

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of the failure of Benjamin M. Giles) Docket No. 17-CONS-3100-CPEN
("Operator") to comply with K.A.R. 82-3-111 at)
The Clearwater #2 and Clearwater #5 wells in) CONSERVATION DIVISION
Butler County, Kansas.)
_____) License No. 5446

MOTION

Benjamin M. Giles ("Operator") moves the State Corporation Commission of the State of Kansas ("Commission") for an Order (i) declaring that Operator has fully performed its obligations under the Settlement Agreement approved by the Commission in this docket, (ii) directing Staff to rescind the penalty it improperly assessed against Operator under the Settlement Agreement, and (iii) reinstating Operator's license that Staff has improperly suspended. In support of his motion, Operator states and alleges as follows:

BACKGROUND

1. Operator is a sole proprietor with a mailing address of 346 S Lulu, Wichita, Kansas, 67211. The Commission has issued Operator oil and gas operator's License No. 5446, which license is in effect through July 30, 2017.
2. On September 15, 2016, the Commission entered in this docket a Penalty Order against Operator for alleged violations of K.A.R. 82-3-111 at the Clearwater #2 and Clearwater #5 wells. In that order the Commission assessed to Operator a \$200 penalty, and directed Operator to plug, return to service, or obtain temporary abandonment status for those wells.
3. Operator timely submitted a written request for hearing on the merits of the Penalty Order. In that request, Operator explained that the Clearwater #2 and #5 wells are located in a low

lying area adjacent to the Whitewater River that had been continuously soaked with rain and floodwater, and that the wet conditions made it unsafe and imprudent to attempt to bring a rig in over the wells to conduct the work necessary to bring the wells into compliance with K.A.R. 82-3-111. Operator indicated that he intended to bring the wells back into production, thereby preventing the waste of the State's oil reserves. Operator also indicated he had been in communication with Staff regarding the wet conditions, that Staff had inspected the premises and acknowledged it would be imprudent to bring a rig in over the wells, but that Staff nonetheless refused to afford Operator additional time to accommodate for the wet conditions and proceeded to recommend the Penalty Order.

4. Thereafter, on or about January 19, 2017, Staff presented Operator with a Settlement Agreement it had prepared, the material terms of which were not negotiable. Operator signed the Settlement Agreement the same day. On January 24, 2017, Staff signed the Settlement Agreement and moved the Commission to adopt the Settlement Agreement. On February 2, 2017, the Commission entered an order approving the Settlement Agreement attached as Exhibit H.

5. The Settlement Agreement contains the following provisions:

“2. By May 18, 2017, Operator shall plug, return to service, or obtain temporary abandonment status for the subject wells. If Operator fails to comply with this deadline, then Operator shall be assessed a \$5,000 penalty. If either of the subject wells are not in compliance with K.A.R. 82-3-111 by being plugged, returned to service, or having temporary abandonment status by May 30, 2017, then Operator shall be assessed an additional \$5,000 penalty, and Staff may plug the wells and assess the costs to Operator.

3. **If Operator elects to return to service any of the subject wells, then the well(s) being returned to service shall not be considered as having been brought into compliance for the purpose of meeting any deadline unless: 1) the well(s) successfully pass a Staff-witnessed casing integrity test, and 2) in addition to being initially returned to service, all equipment necessary for the well(s) to be in service remains installed at the well(s) through November 18, 2017.”**

Exhibit H (emphasis added). Importantly, the Settlement Agreement conspicuously requires “a Staff-witnessed casing test” in event “Operator elects to return to service any of the subject wells”, but does not require a Staff-witnessed casing integrity test in the event Operator elects to bring any of the subject wells into compliance by obtaining temporary abandonment status. In Operator’s experience, the requirement that a well pass a casing integrity test to be brought back into production is highly unusual, but Operator did not object because the Settlement Agreement was presented as non-negotiable.

6. It is also important to note that Operator previously applied for temporary abandonment status for the Clearwater #5 well in February of 2016, but Staff denied that application for “High Fluid Level”. At the time of that application the casing fluid level in the Clearwater #5 was 810’ from surface. A copy of the denied temporary abandonment well application for the Clearwater #5 well is attached as Exhibit A.

7. Operator has brought the Clearwater #2 well into compliance under the Settlement Agreement by returning it to service. On May 12, 2017, the Clearwater #2 well passed a Staff-witnessed casing integrity test, was returned to service, and all equipment necessary for the well to be in service remains installed. Staff does not dispute that the Clearwater #2 is compliant with K.A.R. 82-3-111 and the terms of the Settlement Agreement. An email from Staff confirming the same is attached as Exhibit B.

8. Notably, the Clearwater #2 well casing integrity test did not proceed without obfuscation from Staff. In spite of the fact that Staff insisted on including this extraordinary requirement in the Settlement Agreement, Staff initially refused to come to the well site to witness the casing integrity test and maintained the test was unnecessary. It was not until legal Staff was made aware of the situation and intervened that Staff agreed to witness the casing integrity test.

Even then, Staff attempted to deflect the blame for its own misreading of the Settlement Agreement on Operator. Staff claimed its recalcitrance was because the well was not prepared for the test, as if Staff's earlier refusal to schedule a time to witness the test hinged on that fact.

9. On May 18, 2017, Operator filed an application for temporary abandonment status for the Clearwater #5 well. At the time of the application the casing fluid level was 992' feet from surface. That same day, through counsel Operator notified Staff that the temporary abandonment application had been filed. That email is attached as Exhibit C.

