

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the request to transfer wells)
from Daylight Petroleum, LLC to Bluejacket) Docket No. 25-CONS-3235-CMSC
Operating, LLC.)

**BLUEJACKET OPERATING LLC’S REPLY TO STAFF’S RESPONSE TO
MOTION TO DISMISS / MOTION FOR SUMMARY JUDGMENT**

Bluejacket Operating LLC (“Bluejacket”) by and through its attorney, Chris McGowne, hereby submits this Reply to Staff’s Response to Motion to Dismiss / Motion for Summary Judgment, pursuant to K.S.A. 77-519(a). In support hereof, Bluejacket alleges and states as follows:

I. SUMMARY JUDGMENT IS APPROPRIATE IN THIS MATTER

1. Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Austin Props., LLC v. City of Shawnee*, 564 P.3d 1262, 1266 (Kan. 2025)
2. In Staff’s Response to Motions to Dismiss / Motion for Summary Judgment (“Staff’s Response”), Staff acknowledges that the only question in this docket are questions of law. Specifically, there is no dispute that there are no deficiencies with 1) the T-1’s as submitted, 2) Bluejackets compliance with its statutory obligations as an operator, or 3) Daylight’s compliance with respect to the proposed wells to be transferred.
3. The only issue(s) in dispute is whether Staff may precondition the approval of the T-1’s by applying its own subjective and arbitrary standards despite full compliance with all statutory and administrative requirements of Daylight and Bluejacket.

II. LEGAL STANDARD

4. Generally, administrative agency may not violate or ignore its own rules, and where it fails to follow rules which it has promulgated, its orders are unlawful. *Murphy v. Nelson*, 260 Kan. 589, 921 P.2d 1225 (1996)
5. An agency action is arbitrary and capricious if it is unreasonable or without foundation in fact. *Sajadi v. Kansas Bd. of Healing Arts*, 61 Kan. App. 2d 114, 500 P.3d 542 (2021) *see also Lario Oil & Gas Co. v. Kansas Corp. Comm'n*, 57 Kan. App. 2d 184, 450 P.3d 353 (2019) (The arbitrary and capricious test for judicial review of an agency's decision relates to whether a particular action should have been taken or is justified, such as the reasonableness of an agency's exercise of discretion in reaching the determination or whether the agency's action is without foundation in fact).
6. An administrative agency may not read in statutory provisions that do not exist. *See e.g. Wheeler v. Boeing Co.*, 25 Kan. App. 2d 632, 967 P.2d 1085 (1998)
7. Administrative agency may not use its power to issue regulations which alter legislative act which is being administered *Schmidt v. Kansas State Bd. of Tech. Pros.*, 271 Kan. 206, 21 P.3d 542 (2001), *as corrected* (May 8, 2001)
8. **III. STAFF'S POSITION IS ARBITRARY AND CAPRICIOUS**
9. Staff's position in this matter seems to be one of its own subjective policy considerations as opposed to the application of legal principles.
10. Staff's brief consists of effectively arguing that even when an operator complies with all statutory or regulatory provisions, Staff may ignore those considerations and instead impose

its own subjective criteria to judge an operator's worthiness to operate oil and gas wells within the state of Kansas.

11. As an initial matter, nowhere in its brief does Staff argue that Bluejacket, or Daylight, has not objectively met the required criteria for transfer of the Subject Wells. Rather, Staff instead argues general "policy" considerations as a basis for delaying resolution of this docket and prohibiting the transfer of the wells.
12. Staff begins by arguing that Bluejacket somehow does not fundamentally understand the difference between operatorship and ownership. However, in making this argument Staff only illustrates its own fundamental misunderstanding of the issues of this case.
13. Certainly, ownership and operatorship are separate issues, and Bluejacket is aware that Staff is not challenging the legal title of Bluejackets assets. However, it also appears that Staff may be unaware that a license to operate is also a property right, and the failure to allow Bluejacket to exercise its right to operate comes with serious implications.
14. In other words, what Staff seemingly misunderstands about this case is that its actions in preventing Bluejacket from assuming operatorship is impeding Bluejacket's contractual rights and obligations, potentially resulting tangible, compensable damages to Bluejacket. *See e.g.* 42 U.S.C. § 1983
15. Bluejacket purchased both working interests in the Subject Wells as well as the right to operate said wells. Bluejacket subsequently registered with the state of Kansas as an operator, and otherwise complied with the relevant provisions of K.S.A. 55-155 and the Kansas Administrative Regulations. This included secure the appropriate financial assurance. Bluejacket is an operator in good standing, and the Commission has provided no

other reason for denial of the relevant operatorship of the wells other than its alleged concerns about an unrelated matter pertaining to wells that are not subject to the proposed transfer.

