

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the matter of the failure of White)	Docket No.: 25-CONS-3347-CPEN
Exploration, Inc. (Operator) to comply with)	
K.A.R. 82-3-111 at the Cullers #1 and Milton)	CONSERVATION DIVISION
#1 wells and K.A.R. 82-3-126 at the Cullers)	
<u>lease in Stanton County, Kansas.</u>)	License No.: 33856

**RESPONSE TO OPERATOR’S MOTION TO SUBMIT REQUEST FOR HEARING
OUT OF TIME AND STAY OF PENALTY ORDER**

Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby files this response to Operator’s *Motion to Submit Request for Hearing out of Time & Motion to Stay Enforcement of Penalty Order* (Motion) filed June 24, 2025. In support of this response, Staff states as follows:

I. BACKGROUND

1. On May 1, 2025, the Commission issued a Penalty Order in this docket for two violations of K.A.R. 82-3-111 and one violation of K.A.R. 82-3-126. The Commission found that Operator’s Cullers #1 and Milton #1 wells (Subject Wells) had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for temporary abandonment (TA) status.¹ The Commission also found that Operator’s Cullers lease (Subject Lease) did not have a current identification sign posted on or within 50 feet of the tank or tank battery at the lease.² The Commission ordered Operator to pay a \$300 penalty, and to plug the Subject Wells, return the wells to service, or obtain TA status for the wells, and to post a current identification sign at the tank or tank battery at the Subject Lease.³ The Commission also ordered

¹ Penalty Order, ¶ 13.

² *Id.* at ¶ 14.

³ *Id.* at Ordering Clauses A through C.

that if the Penalty Order was final and Operator was not in compliance with the Order, then Operator's license would be suspended without further notice.⁴

2. The deadline for Operator to request a hearing in this docket was June 3, 2025.⁵ Operator did not file a request for hearing before this deadline; thus, the Penalty Order became a final order.

3. On June 9, 2025, Staff confirmed that Operator had placed a current identification sign on the Subject Lease.

4. On June 13, 2025, Staff suspended Operator's license because Operator had not paid the penalty or brought the Subject Wells into compliance with the Penalty Order. Staff notified Operator of the suspension in a Notice of License Suspension letter mailed on June 13, 2025.

5. On June 17, 2025, Operator paid the \$300 penalty. Staff approved Operator's TA application for the Milton #1 well on June 23, 2025; consequently, only the Cullers #1 well remains out of compliance with the Penalty Order.

6. On June 24, 2025, Operator filed its Motion. Operator does not dispute the violations in the Penalty Order, but states that it failed to file an application to extend the TA status of the Cullers #1 well beyond the 10-year limit in K.A.R. 82-3-111 due to "inadvertence and oversight."⁶ In its Motion, Operator asks the Commission to allow it to request a hearing out of time and to stay its license suspension.⁷

⁴ *Id.* at Ordering Clauses E through G.

⁵ This deadline includes the additional three days added to the 30-day deadline as prescribed by K.S.A. 77-531(b).

⁶ Motion, p. 1.

⁷ *Id.* at pp. 1-2.

II. OPERATOR DOES NOT PROVIDE A SUFFICIENT REASON TO GRANT ITS MOTION TO SUBMIT A REQUEST FOR HEARING OUT OF TIME

7. In its Motion, Operator admits that it failed to request a hearing in this docket prior to the 30-day deadline in the Penalty Order.⁸ The 30-day deadline to request a hearing is prescribed in K.S.A. 55-164(b), and the statute does not provide for the ability to request a hearing after that deadline. As the 30-day deadline is statutorily prescribed, the Commission does not appear to have authority to grant any extensions of that deadline.

8. In its Motion, Operator states that neglecting to timely request a hearing arose out of “inadvertence and oversight” in failing to file an application to extend the 10-year TA limit for the Cullers #1 well.⁹ Operator thus appears to be requesting permission to file a motion out of time due to excusable neglect. Under K.S.A. 60-206(b)(1)(B), “When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.”¹⁰ The Kansas Court of Appeals has defined excusable neglect as “a failure to take some proper step at the proper time, not because of the party's own carelessness or inattention, but because of some unexpected or unavoidable hindrance or accident.”¹¹

9. Operator’s Motion does not describe its failure to file a timely request for hearing as occurring because of some unexpected or unavoidable hindrance or accident. Instead, the Motion states that the failure to timely request a hearing occurred because of the party’s own “inadvertence and oversight.”¹² Operator thus missed the deadline to file a request for hearing due

⁸ *Id.*

⁹ *Id.* at p. 1.

¹⁰ While the Kansas Rules of Civil Procedure (K.S.A. 60-101, *et seq.*) are not binding on the Commission (*see*, K.S.A. 60-201(b)), the Commission may look to them for persuasive authority.

