

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

In the matter of resolving K.A.R. 82-3-111	)	Docket No.: 20-CONS-3129-CPEN
issues associated with Prairie Gas Operating,	)	20-CONS-3144-CPEN
LLC (Operator) in four consolidated dockets,	)	20-CONS-3220-CPEN
regarding wells in Greeley and Hamilton	)	21-CONS-3199-CPEN
Counties, Kansas.	)	
	)	CONSERVATION DIVISION
	)	
	)	License No.: 35442

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**MOTION FOR SUMMARY JUDGMENT IN PART**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby moves the Commission to enter summary judgment in part, in Staff's favor. In support of its motion, Staff states the following:

**PROCEDURAL BACKGROUND**

1. On November 7, 2019, the Commission issued a Penalty Order in Docket 20-CONS-3129-CPEN (Docket 20-3129) for two violations of K.A.R. 82-3-111. The Commission found that Operator's Earl #1, API #15-075-20745, and Watson #1, API #15-071-20656, wells (20-3129 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. The Penalty Order assessed a \$200 penalty, and directed Operator to plug the wells, return the wells to service, or obtain TA status for the wells if eligible.

2. On November 14, 2019, the Commission issued a *second* Penalty Order in Docket 20-CONS-3144-CPEN (Docket 20-3144) for one violation of K.A.R. 82-3-407. The Commission found that Operator had not performed a current successful mechanical integrity test (MIT) at the Bounds #2, API #15-071-20089, well (20-3144 Well). The Penalty Order assessed a \$1,000 penalty, and directed Operator to perform a successful MIT on the well or plug the well.

3. On December 12, 2019, Operator filed written requests for hearings in both Docket 20-3129 and Docket 20-3144 (Consolidated Dockets). On January 22, 2020, the Presiding Officer issued an Order consolidating the dockets under Docket 20-3129, and also issued a procedural order setting forth dates for the filing of written testimony, and an evidentiary hearing.

4. On February 13, 2020, the Commission issued a *third* Penalty Order in Docket 20-CONS-3220-CPEN (Docket 20-3220) for three violations of K.A.R. 82-3-111. The Commission found that Operator's Fecht D #1, API #15-071-20109; Monroe #2-4H, API #15-071-20706; and Watson Farms #1, API #15-071-20358, wells (20-3220 Wells) had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for TA status. The Penalty Order assessed a \$300 penalty, and directed Operator to plug the wells, return the wells to service, or obtain TA status for the wells if eligible.

5. Operator timely filed a written request for a hearing in Docket 20-3220 on March 13, 2020, and a procedural schedule was created that provided for, *inter alia*, the filing of written testimony, and an evidentiary hearing. However, after the filing of Staff's testimony, Operator withdrew its request for a hearing on August, 27, 2020, wherein it noted its understanding that by filing to notice of withdrawal, "the Commission will proceed in the docket without a hearing."<sup>1</sup> On August 28, 2020, a *Prehearing Officer Order Closing Docket* (20-3220 Docket Order) was issued noting, "further proceedings are unnecessary, and...closing this docket will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the Penalty Order."<sup>2</sup> Operator filed no response to the 20-3220 Docket Order.

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<sup>1</sup> Docket 20-CONS-3220-CPEN, *Prairie Gas Operating, LLC's Notice of Withdrawal of Written Request for Hearing*, p. 1.

<sup>2</sup> Docket 20-3220 Docket Order, ¶ 3.

6. On September 24, 2020, Operator withdrew its request for a hearing in the Consolidated Dockets. Again, Operator noted its understanding that its withdrawal meant that the Commission would proceed in the docket without a hearing.<sup>3</sup> As a result of the Operator withdrawing its requests for a written hearing, the Prehearing Officer issued an order closing the docket on September 25, 2020 (Consolidated Dockets Order), again noting, “closing this docket will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to” the Penalty Orders.<sup>4</sup> Operator filed no response to the Consolidated Dockets Order.