10. Six days later, on May 24, 2017, Staff denied Operator's Clearwater #5 well temporary abandonment application for "Failure to MIT". The denied application is attached as Exhibit D. Never had Staff ever indicated to Operator that the Clearwater #5 well would be required to pass an MIT (i.e., casing integrity test) to obtain temporary abandonment status. As stated above, the previous reason Staff offered for denying the Clearwater #5 well temporary abandoned status was "High Fluid Level." See Exhibit A. No Commission regulation would require the Clearwater #5 well to pass a casing integrity test to obtain temporary abandonment status under these circumstances,¹ and such a test is plainly not required by the Settlement Agreement. During a phone call on May 24, 2017, counsel for Operator implored Staff for a written explanation as to why Staff believed it could unilaterally change the terms of the Commission approved Settlement Agreement, and why a casing integrity test was all-of-the-sudden necessary when none had ever been requested by Staff before. Staff flatly refused to

¹ Commission regulations require injection wells to pass an MIT initially and periodically. K.A.R. 82-3-407. The Commission has routinely required a well seeking an exception to the 10-year temporary abandonment time limitations of K.A.R. 82-3-111(b) to pass an MIT. Neither of these circumstances apply to the Clearwater #5, and it is highly unusual for Commission Staff to require a well to pass an MIT before it will be granted temporary abandonment status.

provide any explanation for its conduct. Operator immediately put Staff on notice that it was Operator's position that Staff's conduct constituted a breach of the Settlement Agreement.

11. On May 24, 2017, by email and letter Staff notified Operator's counsel—not Operator—that Operator's license would be suspended and that Operator was being assessed a \$5000 penalty. No individual signed the letter on behalf of Staff. *See* Exhibit B and Exhibit E.

12. The arbitrary nature of Staff's post-facto and unauthorized requirement that the Clearwater #5 well pass a casing integrity test to obtain temporary abandonment status is evident in numerous forms.

First, Staff made no such requirement in denying the temporary abandonment application for the Clearwater #5 well in February of 2016. At that time, the casing fluid level in the Clearwater #5 was almost 200' nearer to surface than it is today. *See* Exhibit A and Exhibit D.

Second, the integrity of the casing in the Clearwater #5 well was functionally identical on May 24, 2017—the date Staff conjured the casing integrity test requirement, as it was on January 19, 2017—the day Staff prepared the non-negotiable Settlement Agreement devoid of the casing integrity test requirement, as it was on February 26, 2016—the day Staff previously denied the temporary abandonment application for “High Fluid Level.” If Commission Staff believed a casing integrity test was necessary to temporarily abandon the Clearwater #5 well, that requirement needed to be included in the Settlement Agreement. It was not.

Third, one does not even have to wander off the Clearwater lease to find examples of wells granted temporary abandonment status without passing a casing integrity test. In fact, on the same day Operator submitted the temporary abandonment application for the Clearwater #5 well, he also submitted temporary abandonment applications for the Clearwater #6 and #7 wells. Although the casing fluid levels in those wells is nearer to surface (961' and 837', respectively) than the

Clearwater #5 well (992'), those wells were granted temporary abandonment status without condition. Suspiciously, in spite of the fact all three temporary abandonment applications were submitted on the same day, the applications for the Clearwater #6 and #7 wells were approved on May 22, 2017—two days prior to Staff arbitrarily denying the temporary abandonment application for the Clearwater #5 under the dubious pretense “Failure to MIT.” Staff has offered no explanation as to why three wells located within 1000’ of one another could be receive such disparate treatment. The temporary abandonment applications for the Clearwater #6 and #7 wells are attached as Exhibit F and G, respectively.

13. Finally, in good faith and in fear of further unwarranted sanctions from Staff, on May 25, 2017—the day after Staff invented the casing integrity test requirement—Operator attempted to schedule a Staff-witnessed casing integrity test for the Clearwater #5 well. Staff claimed nobody could be available to witness the MIT until May 30, 2017, which happened to be the final compliance deadline date prescribed in the Settlement Agreement. When Staff arrived on May 30, 2017, to witness the test it further embellished its unauthorized casing integrity test requirement by mandating that the Clearwater #5 well hold 300 pounds of pressure for 30 minutes to pass the test. No reason was offered as to why a well that was to be temporarily abandoned with fluid levels lower than other wells granted temporary abandonment status would need to hold a pressure in excess of that required for injection wells in the area. The Clearwater #5 well barely failed the unreasonable pressure test, and Staff deemed the casing integrity test a failure. Operator immediately took action to repair the casing and it will pass a casing integrity test as soon as Staff can make itself available.

LEGAL AUTHORITY

The above-recited facts demonstrate that Staff not only breached the express terms of the Settlement Agreement, but also breached the implied covenant of good faith and fair dealing by engaging in pattern of bad faith behavior intended to obfuscate, undermine and prevent Operator from satisfying his obligations under the Settlement Agreement. At law, Staff's breaches preclude it from enforcing the punitive provisions of the Settlement Agreement against Operator. Under these circumstances, the law likewise prevents Staff from suspending Operator's license without notice and opportunity for a hearing. The Commission should order Staff to rescind the \$5000 penalty it improperly assessed and reinstate Operator's license, and declare that Operator has fully performed his obligations under the Settlement Agreement.

Only the Commission may modify its own Orders and the agreements approved thereby, Staff does not have this authority. *See* K.A.R. 82-1-230a(b). A party who first materially breaches a contract is precluded from attempting to enforce the provisions of that contract against the nonbreaching party. *Bank of America, N.A. v. Narula*, 46 Kan.App.2d 142, Syl. ¶ 3 (2011); *see also W. Plains Serv. Corp. v. Ponderosa Dev. Corp.*, 769 F.2d 654, 657 (10th Cir. 1985); ("The law is well settled that a party to a contract cannot claim its benefits where he is the first to violate its terms."); *Blann v. Rogers*, 22 F. Supp. 3d 1169, 1181 (D. Kan. 2014) ("One party's material breach of contract can relieve another party of its obligations under the contract.") "If the terms of the contract are clear, the parties' intent should be determined from the language of the contract itself without applying the rules of construction." *Wichita Clinic, P.A. v. Louis*, 39 Kan.App.2d 848, 852-53 (2008). "When a contract uses different language in proximate and similar provisions, we commonly understand the provisions to illuminate one another and assume that the parties' use of different language was intended to convey different meanings." *See Penncro Assocs., Inc. v.*

Sprint Spectrum, L.P., 499 F.3d 1151, 1156–57 (10th Cir. 2007)². “[T]he language of a contract will be strictly construed against the party who drafted the provision.” *Shelter Mut. Ins. Co. v. Williams*, 248 Kan. 17, 23 (1991).