¹¹ *Nielsen v. Pollan*, 2015 WL 4879159 (Unpublished) (quoting *State v. Keltner*, 2015 WL 1124699 (Unpublished)).

¹² Motion at p. 1.

to Operator's own carelessness or inattention. As Operator's failure to file a timely request for hearing does not rise to the level of excusable neglect, Operator's motion to submit a request for hearing out of time should be denied.

III. OPERATOR'S REQUEST FOR STAY OF LICENSE SUSPENSION IS BARRED BY ACQUIESCENCE AND INCREASES THE POSSIBILITY OF ENVIRONMENTAL HARM

10. The doctrine of acquiescence holds that a party may not act inconsistently by accepting the benefits or burdens of a judgment, while at the same time appealing from that judgment. The Kansas Supreme Court in *Varner v. Gulf Ins. Co.* explained that "[t]he law of acquiescence is well established in Kansas. Voluntary compliance with the judgment of a trial court constitutes acquiescence, and where a party is found to have acquiesced in the judgment of a trial court, appellate jurisdiction is lacking and the party's appeal must be dismissed."¹³ The Court in *Varner* further noted that "[t]he rationale for the rule of acquiescence is that a party who voluntarily complies with a judgment cannot thereafter adopt an inconsistent position and appeal the judgment."¹⁴

11. The doctrine of acquiescence also applies to judgments made by an administrative agency. The Kansas Supreme Court case *Huet-Vaughn, M.D. v. Kansas State Bd. Of Healing Arts* arose out of an order by the Kansas Board of Healing Arts (KBHA) that imposed a fine and censure on physician Huet-Vaughn.¹⁵ Huet-Vaughn filed a petition for review of KBHA's order, but also paid the fine.¹⁶ The Kansas Supreme Court found that because the fine and censure both arose out of a single statutory violation by Huet-Vaughn, they were inseparable for purposes of

¹³ 254 Kan. 492, 497-98 (1994).

¹⁴ *Id.* at 495.

¹⁵ 267 Kan. 144 (1999).

¹⁶ *Id.* at 146.

acquiescence.¹⁷ The Court went on to hold that by paying the fine, Huet-Vaughn had acquiesced to the censure, and dismissed her appeal.¹⁸

12. By paying the \$300 penalty in this docket on June 17, 2025, Operator has acquiesced to the Commission's judgment in the Penalty Order. Ordering Clause G of the Penalty Order states that if the Order is final, "then Operator's license shall be suspended without further notice and shall remain suspended until Operator complies."¹⁹ Each of the Ordering Clauses in the Penalty Order arise out of Operator's action in violating Commission regulations at the Subject Wells and Subject Lease. When it paid the penalty amount that the Commission imposed for violating those regulations, Operator acquiesced to each of the Ordering Clauses in the Penalty Order, including suspension of its license for non-compliance with the order. As Operator has acquiesced to the Penalty Order, Operator may not now request a stay in the execution of that Penalty Order.

13. Finally, granting a stay of enforcement of the Penalty Order increases the likelihood of environmental harm. The Cullers #1 well has been shut-in for over ten years.²⁰ In its Motion, Operator indicates that it intended to file an application for an exception to the 10-year TA limit for the Cullers #1 well.²¹ Typically, before the Commission grants such applications for exception, it requires operators to perform mechanical integrity tests (MITs) on the wells to show that the wells do not pose a threat to fresh and usable waters.²² If the Commission grants a stay of Operator's license suspension, then Operator would have no reason to promptly perform an MIT

¹⁷ *Id.* at 145, 147 ("We emphasize that this appeal goes solely to the violation of K.S.A. 65-2836(c) and not to the individual penalties authorized by K.S.A. 65-2836a and 65-2836. If we should agree with plaintiff that her court martial conviction and sentence are not violations of K.S.A. 65-2836(c), then *both* statutory penalties must be reversed.").

¹⁸ *Id.* at 150.

¹⁹ Penalty Order at Ordering Clause G.

²⁰ *Id.* at Exhibit A.

²¹ Motion at p. 1.

²² *See, e.g.*, Docket 25-CONS-3310-CEXC, *Order Granting Application*, ¶ 5 (Jul. 1, 2025).

on the Cullers #1 well or plug the well. Such a delay in bringing the Cullers #1 into compliance with Commission regulations may allow a well that has been shut-in for more than ten years to sit idle, remaining a potential threat to the environment. For this reason, the Commission should deny Operator's motion for a stay of enforcement of the license suspension.

WHEREFORE, Staff respectfully requests the Commission deny Operator's motion to submit a request for hearing out of time and for a stay of enforcement.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

25-CONS-3347-CPEN

I, the undersigned, certify that a true and correct copy of the attached Response has been served to the following by means of first-class mail and electronic service on July 8, 2025.

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