

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

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

In the matter of an Order to Show Cause) Docket No. 17-CONS-3127-CSHO
issued to Jaed Production Co., Inc.)
("Operator") regarding responsibility under) CONSERVATION DIVISION
K.S.A. 55-179 for unplugged wells on an)
expired license.) License No. 3954

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) files this Petition for Clarification and/or Reconsideration ("Petition") of the Commission's October 31, 2017 Order on Unplugged Wells in the above-captioned docket. This Petition is being filed pursuant to K.S.A. 55-162, K.S.A. 55-606, K.S.A. 66-118b, K.S.A. 77-529(a)(1), and K.A.R. 82-1-235.

In support of its Petition, Staff states as follows:

I. Background

1. On September 22, 2016, Staff filed a Motion for an Order to Show Cause, the Designation of a Prehearing Officer, and the Scheduling of a Prehearing Conference, alleging that under K.S.A. 55-179 Operator was responsible for plugging eight wells remaining on its expired license,¹ and requesting that if Operator did not bring the wells into compliance with Commission regulations, then Operator's license should be suspended and any injection authority associated with the unplugged wells should be revoked.²

2. On January 24, 2017, the Commission issued an Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference.

¹ Motion for an Order to Show Cause, ¶7.

² *Id.*, ¶8.

3. After multiple continuances, on July 11, 2017, the Commission issued a procedural schedule, setting a September 21, 2017 evidentiary hearing.³ Cynthia Maine and Jeff Klock timely submitted pre-filed testimony on behalf of Staff, and Ed Broyles timely submitted pre-filed testimony on behalf of Operator.

4. On September 21, 2017, the Commission heard this matter, admitting all pre-filed testimony into evidence and hearing additional testimony from those same persons.⁴

5. On October 31, 2017, the Commission issued its Order on Unplugged Wells, finding that Operator was responsible for six of the eight wells at issue, but finding that Operator was not responsible for the Forbeck #1 or Horton #2 wells.⁵

II. Argument

6. Staff believes clarification and/or reconsideration is vital to both Staff's and industry's understanding in matters such as these. In addition, certain aspects of the Commission's Order represent significant departures from previous Commission rulings. Without further clarification and/or reconsideration, there is significant risk of regulatory uncertainty and inefficiency.

7. Staff seeks clarification and/or reconsideration on the following issues: (a) the Commission's analysis of who holds the burden of proof in matters such as these; (b) the Commission's application of the law to Staff's theory of the case, particularly as it applies to the Forbeck #1 and Horton #2 wells; (c) the Commission's understanding of the facts regarding the Forbeck #1; and (d) the relief provided by the Commission versus the relief sought by Staff.

³ Order Setting Procedural Schedule, ¶2.

⁴ See Tr. 8:19 to 9:1; 12:12-18; 27:11-16.

⁵ Order on Unplugged Wells, ¶19, 20, A.

a. Burden of Proof

8. Staff believes Operator had the burden of proof in this matter. In determining Operator was not responsible for the Forbeck #1 and Horton #2, however, the Commission concluded “Staff has not met its burden of demonstrating that [Operator] is legally responsible for the [wells].”⁶ Staff seeks clarification and/or reconsideration of this issue, for the reasons described below.

9. Under K.S.A. 55-179(c),

[W]henever the Commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act to show cause why the requisite care and control has not been exercised with respect to such well.

10. Under K.S.A. 55-179(d),

For the purposes of this section, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulation in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of any usable water strata or supply.

11. Staff’s September 22, 2016, Motion for an Order to Show Cause accurately alleged the eight wells at issue were listed on Operator’s expired license.⁷ It is illegal to have an expired license with unplugged wells remaining on it,⁸ and Operator’s license has been expired since November 2012.⁹ Based upon this information, per K.S.A. 55-179(c), the Commission determined there was reason to believe Operator was legally responsible for the proper care and

⁶ See *id.*, ¶19 & 20.

⁷ See Motion for an Order to Show Cause, ¶7.

⁸ See K.S.A. 55-150; K.S.A. 55-155; K.A.R. 82-3-120.

⁹ See Pre-filed Testimony of Cynthia Maine, 2:20-22.

control of the wells.¹⁰ Accordingly, under K.S.A. 55-179(c), the Commission caused Operator to come before it. Under the explicit language of K.S.A. 55-179(c), once an order to show cause has been issued, Staff believes it is the duty of *Operator* “to show cause why the requisite care and control had not been exercised with the respect to the wells,” not the burden of Staff to show Operator’s legal obligation to demonstrate the requisite care and control.