Staff is not authorized to modify the terms of a Settlement Agreement approved by Commission Order. The Settlement Agreement is unambiguous, the Clearwater #5 well is not required to pass a Staff-witnessed casing integrity test (i.e., “MIT”) to obtain temporary abandonment status. A Staff-witnessed casing integrity test is only required if the Clearwater #5 was to be returned to production. The intent of the parties is clear from the four corners of the document—such a test is required to return a well to production but not to obtain temporary abandonment status. Even if the Settlement Agreement were ambiguous—which it is not—the long-established rules of construction dictate that the express inclusion of the casing integrity test requirement to return a well to production operates to exclude such a requirement to obtain temporary abandonment status. Further, the agreement must be construed against Staff and in favor of Operator, because Staff drafted the operative provisions of the non-negotiable Settlement Agreement. If Staff believed a casing integrity test was necessary to obtain temporary abandonment status for a well, it needed to include that requirement in the Settlement Agreement, as it did when it required such a test to return a well to production. Staff did not. Staff’s attempt to unilaterally modify the express terms of the Settlement Agreement after Operator’s performance deadline date has passed constitutes a material breach of the Settlement Agreement. At law, Staff is precluded from enforcing the provision of the agreement against Operator.

² See also 17A Am. Jur. 2d Contracts § 359 (“Particular words or phrases in a contract should, as a rule, be considered not as if in a vacuum and isolated from the context, but in light of the entire contract and the intentions of the parties as manifested thereby.”)

Kansas recognizes a duty of good faith and fair dealing in every contract. *Estate of Draper v. Bank of America*, 288 Kan. 510, 525 (2009). “The duty requires that contractual parties refrain from intentionally doing anything to prevent the other party from carrying out his or her part of the agreement, or from doing anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *First Nat. Bank of Omaha v. Centennial Park, LLC*, 48 Kan.App.2d 714, 716 (2013). The facts set forth above demonstrate Staff’s deliberate and ongoing bad faith efforts to prevent Operator from performing its obligations under the Settlement Agreement.

Staff’s 13th-hour requirement that the Clearwater #5 well pass a casing integrity test to obtain temporary abandonment status is not prescribed by the Settlement Agreement adopted by the Commission. The casing integrity test was not requested by Staff until after Operator’s performance deadline date had passed, and such a requirement is unfounded in the Commission’s own regulatory scheme. Indeed, Staff has refused to provide a written explanation as to why a casing integrity test would be required for the Clearwater #5 to obtain temporary abandonment status, even though no such test was required to temporarily abandon the #6 and #7 wells on the same lease (or any other well in the vicinity for that matter). Staff will argue Operator had to “obtain” temporary abandonment status before the applicable deadline date, and that it is within Staff’s discretion to approve or deny an application. Such an infantile argument amplifies the need to hold Staff accountable to a good faith standard.

The facts also show Staff deliberately stalled taking action on the temporary abandonment application for the Clearwater #5, and then refused to make itself available to witness the “Staff-witnessed” casing integrity test it unreasonably and arbitrarily required. Staff’s dereliction directly resulted in Operator’s inability to bring the Clearwater #5 well into compliance under the

Settlement Agreement as interpreted and enforced by Staff until both operative deadline dates had lapsed. Staff's swift action to approve the temporary abandonment applications for the Clearwater #6 and #7 while holding in abeyance the temporary abandonment application for the Clearwater #5 well demonstrates Staff's bad faith. Staff's actions and inactions are unreasonable, arbitrary and capricious, and corroborate a pattern of bad faith behavior intended to prevent Operator from performing the Settlement Agreement and constitutes a breach of the implied covenant of good faith and fair dealing.

Staff's breach of the implied covenant of good faith and fair dealing, together with its material breach of the express terms of the Settlement Agreement, preclude Staff from enforcing the punitive provisions of the agreement, namely the \$5000 penalty Staff has assessed and its action to suspend Operator's license. Staff will argue that under section 4 of the Settlement Agreement Operator waived his right to appeal the \$5000 penalty and this suspension of his license. Staff's actions and inactions not only render such an argument disingenuous, but for the reasons set forth above, Staff's own breaches of the Settlement Agreement preclude it from enforcing that provision. In any event, Kansas statutes prohibit Staff from suspending Operator's license without notice and the opportunity for a hearing. K.S.A. 77-512.

WHEREFORE, Operator respectfully requests that the Commission grant this motion, enter the above-requested Order, and provide for such further relief as it deems just and proper.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: 

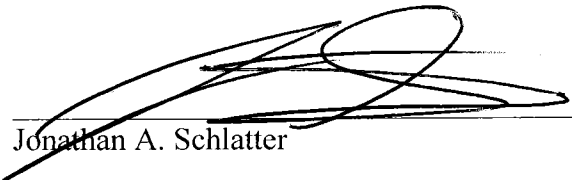
Jonathan A. Schlatter, #24848
300 N. Mead, Suite 200
Wichita, KS 67202-2745
Telephone - (316) 262-2671
Facsimile - (316) 262-6226
Email - jschlatter@morrislaing.com
Attorneys for Benjamin M. Giles

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

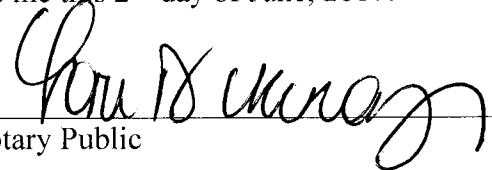
Jonathan A. Schlatter, being of lawful age and being first duly sworn upon his oath, deposes and says:

That he is the attorney for Benjamin M. Giles; he has read the above and forgoing Motion and is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.


Jonathan A. Schlatter

SUBSCRIBED AND SWORN to before me this 2nd day of June, 2017.