16. By prohibiting Bluejacket from operating its duly purchased wells, the agency is putting Bluejacket in a possible breach of contract situation, potentially diminishing the value of the assets, potentially taking Bluejackets property, and damaging its ability to fully exercise its rights associated with the Subject Wells.
17. Put another way, Bluejacket's ability to operate its wells is directly tied to its ability to fully realize its property rights.
18. Staff next proceeds to argue that the Commission has unilateral authority over approval of the transfer of operatorship, using a hypothetical example of the Commission rejecting the transfer of operatorship to a proposed operator who does not have a license to illustrate its point.
19. However, Staff's apples to oranges comparison unwittingly underscores Bluejacket's entire point. In the example given by Staff, the Commission would be wholly justified in denying a transfer of operatorship to a party who has not secured a license as that would be in direct contravention of Kansas statutory and administrative law. Conversely, in the instance an operator is in full compliance, as we have here, it would be arbitrary and capricious to deny the transfer as there would be no underlying justification for the denial.
20. Staff then proceeds to spend the next several paragraphs making tertiary arguments about why, as a matter of policy, Staff may impose regulatory or statutory requirements that do not exist in Kansas law. This, while simultaneously acknowledging that Staff may not supersede

the plain text of K.S.A. 55-155, which establishes clear terms under which a party may become a duly registered operator in Kansas.

21. Staff's basis for its generalized arguments is an irrelevant analysis of the transfer policies of other states, which Staff then uses as justification for disregarding the plain language of Kansas law. Of course the difficulty with this argument is that the regulation of oil and gas on state fee lands is a state-by-state analysis, with each state regulating the industry in significantly different ways.¹ Thus, using the regulatory structure of one state to justify agency action of another state is not only irrelevant, but undermines the basic principles of federalism.
22. Again, this illustrates the fallacy of Staff's ongoing argument that it may arbitrarily deny the transfer of operatorship. Staff cannot provide any legal or factual basis under Kansas law to support its contentions. Instead, Staff must rely on unrelated or speculative arguments based on out of state regulatory schemes as its basis for imposing subjective criteria on the transfer of operatorship.
23. In its brief Staff also attempts to make the argument that as Daylight is transferring "all its assets and leaving only liabilities", Staff therefore has an adequate basis to impair Bluejacket's transfer of operatorship and associated right to operate the Subject Wells.
24. Aside from providing no evidence in support of its claim, nowhere does such a test exist in Kansas statutory or administrative law. Nowhere is Staff granted the authority to make arbitrary economic evaluations and condition the transfer of operatorship based on a

¹ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.acc.com/sites/default/files/resources/vl/membersonly/InfoPAK/1384132_1.pdf

transferring party's remaining assets and liabilities. Under Kansas law this would clearly fall within the applicable legal definition of arbitrary and capricious.

25. It fact, taken to its logical conclusion, such a standard would mean that no Kansas operator could sell all, or substantially all, of its assets without either forcing the buying operator to assume all of the operator's existing liability or somehow providing a satisfactory accounting to the state that would satisfy the Commission's non-existent economic test. This is an absurd result. See e.g. State ex rel. Schmidt v. Kelly, 309 Kan. 887, 441 P.3d 67 (2019)
26. Further, this would essentially render the financial assurance provisions of the Commission's regulations meaningless. The entire basis of imposing financial assurance conditions on operators is to ensure that any leftover obligations not covered by an operator are not left to the state.
27. Staff also argues that "Bluejacket has not provided any information or documentation which would indicate it has the capability to operate the 421 wells at issue, much less, address any compliance concerns that come from those wells."
28. Again, setting aside Bluejacket's compliance with state statutory and administrative standards which presumably were put in place to answer the exact questions staff is posing, Staff again fails to provide any legal basis or justify why it is ignoring the financial assurance rules that currently exist. As noted *supra*, the entire basis for the imposition of financial assurance on operators is to address the very concern Staff is articulating. Staff has no independent basis for adding additional imaginary burdens to Bluejacket, who has already complied with Kan. Stat. Ann. § 55-155(d).
29. Finally, this line of Staff's argument also highlights the issue with Staff attempting tie the

above captioned proceeding with another wholly unrelated docket.