12. As the Commission’s interpretation of K.S.A. 55-179 is of fundamental importance as it pertains to most of Staff’s day-to-day operations, and also to many matters that come before the Commission itself through an evidentiary hearing, Staff seeks clarification and/or reconsideration of what the Commission believes to be the burden of proof in this matter, and upon whom it rests.

b. Staff’s Theory of the Case

13. Staff requests that the Commission clarify and/or reconsider its decision regarding the Forbeck #1 and Horton #2 in light of Staff’s principle theory of the case: that Operator was responsible for the wells under the nonexclusive provisions of K.S.A. 55-179 as the last entity to file paperwork with the Commission accepting responsibility for the wells.

14. Additionally, Staff requests clarification and/or reconsideration regarding (1) whether an operator filing a well completion report sufficiently indicates the operator operated a lease, and (2) regarding whether an operator abandoning a well that has not been produced since then is the original operator who abandoned the well.

15. In Staff’s September 22, 2016, Motion for an Order to Show Cause, Staff stated that “[p]ursuant to Kansas statutes and Commission regulations, Operator appears to be

¹⁰ Order to Show Cause, ¶6.

responsible for plugging the wells.”¹¹ At hearing, Staff explicitly laid out Staff’s theory of the case in its opening statement, stating:

The operator is responsible for the wells under the nonexclusive provisions of K.S.A. 55-179, as they are the last entity to file paperwork with the Commission accepting responsibility for the wells. In addition, they are also responsible as being the original operator to abandon the wells.¹²

16. Under K.S.A. 55-179(b),

[A] person who is legally responsible for the proper care and control of an abandoned well shall include, *but is not limited to*, one or more of the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; the original operator who plugged or abandoned such well; and any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.¹³

17. The Commission determined that Operator was not responsible for the Forbeck #1 and Horton #2 wells because it was unable to determine, or there was insufficient evidence for the Commission to consider, Operator the current or last operator of the leases upon which the wells were located or the original operator who abandoned the wells.¹⁴

18. The Commission’s order does not address Staff’s principal theory of the case: that Operator is responsible for the wells under the nonexclusive provisions of K.S.A. 55-179, as the last entity to file paperwork with the Commission accepting responsibility for the wells. The concept of an entity being responsible for wells under the nonexclusive provisions of K.S.A. 55-179, as the last entity to file paperwork with the Commission accepting responsibility for the wells, has been well-established by this Commission.

¹¹ Motion for an Order to Show Cause, ¶7.

¹² Tr. 6:15-22.

¹³ Emphasis added.

¹⁴ Order on Unplugged Wells, ¶19, 20.

19. For example, in Docket 14-CONS-234-CPEN, after significant analysis, the Commission held it was unnecessary to determine under K.S.A. 55-179 whether an entity was the current or last operator of the wells at issue, because “a person or entity filing paperwork with the Commission asserting that it is the operator for a well becomes responsible for plugging the well under the nonexclusive provisions of K.S.A. 55-179(b).”¹⁵

20. In Docket 15-CONS-361-CPEN, Staff also relied on the nonexclusive provisions of K.S.A. 55-179(b) to argue that an operator filing a well transfer form becomes responsible for an abandoned well. The Commission again conducted significant analysis, concluding that it “rejects arguments that [K.S.A 55-179(b)] limits determinations to one of the four following categories”¹⁶ and attaching “great significance” to the fact the well transfer form had not been approved by the Commission,¹⁷ confirming again, by implication, that a person filing paperwork with the Commission asserting that it is the operator for a well, so long as the form is approved by the Commission, becomes responsible for plugging the well under the nonexclusive provisions of K.S.A. 55-179(b). Similar holdings are not unusual in the Commission’s history, and the consequences of the Commission failing to reach such a holding are well-described in the Commission’s order in Docket 15-CONS-361-CPEN and elsewhere.

21. Staff seeks clarification and/or reconsideration of the Commission’s determinations regarding the Forbeck #1 and Horton #2 in light of Staff’s principle theory of the case, as Staff’s principle theory was not analyzed in the Commission’s Order. If the Commission is not inclined to consider such theories, then this departure from previous Commission holdings will have significant ramifications upon the manner in which Staff must conduct its operations and will likely result in fewer responsible parties for abandoned wells.

¹⁵ Dkt. 14-CONS-234-CPEN, Order on Appeal (Oct. 23, 2014), ¶27.

¹⁶ Dkt. 15-CONS-361-CPEN, Order Granting Motion to Dismiss (Jan. 30, 2015), ¶27

¹⁷ *Id.* at ¶26.