Notary Public

My Appointment expires: 10/12/20

CERTIFICATE OF SERVICE

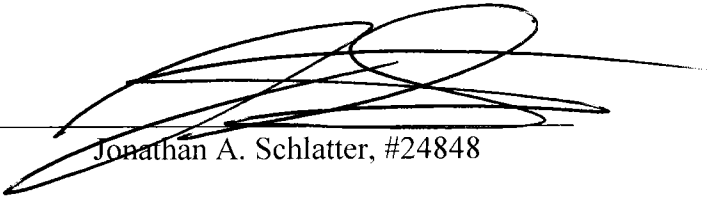
I, Jonathan A. Schlatter, hereby certify that on this 2nd day of June, 2017, I caused the original of the foregoing Motion with the attached Exhibits A, B, C, D, E, F, G and H to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and emailed true and correct copies of the same to the following individuals:

Michael J. Duenes, Prehearing Officer
Kansas Corporation Commission
m.duenes@kcc.ks.gov

Jon Myers, Litigation Counsel
Kansas Corporation Commission
j.myers@kcc.ks.gov

courtesy copy to:

Joshua Wright, Litigation Counsel
Kansas Corporation Commission
j.wright@kcc.ks.gov


Jonathan A. Schlatter, #24848



TEMPORARY ABANDONMENT WELL APPLICATION

All blanks must be complete

OPERATOR: License# 5446
Name: Giles, Benjamin M.
Address 1: 346 S. LULU
Address 2: _____
City: WICHITA State: KS Zip: 67211 + _____
Contact Person: Ben Giles
Phone: (316) 265-1992
Contact Person Email: tauni@bengiles.kscoxmail.com
Field Contact Person: Dusty Green
Field Contact Person Phone: (316) 655-7542

API No. 15- 15-015-20620-00-00
Spot Description: N2 N2 N2 S2 Sec. 33 Twp. 25 S. R. 3 E W
2345 feet from N / S Line of Section
2640 feet from E / W Line of Section
GPS Location: Lat: _____, Long: _____
Datum: NAD27 NAD83 WGS84
County: Butler Elevation: _____ GL KB
Lease Name: CLEARWATER Well #: 5
Well Type: (check one) Oil Gas OG WSW Other: _____
 SWD Permit # _____ ENHR Permit # _____
 Gas Storage Permit # _____
Spud Date: 09/28/1974 Date Shut-In: 07/15/2015

| | Conductor | Surface | Production | Intermediate | Liner | Tubing |
|------------------|-----------|---------|------------|--------------|-------|--------|
| Size | 0 | 8.625 | 4.5 | 0 | 0 | 2.375 |
| Setting Depth | 0 | 213 | 2704 | 0 | 0 | 2650 |
| Amount of Cement | 0 | 135 | 100 | 0 | 0 | 0 |
| Top of Cement | 0 | 0 | 2254 | 0 | 0 | 0 |
| Bottom of Cement | 0 | 213 | 2704 | 0 | 0 | 00 |

Casing Fluid Level from Surface: 810 How Determined? Consolidated wire line Date: 12/15/2015

Casing Squeeze(s): _____ to _____ w / _____ sacks of cement, _____ to _____ w / _____ sacks of cement. Date: _____

Do you have a valid Oil & Gas Lease? Yes No

Depth and Type: Junk in Hole at _____ (depth) Tools in Hole at _____ (depth) Casing Leaks: Yes No Depth of casing leak(s): _____

Type Completion: ALT. I ALT. II Depth of: DV Tool: _____ w / _____ sacks of cement Port Collar: _____ w / _____ sack of cement

Packer Type: _____ Size: _____ Inch Set at: _____ Feet

Total Depth: 2713 Plug Back Depth: _____ Plug Back Method: _____

Geological Data:

Formation Name Mississippi Formation Top 2704 Formation Base 2713 Completion Information
1. At: 2704 to 2713 Feet Perforation Interval _____ to _____ Feet or Open Hole Interval 2704 to 713 Feet
2. At: _____ to _____ Feet Perforation Interval _____ to _____ Feet or Open Hole Interval _____ to _____ Feet

UNDER PENALTY OF PERJURY I HEREBY ATTEST THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Submitted Electronically

| | | | | | |
|--|---|----------------|---------------------|----------------------|---------------------------------|
| Do NOT Write in This Space - KCC USE ONLY | Date Tested: _____ | Results: _____ | Date Plugged: _____ | Date Repaired: _____ | Date Put Back in Service: _____ |
| Review Completed by: <u>Jonathan Hill</u> | Comments: <u>Denied due to High Fluid Level</u> | | | | |
| TA Approved: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Denied | Date: <u>02/26/2016</u> | | | | |

Mail to the Appropriate KCC Conservation Office:

| | | |
|--|--|--------------------|
| | KCC District Office #1 - 210 E. Frontview, Suite A, Dodge City, KS 67801 | Phone 620.682.7933 |
| | KCC District Office #2 - 3450 N. Rock Road, Building 600, Suite 601, Wichita, KS 67226 | Phone 316.337.7400 |
| | KCC District Office #3 - 1500 SW Seventh Steet, Chanute, KS 66720 | Phone 620.432.2300 |
| | KCC District Office #4 - 2301 E. 13th Street, Hays, KS 67601-2651 | Phone 785.261.6250 |

EXHIBIT A

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-630-4000
Fax: 316-630-4005
<http://kcc.ks.gov/>

Jay Scott Emler, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

February 26, 2016

Ben Giles
Giles, Benjamin M.
346 S. LULU
WICHITA, KS 67211

Re: Temporary Abandonment
API 15-015-20620-00-00
CLEARWATER 5
S/2 Sec.33-25S-03E
Butler County, Kansas

Dear Ben Giles:

Your application for Temporary Abandonment (TA) of the above-listed well is denied for the following reasons(s):

High Fluid Level

In accordance with K.A.R. 82-3-111, this well must be plugged or returned to service by March 27, 2016.

