

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

In the matter of the application of Merit Energy) Docket Nos.: 23-CONS-3080-CUIC
Company, LLC (Operator) for a permit to)
authorize the injection of saltwater into the) CONSERVATION DIVISION
Morrow formation at the WMSU #1602 well in)
Section 32, Township 34 South, Range 41 West,) License No.: 32446
Morton County, Kansas.)

**RESPONSE TO JOINT MOTION FOR AN ORDER NUNC PRO TUNC
AND MOTION TO AMEND FINAL ORDER**

Staff of the Kansas Corporation Commission (Staff and Commission, respectively) submits its response to the Joint Motion for Order Nunc Pro Tunc (Motion) submitted by Merit Energy Company, LLC (Operator) and submits its motion requesting that the Commission modify the mechanical integrity testing requirement issued in its Final Order. In support of this response and motion, Staff states as follows:

1. On June 20, 2023, an evidentiary hearing was held in the captioned matter regarding an injection application submitted by Operator for the Wilburton Morrow Sand Unit #902 (Subject Well), API #15-129-20675, which would allow for the Subject Well to have dual-completion allowing the well to inject into the Morrow while simultaneously producing from the Topeka and Wabaunsee formations. On August 3, 2023, the Commission issued a Final Order granting Operator's application. One of the conditions listed in the Commission's Final Order was for Operator to first pass a mechanical integrity test or tests from the top of the Topeka to surface and from the top of the Morrow to the base of the Topeka, at 750 pounds per square inch.¹ This condition was also restated in the Commission's Order on Reconsideration.² Operator did not submit a petition for reconsideration regarding this condition.

¹ Final Order, Ordering Clause A(1) (Aug. 3, 2023).

² Order On Reconsideration, ¶1(a) (Mar. 7, 2024).

2. On May 29, 2024, Operator submitted its Motion.³ The Motion states that the reference to the Topeka in the Commission’s Final Order is in error and should be replaced with “from a point immediately above the highest producing interval”.⁴ Even though the docket is now closed, Staff is not opposed to modification of the Commission’s Final Order. However, an Order Nunc Pro Tunc does not procedurally appear to be the correct way to proceed.

3. An Order Nunc Pro Tunc has generally been used by the Commission in order to correct clerical errors with a final order.⁵ Here, the reference to the Topeka made in the Commission’s Final Order was not a clerical error. It appears the condition required by the Commission was based on a statement made in Mr. Nicholas Lahutsky’s testimony, which discussed an offer to conduct conventional casing integrity tests on the intervals from the top of the Topeka to surface and from the top of the Morrow to the base of the Topeka to demonstrate mechanical integrity at all operative depths.⁶ However, based upon Operator’s Motion it appears this testimony was inaccurate.

4. The application at issue proposes to produce gas from both the Topeka and Wabaunsee formations while simultaneously injecting into the Morrow formation. The Wabaunsee formation is above the Topeka formation in the Subject Well. This can be seen in Exhibit M-1 and Exhibit M-2, which are attached to Mr. Lahutsky’s direct testimony. Despite the conflicting information provided by Operator’s testimony, Staff believes there is enough evidence in the record to require Operator to conduct a mechanical integrity test from the top of the Wabaunsee to surface and from the top of the Morrow to the base of the Topeka, at 750

³ Operator’s Motion is titled as a joint motion; however, Staff did not agree or sign off on the submission of the Motion.

⁴ Joint Motion For Order Nunc Pro Tunc, ¶¶ 1-2 (May 29, 2024).

⁵ See Docket 16-CONS-4045-CUNI, *Order Nunc Pro Tunc* (May 19, 2020).

⁶ Operator’s Pre-Filed Direct Testimony of Nicholas Lahutsky on Behalf of Merit Energy Company, LLC, p. 7:3-5 (Jan. 27, 2023).

pounds per square inch. If the Commission's Final Order is not amended, then Operator would not be able to operate the well as it proposed and Operator would be required to seal off the perforations located in the Wabaunsee formation in order to test the well as currently required by the Commission.

WHEREFORE, Staff respectfully request the Commission grant Staff's motion to amend the Final Order in this docket for the reasons described above by requiring Operator to pass a mechanical integrity test or tests from the top of the Wabaunsee to surface and from the top of the Morrow to the base of the Topeka, at 750 pounds per square inch, 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

23-CONS-3080-CUIC

I, the undersigned, certify that a true and correct copy of the attached Response to Joint Motion for an Order Nunc Pro Tunc and Motion to Amend Final Order has been served to the following by means of electronic service on June 11, 2024.

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