7. After the Presiding Officer closed Docket 20-3220, Operator remained out of compliance with the Penalty Order because the 20-3220 Wells had not been plugged, returned to service, or approved for TA status. Consequently, Staff suspended Operator’s license on September 14, 2020. Likewise, after the Presiding Officer closed the Consolidated Dockets, Operator remained out of compliance with the Penalty Orders in those dockets as well. The 20-3129 Wells had not been plugged, returned to service, or approved for TA status. Operator had also not plugged or performed a successful MIT on the 20-3144 Well. Additionally, Operator had not paid the fine issued in either docket. Staff sent a letter on October 9, 2020, informing Operator that’s its license was also suspended under the Consolidated Dockets.

8. On March 12, 2021, Operator filed a petition in Docket 20-3220, titled, *Petition by Prairie Gas Operating LC [sic] for Order Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing* (Petition). In its Petition, Operator argued its license suspension was legally improper because Staff denied Operator due process and acted

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<sup>3</sup> Consolidated Dockets, *Prairie Gas Operating, LLC’s Notice of Withdrawal of Written Request for Hearing*, p. 1.

<sup>4</sup> Consolidated Dockets Order, ¶ 2.

beyond the scope of the Penalty Orders. On April 13, 2021, Operator also filed a similar Petition in the Consolidated Dockets.

9. On March 24, 2021, Commission Staff filed a *Response to Petition by Prairie Gas Operating, LLC* (Response). In its Response, Commission Staff argued that Operator's license should remain suspended until it could show that wells with probable casing leaks did not present a threat to fresh and usable water and had been brought into compliance with Commission Rules and regulations. On April 13, 2021, Operator filed a *Reply to Staff Response to Petition by Prairie Gas Operating LLC*.

10. On April 13, 2021, the Commission issued a *fourth* Penalty Order in Docket 21-CONS-3199-CPEN (Docket 21-3199) for twenty-seven violations of K.A.R. 82-3-111. The Commission found that twenty-seven of the Operator's wells (21-3199 Wells) had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for TA status. The Penalty Order assessed a \$20,000 penalty, and directed Operator to plug the wells, return the wells to service, or obtain TA status for the wells if eligible. Additionally, the Penalty Order allows Staff the ability to require a casing integrity test before any well is returned to service if (1) any fluid level measurement has shown fluid in the wellbore at or above the appropriate minimum surface casing requirement described in Table I of the Commission's August 1, 1991, Order in Docket 34,780, (2) any measurement has shown fluid in the wellbore at or above any salt formation or other corrosive formation, or (3) in the opinion of Staff, variation in measurements indicates the possibility of a casing leak. Operator timely filed a written request on May 6, 2021, for a hearing in that docket.

11. On April 20, 2021, the Commission issued an Order on Petitions for Lifting of Suspension and Setting Prehearing Conference (Order) in Docket 20-3220 and the Consolidated

Dockets. In the Order, the Commission stated it believed the related wells may need to have casing integrity tests conducted upon them and/or be repaired or plugged. Thus, the Commission broadened the issues in the proceeding, so as to develop the record in regard to these possible needs.

12. Also on April 20, 2021, the Prehearing Officer consolidated Docket 20-3220 with the Consolidated Dockets.

13. On May 28, 2021, the Commission issued a Presiding Officer *Order Consolidating Dockets, Clarifying Remaining Issues, and Setting Procedural Schedule*. The Order further consolidated Docket 21-3199 with the already consolidated dockets (Fully Consolidated Dockets), with filings to be made under Docket 20-3220. As a result, four dockets have now been consolidated under Docket 20-3220.

14. The Commission's Order of May 28, 2021, also states that the parties agree the remaining issues in the Fully Consolidated Dockets are: Issue 1 - whether the Earl #1, Fecht D #1, and Watson #1 wells (Issue 1 Wells) need to have casing integrity tests conducted upon them and/or be repaired or plugged; and Issue 2 - all matters related to the Penalty Order in Docket 21-3199 and Operator's request for hearing thereon.<sup>5</sup> Commission Staff's motion for summary judgement applies only to Issue 1, thus why its motion is for summary judgement in part.

