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2017-11-28 16:22:42
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November 27, 2017

Kansas Corporation Commission,
Conservation Division
266 N Main Street, Suite 220
Wichita, KS 67202-1513

**Re: Request for Hearing – Benjamin M. Giles, License No. 5446;
18-CONS-3188-CPEN, In re Compliance with K.A.R. 82-3-602 at the Wright #1
OWWO; and 18-CONS-3189-CPEN, In re Compliance with K.A.R. 82-3-608 at the
Wright #1 OWWO**

To whom it may concern:

We respectfully request a hearing in the above-referenced dockets on behalf of Benjamin M. Giles (“Operator”) for the reasons below set forth.

Operator is the operator of the Wright #1 OWWO¹ (“Subject Well”), an oil well located in the NE/4 NE/4 SW/4 of Section 32-T25S-R4E, Butler County, Kansas, on a valid and subsisting oil and gas lease. Operator requests that the Commission take administrative notice of Docket No. 18-CONS-3167-CPEN. In particular, Operator requests that the Commission review the background information recited in his request for rescission of penalty order dated November 14, 2017. The Subject Well is a washdown of a previously abandoned well. As explained in great detail in Operator’s request letter, contrary to Commission records the old well was not actually plugged when it was originally abandoned some 50 years ago. The result was that the old well was in extremely poor condition when Operator commenced workover operations, which caused the drilling of the Subject Well to take much longer than anticipated. The duration of the workover operation was further extended by unexpected and extraordinary mechanical difficulties with the drilling equipment and extreme weather. These circumstances required the use of the lawfully permitted drilling pit at issue for a period of time in excess of 365 days.

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WICHITA, KS

¹ OWWO stands for “old well workover.”

The Penalty Order issued in Docket No. 18-CONS-3188-CPEN cites Operator for one violation of K.A.R. 82-3-602 because, "Operator has not submitted a complete, accurate CDP-4 [Surface Pit Closure Form] in a timely manner for the pit associated with the subject well."² K.A.R. 82-3-602(c) requires that "[e]ach operator of a pit shall file a pit closure form prescribed by the Commission **within 30 days after closure of the pit.**" The Penalty Order was issued October 26, 2017. On that date the drilling pit at issue was not closed, and, in fact, was still being utilized by the Operator in connection with the drilling of the Subject Well. It is therefore not possible that Operator could have committed a violation of K.A.R. 82-3-602 as alleged in the Penalty Order, because at that time the pit was not closed and had not been closed for in excess of 30 days. Operator completed drilling and set 5 ½" casing at the Subject Well for production on November 17, 2017. Operator will close the drilling pits at issue on or before December 29, 2017. Operator will file a CDP-4 pit closure form within 30 days from the date the pit is closed as required by Commission regulations.

The Penalty Order issued in Docket No. 18-CONS-3189-CPEN cites Operator for one violation of K.A.R. 82-3-608 because, "Operator has not submitted a complete, accurate CDP-5 [Waste Transfer Form] in a timely manner for the pit associated with the subject well."³ K.A.R. 82-3-608(a) requires that "[e]ach operator shall file a form prescribed by the Commission **within 30 days after the operator transfers refuse from any pit . . .**" The letter from Commission Staff authorizing the drilling pit at issue requires Operator to remove fluids within 48 hours of completion of drilling operations, and to file a CDP-5 waste transfer form within 30 days after fluid removal.⁴ This Penalty Order was also issued on October 26, 2017. No where is it alleged in the Penalty Order that Operator has transferred refuse from the drilling pit at issue. As noted above, Operator was engaged in the drilling of the Subject Well on the date the Penalty Order was issued. It is therefore not possible that Operator could have committed a violation of K.A.R. 82-3-608 for failing to timely submit a CDP-5 waste transfer form as alleged in the Penalty Order, because at that time Operator drilling operations were not completed and Operator had not transferred any refuse from the pit. As noted above, drilling operations were completed on November 17, 2017, and the drilling pits will be closed on or before December 29, 2017. Operator has not and does not intend to transfer any waste from the drilling pit at issue. Operator will file a CDP-5 form indicating the same within 30 days from the date drilling operations were completed as required by Commission regulations and Staff's letter authorizing the drilling pit.

Operator concedes that the drilling pit at issue has been opened longer than the 365 days allowed by K.A.R. 82-3-602(a)(1)(A). As a result of administrative oversight, Operator has not previously requested pit permit extensions of up to six months in accordance with K.A.R. 82-3-602(a)(2).⁵ Operator notes that he has not been cited for a violation of K.A.R. 82-3-602(a) in either of the above-referenced dockets. Operator contends that the unforeseeable condition of the old well and the extraordinary series of events inhibiting the drilling of the Subject Well constitute good cause to extend the pit permit. By this letter Operator respectfully requests a pit permit

² Docket No. 18-CONS-3188-CPEN, Penalty Order ¶ 13.

³ Docket No. 18-CONS-3189-CPEN, Penalty Order ¶ 13.

⁴ Docket No. 18-CONS-31167-CPEN, Penalty Order, Ex. F, p.5.

⁵ Per K.A.R. 82-3-602(a)(2), "[a]ny operator may request a pit permit extension of not more than three months, and the request may be granted by the director. An extension may be granted due to pit conditions or for other good cause shown by the operator."

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extension of four months to December 29, 2017. Operator will close the pit in accordance with Staff instructions on or before that date, and will file the requisite CDP-4 pit closure form and CDP-5 waste transfer form within the timeframes required by Commission regulations. Operator apologizes for his administrative oversight.

For the reasons set forth above, Operator believes the Penalty Orders issued in Docket Nos. 18-CONS-3188-CPEN and 18-CONS-3189-CPEN are improper on the face of the pleadings, particularly when read in concert with the pleadings on file in Docket No. 18-CONS-3167-CPEN. Charging Operator with violations for neglecting to file a CDP-4 and CDP-5 when the filing of such forms is not required under the plain reading of the Commission's regulations is unreasonable, arbitrary and capricious towards Operator. Operator further contends that the issuance of the associated fines constitutes economic waste. Operator respectfully requests the Penalty Orders issued in the above-referenced dockets be rescinded, or in the alternative, requests a hearing in those matters.

Sincerely,

Roger L. This, Attorney
for Jonathan A. Schlatter
For the Firm

Attorneys for Benjamin M. Giles

JAS/cah

cc: Jon R. Myers, KCC Litigation Counsel