Sincerely,

Jonathan Hill

Jonathan Schlatter

From: Joshua Wright <j.wright@kcc.ks.gov>
Sent: Wednesday, May 24, 2017 2:56 PM
To: Jonathan Schlatter
Subject: Re: Ben Giles #5446 --- 17-CONS-3100-CPEN --- Clearwater #2 and #5

Jon:

After speaking with District Staff I've learned that your client is not in compliance with the settlement agreement. Though the Clearwater #2 has been returned to production, the TA application on the Clearwater #5 has been denied. Per the agreement, a \$5,000 penalty will be assessed and the license suspended.

Should you receive correspondence regarding the denied TA application, please disregard any new deadlines stated therein as the settlement agreement controls.

Thanks,

Joshua D. Wright

Litigation Counsel

Conservation Division

Kansas Corporation Commission

266 N. Main, Suite 220 | Wichita, KS | 67202-1513

Phone (316) 337-6200 | Fax (316) 337-6211 | <http://kcc.ks.gov/>

Jonathan Schlatter

From: Jonathan Schlatter
Sent: Thursday, May 18, 2017 3:08 PM
To: j.myers@kcc.ks.gov
Cc: Carnella Anderson
Subject: Ben Giles #5446 --- 17-CONS-3100-CPEN --- Clearwater #2 and #5

Jon,

FYI, the Clearwater #2 has pumped, and remains equipped to produce. A TA application for the Clearwater #5 has been submitted. Once you've had a chance to review the matter can you confirm that Mr. Giles has complied with the terms of the settlement agreement? Please let me know if District 2 intends to perform an inspection to confirm compliance.

Thank you,

Jon Schlatter
Morris Laing Evans Brock & Kennedy, Cht.
316-262-2671
jschlatter@morrislaing.com

TEMPORARY ABANDONMENT WELL APPLICATION

All blanks must be complete

OPERATOR: License# 5446
Name: Giles, Benjamin M.
Address 1: 346 S. LULU
Address 2: _____
City: WICHITA State: KS Zip: 67211 + _____
Contact Person: Ben Giles
Phone: (316) 265-1992
Contact Person Email: _____
Field Contact Person: Dusty Green
Field Contact Person Phone: (316) 655-7542

API No. 15- 15-015-20620-00-00
Spot Description: N2 N2 N2 S2 Sec. 33 Twp. 25 S. R. 3 E W
2345 feet from N / S Line of Section
2640 feet from E / W Line of Section
GPS Location: Lat: _____, Long: _____
Datum: NAD27 NAD83 WGS84
County: Butler Elevation: _____ GL KB
Lease Name: CLEARWATER Well #: 5
Well Type: (check one) Oil Gas OG WSW Other: _____
 SWD Permit #: _____ ENHR Permit #: _____
 Gas Storage Permit #: _____
Spud Date: 09/28/1974 Date Shut-In: 07/15/2015

| | Conductor | Surface | Production | Intermediate | Liner | Tubing |
|------------------|-----------|---------|------------|--------------|-------|--------|
| Size | NA | 8.625 | 4.5 | NA | NA | 2.375 |
| Setting Depth | | 213 | 2704 | | | 2650 |
| Amount of Cement | | 135 | 100 | | | 0 |
| Top of Cement | | 0 | 2254 | | | 0 |
| Bottom of Cement | | 213 | 2704 | | | 0 |

Casing Fluid Level from Surface: 992 How Determined? Echometer Service Date: 05/18/2017

Casing Squeeze(s): _____ to _____ w / _____ sacks of cement, _____ to _____ w / _____ sacks of cement. Date: _____

Do you have a valid Oil & Gas Lease? Yes No

Depth and Type: Junk in Hole at _____ Tools in Hole at _____ Casing Leaks: Yes No Depth of casing leak(s): _____

Type Completion: ALT. I ALT. II Depth of: DV Tool: _____ w / _____ sacks of cement Port Collar: _____ w / _____ sack of cement

Packer Type: _____ Size: _____ Inch Set at: _____ Feet

Total Depth: 2713 Plug Back Depth: _____ Plug Back Method: _____

Geological Data:

Formation Name Formation Top Formation Base Completion Information
1. Mississippi At: 2704 to 2713 Feet Perforation Interval _____ to _____ Feet or Open Hole Interval 2704 to 2713 Feet
2. _____ At: _____ to _____ Feet Perforation Interval _____ to _____ Feet or Open Hole Interval _____ to _____ Feet

UNDER PENALTY OF PERJURY, I HEREBY ATTEST THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Submitted Electronically

| | | | | | |
|--|-------------------------|----------------|---------------------|----------------------|---------------------------------|
| Do NOT Write in This Space - KCC USE ONLY | Date Tested: _____ | Results: _____ | Date Plugged: _____ | Date Repaired: _____ | Date Put Back in Service: _____ |
| Review Completed by: <u>Jon Hill</u> | Comments: _____ | | | | |
| TA Approved: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Denied | Date: <u>05/24/2017</u> | | | | |

Mail to the Appropriate KCC Conservation Office:

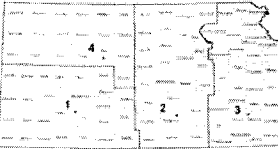
| | | |
|---|--|--------------------|
|  | KCC District Office #1 - 210 E. Frontview, Suite A, Dodge City, KS 67801 | Phone 620.682.7933 |
| | KCC District Office #2 - 3450 N. Rock Road, Building 600, Suite 601, Wichita, KS 67226 | Phone 316.337.7400 |
| | KCC District Office #3 - 1500 SW Seventh Steet, Chanute, KS 66720 | Phone 620.432.2300 |
| | KCC District Office #4 - 2301 E. 13th Street, Hays, KS 67601-2651 | Phone 785.261.6250 |

EXHIBIT D

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-337-7400
Fax: 316-630-4005
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist-Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

May 24, 2017

Ben Giles
Giles, Benjamin M.
346 S. LULU
WICHITA, KS 67211

Re: Temporary Abandonment
API 15-015-20620-00-00
CLEARWATER 5
S/2 Sec.33-25S-03E
Butler County, Kansas

Dear Ben Giles:

Your application for Temporary Abandonment (TA) for the above-listed well is denied for the following reasons(s):

Failure to MIT

Pursuant to K.A.R. 82-3-111, the well must be plugged, or returned to service, or obtain temporary abandonment status by June 21, 2017.

