#### THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:

Andrew J. French, Chairperson Dwight D. Keen Susan K. Duffy

In the matter of the application of Prairie Gas Operating, LLC (Operator) for an Operator's License Renewal. Docket No: 22-CONS-3098-CMSC CONSERVATION DIVISION License No: 35442

### ORDER DESIGNATING PRESIDING OFFICER AND SETTING PREHEARING CONFERENCE

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The Commission rules as follows:

1. On March 31, 2021, Operator submitted a license renewal application, which has been neither granted nor denied. On August 25, 2021, Commission Staff motioned for the designation of a presiding officer and the setting of a prehearing conference in this matter. On September 15, 2021, Operator responded to Staff's motion.

2. Staff's motion is resolved as described herein. The purpose of this docket shall be to consider and render a decision upon Operator's license renewal application.<sup>1</sup> Under K.S.A. 77-551(c), the Commission finds a Presiding Officer should be designated to determine procedural matters that may arise prior to a hearing on the merits, including but not limited to conducting prehearing conferences.<sup>2</sup> The Commission also finds a Prehearing Conference should be scheduled.

<sup>&</sup>lt;sup>1</sup> In its motion, Staff stated it had "extended the temporarily [*sic*] expiration date of Operator's license to allow for timely regulatory compliance while this matter is pending." *See* Motion, ¶ 2 (Aug. 25, 2021). The Commission interprets this to mean that, for administrative convenience, the expiration date of Operator's license has been altered in Commission databases to allow Operator continued filing capabilities while its renewal application is considered, as Staff has no statutory or regulatory authority to temporarily extend the expiration date of Operator's license. *See* K.S.A. 55-155; K.A.R. 82-3-120. *See also* K.S.A. 77-511(d) ("If a timely and sufficient application has been made for renewal of a license…the existing license does not expire until the state agency has taken final action upon the application for renewal or, if the state agency's action is unfavorable, until the last day for seeking judicial review…"). <sup>2</sup> *See also* K.S.A. 77-516 and K.S.A. 77-517.

3. Under K.A.R. 82-1-228(d)(1), any party may either "appear before the Commission and be heard in person on that party's own behalf," or appear before the Commission through a licensed attorney. Because Operator is an artificial entity, it cannot appear in person.<sup>3</sup> Thus, Commission regulations require artificial entities such as Operator to appear before the Commission via counsel. Even if Commission regulations did not require counsel in this matter, the Commission finds it would be in the public interest to require counsel via order.<sup>4</sup>

### THEREFORE, THE COMMISSION ORDERS:

A. The Presiding Officer for prehearing matters in this proceeding shall be Jonathan R. Myers, Assistant General Counsel, Kansas Corporation Commission, 266 N. Main Street, Suite 220, Wichita, Kansas, 67202-1513, telephone number (316) 337-6245, email address j.myers@kcc.ks.gov. The Commission may designate other Staff members to serve in this capacity.

B. A Prehearing Conference is scheduled for Thursday, October 7, 2021, at 2:45 p.m.
by telephone. The conference call information is: telephone number (866) 620-7326, Conference
Code PIN: 3902542751. Operator must appear via a licensed attorney.

C. At the Prehearing Conference, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, scheduling of a hearing with the Commission, and any other issues that will promote the orderly and prompt resolution of this proceeding. At the Prehearing Conference, without further notice, this proceeding may be converted into a conference hearing or a summary proceeding for disposition of this matter as provided by the Kansas Administrative Procedure Act (KAPA). Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA.<sup>5</sup>

<sup>&</sup>lt;sup>3</sup> See State ex rel. Stephan v. Williams, 246 Kan. 681, 691 (1990).

<sup>&</sup>lt;sup>4</sup> The administration of justice is efficiently furthered by requiring persons licensed to practice law and familiar with procedure to represent artificial entities. *See In re Arnold*, 274 Kan. 761, 770 (2002). *See also* K.S.A. 77-515(c) ("A state agency may require a corporation or other artificial person to participate by counsel.").

<sup>&</sup>lt;sup>5</sup> K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

D. Although a Presiding Officer is designated, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room. Any filing received after 5:00 p.m. shall be considered filed the next business day. In addition, any late filing shall be accompanied by a Motion to File Out-of-Time. <u>The Commission directs electronic service</u>

# of all filings in the docket to include service on the Presiding Officer and mailed service of all

## filings to be directed to the Presiding Officer's attention.

E. The attorney designated to appear on behalf of the agency in this proceeding is Kelcey

Marsh, Litigation Counsel, telephone number (316) 337-6200, k.marsh@kcc.ks.gov.

### BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: <u>09/23/2021</u>

Lynn M. Ref

Lynn M. Retz Executive Director

Mailed Date: <u>09/23/2021</u>

JRM

#### **CERTIFICATE OF SERVICE**

#### 22-CONS-3098-CMSC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail and electronic service on <u>09/23/2021</u>

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/S/ Desirae Mayfield Desirae Mayfield