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<sup>5</sup> Docket 20-3220, *Presiding Officer Order Consolidating Dockets, Clarifying Remaining Issues, and Setting Procedural Schedule*, p.2 (May 28, 2021);

## **SUMMARY JUDGMENT AND STANDARD OF PROOF**

15. The Commission has the power and authority to rule on motions for summary judgment under K.S.A. 55-162 and K.S.A. 55-164. The Commission has consistently applied the standards of the Kansas Rules of Civil Procedure<sup>6</sup> when considering and ruling on such motions.

16. Pursuant to K.S.A. 60-256(c)(2), summary judgment is appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”

17. The Kansas Supreme Court has written that when ruling on a motion for summary judgment, “[t]he trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case.”<sup>7</sup>

18. In the instant case, Staff should receive summary judgment in its favor because the evidence indicates there is no issue as to any material fact, and Staff is entitled to judgment as a matter of law.

## **ARGUMENT**

A. *Staff it is Entitled to Summary Judgment with Respect to Issue 1.*

19. As reflected in the record, after the Penalty Order in Docket 20-3129 was issued by the Commission, Operator filed applications for TA status at the 20-3129 Wells. Staff initially approved TA status for both wells; subsequently, however, Staff learned that Operator had

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<sup>6</sup> K.S.A. 60-101, *et seq.*

<sup>7</sup> O’Brien v. Leegin Creative Leather Products, Inc., 294 Kan. 318, 330 (2012), citing, Shamberg, Johnson & Bergman, Chtd. V. Oliver, 289 Kan. 891, 900 (2009).

provided incorrect fluid levels on both TA applications.<sup>8</sup> The Earl #1 had a fluid level of approximately 1,039 feet, which is above the usable water level in its area of 1,150 feet.<sup>9</sup> Staff obtained a fluid level of 788 feet in the Watson #1 well which is well above the depth of usable water in its area.<sup>10</sup> The actual fluid levels in both well bores were too high to approve TA status for the wells.<sup>11</sup> As a consequence, Staff revoked the TA approval for both wells.<sup>12</sup> Operator did not dispute the high fluid levels when it filed its Direct Testimony in the Consolidated Dockets on March 9, 2020.<sup>13</sup> Ultimately, as noted above, Operator withdrew its request for a hearing in the Consolidated Dockets prior to the scheduled evidentiary hearing date, and the Consolidated Dockets Order noted that Staff was not prevented from taking appropriate action related to the relevant wells.

20. In Docket 20-3220, Operator filed an application for TA status at the Fecht D #1 well prior to the Penalty Order being issued by the Commission.<sup>14</sup> However, Staff denied that TA application because of a high fluid level in the well.<sup>15</sup> The static fluid level measured within the Fecht D #1 was 1,085 feet.<sup>16</sup> This is above the usable water level at the Fecht D #1 of 1,600 feet.<sup>17</sup> Operator failed to bring the well into compliance by the deadline provided in the TA denial letter, which resulted in the penalty order in Docket 20-3220 being issued. While Operator also requested a hearing in Docket 20-3220, it again withdrew its request for a hearing prior to the scheduled evidentiary hearing date.

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<sup>8</sup> Docket 20-CONS-3129-CPEN, Prefiled Testimony of Ken Jehlik, p. 4:17-19 (Feb. 7, 2020); Staff also asks the Commission to take administrative notice of its records pursuant to K.A.R. 82-1-230(h).

<sup>9</sup> Docket 20-3129-CPEN, *Prefiled Rebuttal Testimony of Ken Jehlik*, p.6:14-17 (June 19, 2020).

<sup>10</sup> *Id.* at 3:15-21; *see also* Docket 20-3220, *Response to Petition by Prairie Gas Operating, LLC*, Exhibit KCC-1 (Mar. 24, 2021).