This deadline does NOT override any compliance deadline given to you in any Commission Order.

You may contact me if you have any questions.

Sincerely,
Jon Hill
KCC DISTRICT 2

Conservation Division
266 N. Main St., Ste. 220
Wichita, KS 67202-1513



Phone: 316-337-6200
Fax: 316-337-6211
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

May 24, 2017

Benjamin M. Giles
c/o Jonathan B. Schlatter
Morris Laing Evans Brock & Kennedy, Chtd.
300 N. Mead, Suite 200
Wichita, KS 67202-2745

NOTICE OF LICENSE SUSPENSION

License No. 5446

Docket No. 17-CONS-3100-CPEN

Operator:

Our records indicate that you are in violation of a Commission Order in the above Docket.

Your license is hereby suspended.

Until your license is reinstated, it is illegal for you to conduct oil and gas operations in Kansas.

If, after 10 days from the date of this letter, Commission Staff discover you performing oil and gas operations, Staff will recommend a Shut-In Order, including an additional \$10,000 penalty. If you are already shut-in, you must remain shut-in.

Any outstanding monetary penalty may be sent to collections.

You may review the Commission Order, which was mailed to you, at the Commission's website. If you have questions, you may contact us at the phone number listed at the top of this page.

Sincerely,

Legal Department Staff

EXHIBIT E

KANSAS CORPORATION COMMISSION



Conservation Division
 266 N. Main St., Ste 220
 Wichita, Kansas 67202-1513
 316-337-6200
 Fax: 316-337-6211
 FEIN: 48-1124839

INVOICE

Invoice Date: May 24, 2017
 Invoice Number: 2017050040
 Accounting Code: 535
 License Number: 5446
 Due Date: June 26, 2017

Giles, Benjamin M.
 346 S. LULU
 WICHITA, KS 67211

Docket Number: 17-CONS-3100-CPEN **Attorney:** J. Myers **Date Order Mailed:** May 24, 2017

| Violation | Violation Description | Cnt | Lease Id | Amount |
|-----------------------------|--|-----|---|--------------------|
| AP-8 82-3-111 | Failure to file notice of temporary abandonment of well (Form CP-111). | 1 | Clearwater #5 15-015-20620 33-25S-3E | 100.00 |
| K.S.A. 55-164 | Failure to comply with a Kansas Statute, or a Commission Order, Rule, or Regulation. | | | 5,000.00 |
| AP-8 82-3-111 | Failure to file notice of temporary abandonment of well (Form CP-111). | 1 | Clearwater #2 15-015-20125 33-25S-3E | 100.00 |
| Total Fines Imposed: | | | | \$ 5,200.00 |
| Invoice Total: | | | | \$ 5,200.00 |
| Payments Received: | | | | (200.00) |
| Amount Due: | | | | \$ 5,000.00 |



TEMPORARY ABANDONMENT WELL APPLICATION

All blanks must be complete

OPERATOR: License# 5446
Name: Giles, Benjamin M.
Address 1: 346 S. LULU
Address 2: _____
City: WICHITA State: KS Zip: 67211 + _____
Contact Person: Ben Giles
Phone: (316) 265-1992
Contact Person Email: _____
Field Contact Person: Dusty Green
Field Contact Person Phone: (316) 655-7542

API No. 15- 15-015-20714-00-00
Spot Description:
SE NE SW Sec. 33 Twp. 25 S. R. 3 E W
1637 feet from N / S Line of Section
2320 feet from E / W Line of Section
GPS Location: Lat: _____, Long: _____
Datum: NAD27 NAD83 WGS84
County: Butler Elevation: _____ GL KB
Lease Name: CLEARWATER Well #: 6
Well Type: (check one) Oil Gas OG WSW Other: _____
 SWD Permit #: _____ ENHR Permit #: _____
 Gas Storage Permit #: _____
Spud Date: 05/12/1975 Date Shut-In: 07/15/2015

| | Conductor | Surface | Production | Intermediate | Liner | Tubing |
|------------------|-----------|---------|------------|--------------|-------|--------|
| Size | NA | 8.625 | 4.5 | NA | 3.5 | 2.375 |
| Setting Depth | | 212 | 2738 | | 2685 | 2575 |
| Amount of Cement | | 125 | 100 | | 103 | 0 |
| Top of Cement | | 0 | 2288 | | 0 | 0 |
| Bottom of Cement | | 212 | 2738 | | 2685 | 0 |

Casing Fluid Level from Surface: 961 How Determined? Echometer Service Date: 05/09/2017
Casing Squeeze(s): _____ to _____ w / _____ sacks of cement, _____ to _____ w / _____ sacks of cement. Date: _____
Do you have a valid Oil & Gas Lease? Yes No
Depth and Type: Junk in Hole at _____ (depth) Tools in Hole at _____ (depth) Casing Leaks: Yes No Depth of casing leak(s): _____
Type Completion: ALT. I ALT. II Depth of: DV Tool: _____ w / _____ sacks of cement Port Collar: _____ w / _____ sack of cement
Packer Type: _____ Size: _____ Inch Set at: _____ Feet
Total Depth: 2738 Plug Back Depth: _____ Plug Back Method: _____

Geological Date:

Formation Name Formation Top Formation Base Completion Information
1. Mississippi At: 2700 to 2738 Feet Perforation Interval 2700 to 2706 Feet or Open Hole Interval _____ to _____ Feet
2. _____ At: _____ to _____ Feet Perforation Interval _____ to _____ Feet or Open Hole Interval _____ to _____ Feet

UNDER PENALTY OF PERJURY I HEREBY ATTEST THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Submitted Electronically