30. If Staff has legitimate concerns about Daylight's remaining liabilities, it need only confirm that Daylight is in full compliance with the Commission's financial assurance provisions.
31. If in fact Daylight were to not live up to its obligations, the Commission's remedy is not to prevent transfer of operatorship to Bluejacket, but rather to foreclose on Daylight's bond.
32. Setting aside the fact that each party is fully bonded, Staff's attempt to tie two independent dockets together is not rooted in any factual or legal basis and is arbitrary as a matter of law.
33. Staff is seeking to condition transfer of operatorship to Bluejacket, on resolution by Daylight, of an issue involving a well that is not being transferred.
34. Put another way, Staff is preventing the transfer of a significant number of valuable assets to Bluejacket that Bluejacket has put considerable time and resources into in order to attempt to force Daylight into resolving a matter that has no relevance to Bluejacket or its operations.
35. No matter how much Staff asserts otherwise, Staff has no basis or authority to tie these unrelated matters together. In fact, if Staff had a basis to intermingle these issues, it would have done so within Docket No. 25-3040.
36. Staff's final arguments are rooted in general "public policy" reasons, which it attempts to use as a basis to override statutory and administrative regulations.
37. As a matter of course, public policy cannot override statutory or administrative law. Staff cannot simply cite "public policy considerations" as a basis to ignore Kansas law and impede Daylight and Bluejacket's rights.

38. Additionally, Staff is failing to acknowledge the public policy considerations in ensuring that Kansas operators are allowed to exercise their statutory, administrative, and constitutional rights.
39. There is significant public policy benefits to ensuring that Kansas operators are treated fairly, that they are subject to a clear and unambiguous regulatory scheme, and they are not denied substantive and procedural due process by Staff imposing unconstitutionally vague and ambiguous regulatory standards.
40. Indeed, public policy considerations demand that if an operator is in full compliance with all applicable legal standards that it be afforded the opportunity to exercise its rights.

IV. CONCLUSION

41. Staff does not have an adequate legal or factual basis to deny the transfer of operatorship.
42. Staff has failed to provide more than generalized arguments not rooted in Kansas law asserting that Staff has the right to condition the transfer of operatorship based on nothing more than its desire to hold Daylight hostage and force it to resolve an issue unrelated to the matter before the Commission.
43. Staff desires to deny Bluejacket its rights, and effectively hold Bluejacket in limbo in order to resolve an issue related to a well that Bluejacket has no interest in, and is not being transferred.
44. Staff seems to believe that it can unilaterally impact Bluejacket's rights by imposing arbitrary, subjective standards on the transfer of operatorship in order to somehow impact an ancillary docket which involves the transferring operator.

45. Staff's actions are ultra virus, not in accord with Kansas law, arbitrary and capricious, in violation of the Kansas and US Constitutions, and should be rejected outright by this Commission.

WHEREFORE, Bluejacket Operating, LLC respectfully requests the Commission dismiss this Docket, finding as a matter of law that the T-1 transfers must be approved and order Staff to process said T-1 transfers forthwith and assign the wells listed thereon and applicable injection authorities to Bluejacket.

s/Chris McGowne

Chris McGowne

McGowne Law Offices, P.A.

PO Box 1659

Hays KS 67601

(720) 878-7688, telephone

cjmcgowne@mcgownelaw.com

Attorneys for Bluejacket Operating, LLC

CERTIFICATE OF SERVICE

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I, the undersigned, certify that a true and correct copy of the attached Response has been served to the following by means of electronic service on April 18, 2025.

KEITH A. BROCK, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067-0017
kbrock@andersonbyrd.com

DEANNA GARRISON
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
deanna.garrison@ks.gov

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
kelcey.marsh@ks.gov

CHRISTOPHER J MCGOWNE
MCGOWNE LAW OFFICES, P.A.
PO BOX 1659
HAYS, KS 67601-8659
cjmcgowne@mcgownelaw.com

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
jon.myers@ks.gov

KRAIG STOLL, EP&R SUPERVISOR
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
kraig.stoll@ks.gov

/s/ Chris McGowne