<sup>11</sup> *Id.* at 3:21-23 and 6:21-23.

<sup>12</sup> *Id.* at 3:23-4:2; *see also* Docket 20-3220, *Petition by Prairie Gas Operatin LC [sic] for Order Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing*, Exhibit D (Mar. 12, 2021).

<sup>13</sup> Pre-filed and Direct Testimony of Patrick Bass on Behalf of Prairie Gas Operating, LLC (Mar. 9, 2020).

<sup>14</sup> Docket 20-3220, *Penalty Order*, ¶ 9 (Feb. 13, 2020).

<sup>15</sup> *Id.* at Exhibit C.

<sup>16</sup> *Id.* at Exhibit D, p. 12 of 15.

<sup>17</sup> Docket 20-3220, *Response to Petition*, Exhibit KCC-1 (Mar. 24, 2021).

21. On March 8, 2021, Staff informed Operator that it was invoking its right of denial under K.A.R. 82-3-111(c) and that the Issue 1 Wells would need to be repaired or plugged, and that casing integrity tests would need to be performed on the three Issue 1 Wells pursuant to K.A.R. 82-3-111(c). As of the filing of this motion, Operator has yet to perform casing integrity tests on the Issue 1 Wells.

22. Thus, the material facts of Staff's argument are:

- a) Operator applied for TA status for the Issue 1 Wells,
- b) Staff denied the TA applications or revoked the TA status because of high fluid levels in the Issue 1 Wells,
- c) Staff invoked its right of denial pursuant to K.A.R. 82-3-111(c), requesting Operator perform casing integrity tests for the Issue 1 Wells, and
- d) Operator has not performed casing integrity tests for any of the Issue 1 Wells.

These are the only material facts in this case, and Operator has never disputed them. All other facts are immaterial.

23. Under K.A.R. 82-3-111(c), "[a]fter an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water resources. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the conservation division and in accordance with its regulations."

24. Pursuant to the plain language of K.A.R. 82-3-111(c), after an Operator has applied for TA status for a well, Staff has the legal authority to inspect that well. Additionally, if Staff denies TA status for a well, Staff has legal authority to direct the Operator in plugging or



repairing the well. In the instant case, Operator applied for TA status for the Subject Wells. K.A.R. 82-3-111(c) clearly gives Staff the authority to inspect those wells. Further, the Commission has previously ruled that high fluid levels constitute grounds for denial of temporary abandonment applications.<sup>18</sup> The Commission is explicitly tasked with the prevention of pollution of waters of the state from oil and gas activities;<sup>19</sup> it is also tasked with the prevention of economic waste and waste of reservoir energy.<sup>20</sup> Where a potential casing leak exists, the Commission needs to err on the side of protecting water resources and preventing waste.<sup>21</sup> Due to the high fluid levels in the Subject Wells, Staff chose to inspect the wells via casing integrity tests. Additionally, as Staff has denied the TA applications or revoked the TA status for the Issue 1 Wells, Staff also has the legal authority to direct the Operator in plugging or repairing the wells. Therefore, as a matter of law, Staff has the authority to require Operator to perform casing integrity tests on the Subject Wells, and to direct the potential repair or plugging of those wells.

25. Operator has attempted to muddy the water as to what material facts are in dispute, and as to the relevant laws and regulations. In its Reply to Staff Response to Petition by Prairie Gas Operating LLC, filed April 13, 2021, Operator claims that it has performed maintenance work on the Subject Wells, costing the Operator several thousand dollars. That may very well be true, but is completely immaterial. Operator did not perform the maintenance work under the direction of Staff as required by K.A.R. 82-3-111(c). More importantly, Staff requested Operator perform casing integrity tests on the Subject Wells, and Operator has failed to do so.

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<sup>18</sup> See, e.g., Docket 19-CONS-3271-CPEN, Final Order, ¶¶ 12, 14, (Mar. 23, 2021).