Do NOT Write in This Space - KCC USE ONLY

Date Tested: _____ Results: _____ Date Plugged: _____ Date Repaired: _____ Date Put Back in Service: _____

Review Completed by: Jonathan Hill Comments: TA approved for 1 year

TA Approved: Yes Denied Date: 05/22/2017

Mail to the Appropriate KCC Conservation Office:

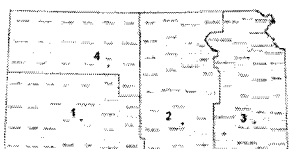
| | | |
|--|--|--------------------|
|  | KCC District Office #1 - 210 E. Frontview, Suite A, Dodge City, KS 67801 | Phone 620.682.7933 |
| | KCC District Office #2 - 3450 N. Rock Road, Building 600, Suite 601, Wichita, KS 67226 | Phone 316.337.7400 |
| | KCC District Office #3 - 1500 SW Seventh Street, Chanute, KS 66720 | Phone 620.432.2300 |
| | KCC District Office #4 - 2301 E. 13th Street, Hays, KS 67601-2651 | Phone 785.261.6250 |

EXHIBIT F

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-337-7400
Fax: 316-630-4005
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Entler, Commissioner

Sam Brownback, Governor

May 22, 2017

Ben Giles
Giles, Benjamin M.
346 S. LULU
WICHITA, KS 67211

Re: Temporary Abandonment
API 15-015-20714-00-00
CLEARWATER 6
SW/4 Sec.33-25S-03E
Butler County, Kansas

Dear Ben Giles:

"Your temporary abandonment (TA) application for the well listed above has been approved. In accordance with K.A.R. 82-3-111 the TA status of this well will expire 05/22/2018.

- * If you return this well to service or plug it, please notify the District Office.
- * If you sell this well you are required to file a Transfer of Operator form, T-1.
- * If the well will remain temporarily abandoned, you must submit a new TA application, CP-111, before 05/22/2018.

You may contact me at the number above if you have questions.

Very truly yours,

Jonathan Hill"

TEMPORARY ABANDONMENT WELL APPLICATION

OPERATOR: License# 5446
 Name: Giles, Benjamin M.
 Address 1: 346 S. LULU
 Address 2: _____
 City: WICHITA State: KS Zip: 67211 + _____
 Contact Person: Ben Giles
 Phone: (316) 265-1992
 Contact Person Email: _____
 Field Contact Person: Dusty Green
 Field Contact Person Phone: (316) 655-7542

API No. 15- 15-015-20749-00-00
 Spot Description: _____
NW NE SW Sec. 33 Twp. 25 S. R. 3 E W
2331 feet from N / S Line of Section
1816 feet from E / W Line of Section
 GPS Location: Lat: _____, Long: _____
 Datum: NAD27 NAD83 WGS84
 County: Butler Elevation: _____ GL KB
 Lease Name: CLEARWATER Well #: 7
 Well Type: (check one) Oil Gas OG WSW Other: _____
 SWD Permit #: _____ ENHR Permit #: _____
 Gas Storage Permit #: _____
 Spud Date: 09/19/1975 Date Shut-In: 07/15/2015

| | Conductor | Surface | Production | Intermediate | Liner | Tubing |
|------------------|-----------|---------|------------|--------------|-------|--------|
| Size | NA | 8.625 | 4.5 | NA | NA | 2.375 |
| Setting Depth | | 212 | 2717 | | | 2650 |
| Amount of Cement | | 135 | 100 | | | 0 |
| Top of Cement | | 0 | 2265 | | | 0 |
| Bottom of Cement | | 212 | 2717 | | | 0 |

Casing Fluid Level from Surface: 837 How Determined? Echometer Service Date: 05/09/2017

Casing Squeeze(s): _____ to _____ w / _____ sacks of cement, _____ to _____ w / _____ sacks of cement. Date: _____

Do you have a valid Oil & Gas Lease? Yes No

Depth and Type: Junk in Hole at _____ (depth) Tools in Hole at _____ (depth) Casing Leaks: Yes No Depth of casing leak(s): _____

Type Completion: ALT. I ALT. II Depth of: DV Tool: _____ w / _____ sacks of cement Port Collar: _____ w / _____ sack of cement

Packer Type: _____ Size: _____ Inch Set at: _____ Feet

Total Depth: 2723 Plug Back Depth: _____ Plug Back Method: _____

Geological Date:

Formation Name Formation Top Formation Base Completion Information
 1. Mississippi At: 2708 to 2723 Feet Perforation Interval _____ to _____ Feet or Open Hole Interval 2717 to 2723 Feet
 2. _____ At: _____ to _____ Feet Perforation Interval _____ to _____ Feet or Open Hole Interval _____ to _____ Feet

UNDER PENALTY OF PERJURY, I HEREBY ATTEST THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Submitted Electronically

| | | | | | |
|--|---|----------------|---------------------|----------------------|---------------------------------|
| Do NOT Write in This Space - KCC USE ONLY | Date Tested: _____ | Results: _____ | Date Plugged: _____ | Date Repaired: _____ | Date Put Back in Service: _____ |
| Review Completed by: <u>Jonathan Hill</u> | Comments: <u>TA approved for 1 year</u> | | | | |
| TA Approved: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Denied | Date: <u>05/22/2017</u> | | | | |

Mail to the Appropriate KCC Conservation Office:

| | | |
|--|--|--------------------|
| | KCC District Office #1 - 210 E. Frontview, Suite A, Dodge City, KS 67801 | Phone 620.682.7933 |
| | KCC District Office #2 - 3450 N. Rock Road, Building 600, Suite 601, Wichita, KS 67226 | Phone 316.337.7400 |
| | KCC District Office #3 - 1500 SW Seventh Steet, Chanute, KS 66720 | Phone 620.432.2300 |
| | KCC District Office #4 - 2301 E. 13th Street, Hays, KS 67601-2651 | Phone 785.261.6250 |

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-337-7400
Fax: 316-630-4005
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

May 22, 2017

Ben Giles
Giles, Benjamin M.
346 S. LULU
WICHITA, KS 67211

Re: Temporary Abandonment
API 15-015-20749-00-00
CLEARWATER 7
SW/4 Sec.33-25S-03E
Butler County, Kansas

Dear Ben Giles:

"Your temporary abandonment (TA) application for the well listed above has been approved. In accordance with K.A.R. 82-3-111 the TA status of this well will expire 05/22/2018.

