

**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 ON COMPLIANCE WITH 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 fully 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 Conservation Staff (Staff) filed a Motion requesting the Commission approve a Settlement Agreement between Staff and Operator.²
4. On February 2, 2017, the Commission issued its *Order Approving Settlement Agreement (Order)*, which incorporated the Settlement Agreement into the *Order*.³ Under the terms of the Settlement Agreement, Operator agreed to "plug, return to service, or obtain temporary abandonment status for the subject wells" by May 18, 2017, and if Operator missed

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

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

³ See *Order Approving Settlement Agreement*, ¶ 3 (Feb. 2, 2017).

that deadline, it was to be assessed a \$5,000 penalty.⁴ Operator further agreed that “[i]f 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.”⁵ The Agreement also stipulated that wells brought back into service by Operator must “pass a Staff-witnessed casing integrity test.”⁶ Further, Operator waived its right to appeal any subsequent suspension of its Operator’s license based upon non-compliance with the Settlement Agreement.⁷

5. On June 2, 2017, Operator filed a Motion, variously asserting that Staff breached the Settlement Agreement by unilaterally changing its terms⁸ and breached the implied covenant of good faith and fair dealing by repeatedly hindering Operator from complying with the Settlement Agreement.⁹ Operator attached to its Motion an email from Staff, dated May 24, 2017, stating that Staff had “learned that [Operator] is not in compliance with the settlement agreement,” and “[p]er the agreement, a \$5,000 penalty will be assessed and the license suspended.”¹⁰ Operator also attached to its Motion a Notice of License Suspension, dated May 24, 2017, issued by “Legal Department Staff,” indicating that Operator’s license is suspended.¹¹

6. Operator asked the Commission to issue 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

⁴ See Settlement Agreement, ¶ 2 (attached to the *Order*).

⁵ *Id.*

⁶ *Id.*, ¶ 3.

⁷ *Id.*, ¶ 4.

⁸ Operator’s Motion, ¶¶ 10-13 (June 2, 2017).

⁹ *Id.*, p. 7.

¹⁰ See Operator’s Motion, Exhibit B, Email from Joshua D. Wright, Litigation Counsel, Kansas Corporation Commission, to Jonathan Schlatter, counsel for Operator (May 24, 2017, 2:56 PM).

¹¹ See *Id.*, Exhibit E.

under the Settlement Agreement, and (iii) reinstating Operator's license that Staff has improperly suspended.”¹²

7. The Commission has previously designated a Prehearing Officer in this proceeding to address any matters listed in K.S.A. 77-517(b).¹³ Moreover, the Commission’s *Order Approving Settlement Agreement* orders that “[t]he Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary.”¹⁴

8. Based on the alleged facts brought forth by Operator, the Commission finds the additional \$5,000 penalty assessed against Operator referenced in the aforementioned email from Staff¹⁵ and the suspension of Operator’s license issued by Legal Department Staff¹⁶ are of no force and effect for thirty (30) days, thus providing the Prehearing Officer time to convene a Prehearing Conference in this matter, as well as providing Staff the opportunity to respond to Operator’s allegations.

THEREFORE, THE COMMISSION ORDERS:

A. The \$5,000 penalty assessed against Operator pursuant to the Settlement Agreement and the suspension of Operator’s license, dated May 24, 2017, are of no force and effect for thirty (30) days from the date of service of this Order.

B. The Prehearing Officer is directed to hold a status conference in this matter.

C. The parties have fifteen (15) days from the date of electronic service of this Order in which to petition the Commission for reconsideration.¹⁷

¹² *Id.*, p. 1.

¹³ See *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause A (Nov. 17, 2016).

¹⁴ *Order Approving Settlement Agreement*, Ordering Clause C.

¹⁵ See ¶ 5 of this Order, *supra*.

¹⁶ *Id.*

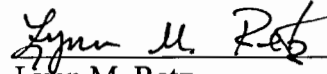
¹⁷ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

D. 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: JUN. 08 2017



Lynn M. Retz
Secretary to the Commission

Mailed Date: June 8, 2017

MJD

CERTIFICATE OF SERVICE

I certify that on 6/8/17, I caused a complete and accurate copy of this Order to be served electronically and via United States mail, with the postage prepaid and properly addressed to the following:

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and delivered by e-mail to:

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