<sup>19</sup> See K.S.A. 74-623.

<sup>20</sup> See K.S.A. 55-601; K.S.A. 55-602.

<sup>21</sup> See, e.g., Docket 19-3271, Final Order, ¶ 14.

26. Operator argues in its Petition filed March 12, 2021, that because pressures are low in the Bradshaw Gas Field, it should not be required to perform casing integrity tests on the Issue 1 Wells. In support of this contention, Operator cites to a ruling made by the Commission in Docket 15-CONS-274-CEXC (Docket 15-274). Operator summarizes the Commission's ruling as holding that in the Bradshaw Gas Field, the Order "exempted all wells from provisions of K.S.A. 82-3-304(c) et seq. [*sic*]." <sup>22</sup>

27. It should be noted first that prior orders of the Commission are not precedential. <sup>23</sup> Regardless, the ruling in Docket 15-274 does not bear on the current case. The Commission's order in Docket 15-274 held that wells in the Bradshaw Gas Field were "exempt from the provisions of K.A.R. 82-3-304(c), K.A.R. 82-3-304(d), K.A.R. 82-3-304(e), and the final sentence of K.A.R. 82-3-304(g)." <sup>24</sup> The Commission decided Docket 15-274 on January 13, 2015, when the version of K.A.R. 82-3-304 that was in effect was the version adopted June 1, 2007. In the version of the regulation from 2007, each of the provisions referenced by the Commission in its Order dealt with the annual testing of gas wells for production purposes. In the instant case, Staff is not requesting an annual test of the Subject Wells, but instead, a test to specifically determine if the wells are polluting fresh and usable water resources. Moreover, Operator leaves out a material sentence of the Commission's Order: "The Commission retains the ability to require testing on a specific-well basis whenever Staff believes that circumstances warrant such testing." <sup>25</sup> Staff believes the high fluid levels in the Subject Wells warrant testing of

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<sup>22</sup> Petition by Prairie Gas Operating LC for Order Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing, ¶18 (March 12, 2021).

<sup>23</sup> See, e.g., John M. Denman Oil Co., Inc. v. State Corporation Commission of the State of Kansas, 51 Kan.App.2d 98, 105 (2015).

<sup>24</sup> Docket 15-CONS-274-CEXC, Order Granting Application, Commission Order ¶A (Jan. 13, 2015).

<sup>25</sup> *Id.* at ¶C.

those specific wells. Consequently, the Commission's Order in Docket 15-274 does not bear on this case as it concerns annual testing, not testing on a specific-well basis.

### **CONCLUSIONS**

28. The material facts of Staff's argument are undisputed: Operator applied for TA status for the Subject Wells, Staff denied those applications because of high fluid levels, Staff requested Operator perform casing integrity tests, and Operator has yet to perform those tests. Additionally, while Operator requested a hearing regarding the Issue 1 Wells it ultimately withdrew its requests for hearing without contesting the high fluid level within the Issue 1 Wells. Under K.A.R. 82-3-111(c), once Operator applied for TA status for the Subject Wells, Staff gained legal authority to require Operator to perform casing integrity tests on the wells. As there are no material facts that are in dispute, and Staff is entitled to judgment as a matter of law, the Commission should enter an order for summary judgment in Staff's favor, and order Operator to perform casing integrity tests on the Subject Wells.

WHEREFORE, for the reasons described above, Staff respectfully moves the Commission to enter summary judgment regarding Issue 1 in Staff's favor, require Operator to perform casing integrity tests at the Issue 1 Wells, and such other and further relief as the Commission deems just and equitable.

Respectfully submitted,

/s/ Kelcey Marsh

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## **CERTIFICATE OF SERVICE**

20-CONS-3129-CPEN, 20-CONS-3144-CPEN, 20-CONS-3220-CPEN, 21-CONS-3199-CPEN

I, the undersigned, certify that a true copy of the attached Motion for Summary Judgment in Part has been served to the following by means of electronic service on June 30, 2021.

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