- * If you return this well to service or plug it, please notify the District Office.
- * If you sell this well you are required to file a Transfer of Operator form, T-1.
- * If the well will remain temporarily abandoned, you must submit a new TA application, CP-111, before 05/22/2018.

You may contact me at the number above if you have questions.

Very truly yours,

Jonathan Hill"

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of the failure of Benjamin M. Giles) Docket No.: 17-CONS-3100-CPEN
("Operator") to comply with K.A.R. 82-3-111 at)
the Clearwater #2 and Clearwater #5 wells in) CONSERVATION DIVISION
Butler County, Kansas.)
_____) License No.: 5446

ORDER APPROVING SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On September 15, 2016, the Commission issued in this docket a Penalty Order against Benjamin M. Giles (Operator), finding two violations of K.A.R. 82-3-111 at the Clearwater #2 and Clearwater #5 wells, assessing a \$200 penalty, and directing Operator to either plug, return to service or obtain temporary abandonment status for these wells.¹

2. On October 17, 2016, Operator requested a hearing on this matter.

3. On January 24, 2017, Commission Staff (Staff) filed a Motion requesting the Commission approve a Settlement Agreement between Staff and Operator.² The Settlement Agreement is attached to this Order and incorporated herein by reference. The Agreement notes that Operator has paid the \$200 penalty and requests additional time to bring the aforementioned wells into compliance with K.A.R. 82-3-111.³ By the terms of the Agreement, Operator has until

¹ *Penalty Order*, p. 3 (Sept. 15, 2016).

² *Motion to Approve Settlement Agreement* (Jan. 24, 2017).

³ *Settlement Agreement*, p. 1 (Jan. 24, 2017).

May 18, 2017, to plug, return to service or obtain temporary abandonment status for the aforementioned wells.⁴

4. The Commission affirms Staff's review and resolution concerning the wells at issue in this matter. The Commission finds the attached Settlement Agreement represents an appropriate manner of resolving the issues addressed therein.

THEREFORE, THE COMMISSION ORDERS:

A. The attached Settlement Agreement is approved and incorporated into this Order.


B. The parties have fifteen (15) days, plus three (3) days if mailed service, in which to petition the Commission for reconsideration.⁵

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: FEB 02 2017



Amy L. Green
Secretary to the Commission

Mailed Date: February 2, 2017

MJD/sc

⁴ *Id.*

⁵ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

SETTLEMENT AGREEMENT

This Agreement is between Benjamin M. Giles (“Operator”) (License #5446) and Commission Staff (“Staff”). If the Commission does not approve this Agreement by a signed Order, then this Agreement shall not be binding on either party. This Agreement shall settle the proceedings in Commission Docket Number 17-CONS-3100-CPEN.

A. Background

1. On September 15, 2016, the Commission issued a Penalty Order against Operator, finding two violations of K.A.R. 82-3-111 at the Clearwater #2 and Clearwater #5 wells (collectively “the subject wells”), assessing a \$200 penalty, and directing Operator, within 30 days, to plug the subject wells, return them to service, or obtain TA status for them. Operator filed a timely appeal. Operator has paid the \$200 and now concedes the violations, but in return requests additional time to bring the subject wells into compliance with K.A.R. 82-3-111. Staff is willing to enter into such an agreement.

B. Terms of Settlement

2. By May 18, 2017, Operator shall plug, return to service, or obtain temporary abandonment status for the subject wells. If Operator fails to comply with this deadline, then Operator shall be assessed a \$5,000 penalty. If either of the subject wells are not in compliance with K.A.R. 82-3-111 by being plugged, returned to service, or having temporary abandonment status by May 30, 2017, then Operator shall be assessed an additional \$5,000 penalty, and Staff may plug the wells and assess the costs to Operator.

3. If Operator elects to return to service any of the subject wells, then the well(s) being returned to service shall not be considered as having been brought into compliance for the purpose of meeting any deadline unless: 1) the well(s) successfully pass a Staff-witnessed casing

integrity test, and 2) in addition to being initially returned to service, all equipment necessary for the well(s) to be in service remains installed at the well(s) through November 18, 2017.

4. Operator agrees to waive its right to appeal the Commission's Order approving this Agreement, any penalties or costs assessed under this Agreement, and any suspension of Operator's license implemented by Staff due to Operator's failure to comply with this Agreement. The terms of this Agreement shall remain binding upon Operator even if its interests in the subject wells are conveyed. However, any subject well transferred to another operator and then brought into compliance with K.A.R. 82-3-111 shall count towards Operator meeting its compliance obligations under this Agreement.

5. Except as described by this Agreement, Staff will not pursue Operator for any violation of K.A.R. 82-3-111 at the subject wells that occurred or occurs prior to May 31, 2017.

Commission Staff

Benjamin M. Giles

By: Jon Myers

Benjamin M. Giles
Benjamin M. Giles

Printed Name: JON MYERS

Printed Name: Benjamin M. Giles

Title: LITIGATION COUNSEL

Title: Owner Operator

Date: 1/24/17

Date: 1-19-17

CERTIFICATE OF SERVICE

I certify that on 2/2/17, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Jonathan A. Schlatter
Morris Laing Evans Brock & Kennedy, Chtd.
300 N. Mead, Suite 200
Wichita, KS 67202
Attorneys for Benjamin M. Giles

Benjamin M. Giles
346 S. Lulu
Wichita, KS 67211

and delivered by e-mail to:

Dan Fox
KCC District #2

Michael J. Duenes
Assistant General Counsel
KCC Topeka

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission