

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

In the matter of the failure of Nacogdoches) Docket No.: 24-CONS-3177-CPEN
Oil & Gas, LLC (Operator) to comply with)
K.A.R. 82-3-120.) CONSERVATION DIVISION
)
_____) License No.: 32042

**RESPONSE TO OPERATOR'S MOTION FOR TEMPORARY STAY OF
PROCEEDINGS**

Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby submits this response to the *Motion for Temporary Stay of Proceedings* (Motion) filed on behalf of Nacogdoches Oil & Gas, LLC (Operator) on May 15, 2024. In support of its response, Staff states as follows:

1. On December 19, 2023, the Commission issued a Penalty Order to Operator in the captioned docket, because there were unplugged wells remaining on Operator's expired license. Operator had submitted a license renewal application, but it was denied in Docket 22-CONS-3407-CMSC (Docket 22-3407) based on Operator's failure to meet the requirements of K.S.A. 55-155(c)(4) and K.A.R. 82-3-120(g)(2). Operator's Motion incorrectly states that the penalty order in the captioned docket is entirely based upon Operator's alleged non-compliance with the Final Order in Docket 22-3407.¹ The Commission's Orders in Docket 22-3407 simply denied Operator's application for a license renewal. The captioned docket penalizes Operator for continuing to have wells on its expired license.

2. Under K.A.R. 82-3-120(a), each operator in physical control of any oil, gas, injection, or monitoring well shall maintain a current license even if the well is shut-in or idle. Here, Operator does not have a current license, so continuing to have unplugged wells on the license is in violation of the Commission's rules and regulations. Operator was provided an

¹ Motion for Temporary Stay of Proceedings, p. 1 (May 15, 2024).

opportunity to resolve this compliance issue, but has failed to do so. The penalty order issued by the Commission in the captioned matter is similar to any other penalty order the Commission has issued to operators with unplugged wells remaining on an expired license.

3. The Kansas Administrative Procedure Act permits a party to submit a petition for stay, and appears to give discretion to the presiding officer or agency head on whether to take action on the petition for stay.² For the reasons discussed below, Staff does not believe Operator has provided any information or documentation to show that a stay of this docket is warranted at this point in time. Here, Operator argues that this action should be stayed because Operator has sought judicial review after the Commission's final order in a separate docket, Docket 24-3407. However, the action in the captioned docket is separate from the action pending at District Court. Operator currently does not have a license and it is against Commission rules and regulations for unlicensed operators to continue to have unplugged wells on expired licenses. Granting a stay would allow Operator to keep unplugged wells on its expired license for an unknown amount of time and would be contradictory to the Commission's rules and regulations. Additionally, Operator still has all of its administrative remedies available in the captioned docket. Operator has submitted a request for hearing, and the parties are currently in the process of submitting pre-filed testimony. If the Commission does not rule in its favor, then Operator still has an opportunity to request a stay at that point in time, petition for reconsideration, and petition for judicial review.

4. Operator's Motion also argues that the Kansas Judicial Review Act permits the Commission to grant a stay during judicial review. However, this argument does not appear to be relevant because the captioned matter has not reached the point of judicial review. Operator further states that a stay should be granted if the applicant will suffer irreparable injury without

² See K.S.A. 77-528.

it, and granting the stay will not substantially harm other parties to the proceeding or threaten the public health, safety and welfare.³ However, this is an incomplete paraphrasing of the law.

K.S.A. 77-616(c) states,

“If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety or welfare, the court may not grant relief unless it finds that: (1) the applicant is likely to prevail when the court finally disposes of the matter; (2) without relief the applicant will suffer irreparable injury; (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (4) the threat to the public health, safety or welfare relied on by the agency is not sufficiently serious to justify the agency’s action in the circumstances.”

5. First, it is unlikely that Operator will prevail when this matter is disposed. Under K.A.R. 82-3-120 it is clear that unplugged wells cannot remain on expired licenses. As Operator’s license is expired, there is zero indication that Operator would have any likelihood of prevailing in this matter. Therefore, it does not appear that the first prong of the statute referenced in Operator’s Motion is met.

6. Second, Operator’s Motion states that requiring Operator to transfer or plug the wells will cause irreparable harm to Operator. Operator bases this claim of irreparable harm on a statement that the assets on these eastern Kansas leases are estimated to be hundreds of thousands of barrels of oil worth in the tens of millions of dollars.⁴ However, Operator has had these wells since 1997. Since that time, Operator has sold a total of 9,713 barrels of oil.⁵ Operator’s argument of irreparable harm does not appear to carry much weight based on the lack of an active license and lack of production at its wells over the past 27 years. Operator also argues that it or its mineral owners valuable correlative rights might be irreparably harmed if the Motion is not granted. However, no mineral owners have entered an appearance in the docket to

³ Motion at p. 2.

⁴ *Id.*

⁵ Exhibit A.

raise that issue. It does not appear that the second prong of the statute referenced in Operator's Motion is met.

7. Third, Operator states that granting the Motion will not harm any other party to this proceeding nor threaten the public health, safety and welfare.⁶ Further, Operator's Motion states its wells present no threat to fresh water, that Operator has been conducting the minimum maintenance required to assure the Commission of that fact, and has recently conducted casing and mechanical integrity tests consistent with the requirements of Commission.⁷ However, these statements appear to be a misrepresentation to the Commission as Operator has not taken the steps to show the wells are not a threat to public health, safety and welfare. For example, Operator has not provided documentation that shows each of its wells has proper surface control or that each of its wells have passed an integrity test. The State will be harmed if a stay is granted because it will continue to allow environmental issues to go unaddressed. As stated above, Operator has provided no documentation that supports such a statement.

8. Additionally, Operator has been penalized for not conducting mechanical integrity tests consistent with the Commission's regulations. On May 30, 2024, the Commission issued two penalty orders to Operator based on Operator's failure to conduct a mechanical integrity test at one of its wells and based on Operator's failure to submit its annual fluid injection reports.⁸ Failing to ensure that an injection well has sufficient integrity should be considered a substantial threat to public health, safety and welfare. The lack of documentation provided by Operator, as well as the knowledge that Operator is not maintaining its regulatory obligations as it claims, is an indication that the third and fourth prongs of the statute referenced in Operator's Motion are not met.

⁶ Motion at p. 3.

⁷ *Id.*

⁸ See KCC Dockets 24-CONS-3373-CPEN and 24-CONS-3374-CPEN.

9. In conclusion, Operator's Motion appears to be a delay tactic and does not appear to be procedurally appropriate or supported by any documentation. Staff's response above shows how Operator has failed to present a legitimate argument that a stay is necessary in this docket. However, this response does show that there is an environmental threat with the wells and Operator fails to demonstrate that the wells are not a threat to fresh and usable water.

WHEREFORE, Staff respectfully requests the Commission deny Operator's *Motion for Temporary Stay of Proceedings*, and for such other and further relief as the Commission deems just and equitable.

Respectfully Submitted,

/s/ Kelcey Marsh

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CERTIFICATE OF SERVICE

24-CONS-3177-CPEN

I, the undersigned, certify that a true and correct copy of the attached Response to Operator's Motion for Temporary Stay of Proceedings has been served to the following by means of electronic service on June 14, 2024.

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