22. There are two additional matters regarding Staff's theory of the case for which Staff seeks clarification and/or reconsideration. First, the Commission determined that it was "unable to ascertain whether [Operator] was ever the 'operator of the lease upon which' the Forbeck #1 was located."¹⁸ The Commission's Order notes, however, that Operator filed a well completion form for the well.¹⁹ Under K.A.R. 82-3-130, the duty to file a well completion form rests with *the operator*.²⁰ In other words, the well completion report clearly demonstrates Operator was at some point the operator of the lease. A determination that a well completion report is insufficient evidence to ascertain whether an operator was ever the operator of the lease represents a sea-change in the Commission's analysis of such matters. Thus, Staff requests clarification and/or reconsideration of the matter.

23. Second, the Commission determined in regard to the Horton #2, a well drilled by Operator,²¹ that Operator's exhibit, dated February 22, 2012, which contains a statement by Operator that "said well has been deemed abandoned by Assignors [aka Operator] and has not produced Oil or Gas since," "does not make it clear that [Operator] was the original operator who . . . abandoned the [well]."²²¶ There is no evidence the well has been produced since February 2012.¶ A determination that the last person to produce a well is not the original operator to abandon the well, absent substantial competent evidence that a later party conducted work on the well,²³ represents not just a sea-change in the Commission's analysis of such

¹⁸ Order on Unplugged Wells, ¶19.

¹⁹ *Id.*

²⁰ K.A.R. 82-3-130(a) provides "Within 120 days of the spud date or commencement of recompletion of a well, the operator shall file an original and two copies of an affidavit of completion with the conservation division. . ."

²¹ See Order on Unplugged Wells, ¶12.

²² Order on Unplugged Wells, ¶20. Operator's license expired in November 2012. See Pre-filed Testimony of Cynthia Maine, 2:20-22.

²³ Mr. Broyles unsubstantiated testimony that it was his "understanding" that a different party stripped the well of equipment at an unknown time (Pre-filed Testimony of Ed Broyles, p. 3), was not discussed in the Commission's order and is not evidence of work on the well constituting a new party abandoning the well.

matters, but also a significant curtailment of the ability to pursue any entity under K.S.A. 55-179(b) as the original operator who abandoned a well. Thus, Staff requests clarification and/or reconsideration of the matter.

c. Facts Regarding the Forbeck #1

24. Staff believes the Commission's findings regarding the September 2011 T-1, Transfer of Operator form, as they pertain to the Forbeck #1, are inaccurate based upon the record before the Commission. Staff therefore requests clarification and/or reconsideration of Operator's responsibility for the Forbeck #1 in light of the following.

25. In its findings of fact regarding the Forbeck #1, the Commission stated:

Mr. Broyles testified to "location issues" with this well and provided a T-1 form with an effective transfer date of September 1, 2001, showing Cyclone Petroleum, Inc. as the past operator and Endeavor Energy Resources, L.P. as the new operator. Although both the well completion form and the T-1 form list the well as the Forbeck #1, the well completion form provides a different API number than the T-1 form. Mr. Broyles stated his understanding that "this well is producing today and [is] operated by Endeavor Energy Resources. No Forbeck B lease, under which the Forbeck #1 well would have been drilled, was provided by either party."²⁴

26. In its findings and conclusions regarding the Forbeck #1, the Commission concluded:

Mr. Broyles provided a September 2011 T-1 form showing a change of operator on the Forbeck #1 well from Cyclone Petroleum, Inc. to Endeavor Energy Resources, L.P., which indicates that Jaed is no longer operating the Forbeck #1 well.²⁵

27. Staff's motion to show cause alleged Operator is responsible for the Forbeck #1, API #15-191-21073-00-02.²⁶ Staff witness Jeff Klock attached Operator's own Well Completion Form for the well to his pre-filed testimony, which lists the exact same well name, API number,

²⁴ See Order on Unplugged Wells, ¶11.

²⁵ *Id.* at ¶19.

²⁶ See Motion for an Order to Show Cause, ¶7, Exhibit A.

and location, and adding that the well is located at 1,320 feet from the south line and 2,970 feet from the east line of Section 15, Township 35, Range 2.²⁷ Mr. Klock also attached Staff's inspection report, which indicates that Staff was unable to visually see or physically get to the well due to thick vegetation.²⁸

28. On the other hand, the September 2001 T-1 from Cyclone to Endeavor identifies the Forbeck B #1, API #15-191-20913, at 660 feet from the south line and 3300 feet from the east line, from the same Section, Township, and Range.²⁹ Although not necessary to reach the proper conclusion, per K.A.R. 82-1-230(h) the Commission may take administrative notice of Commission files, which indicate Endeavor Energy Resources has been certifying the Forbeck B #1, API #15-191-20913, as a producing oil well since 2011.

29. In other words, the Forbeck #1, API #15-191-21073-00-02, 1320 FSL 2970 FEL, for which Staff alleges Operator is responsible, is clearly not the Forbeck B #1, API #15-191-20913, 660 FSL 3300 FEL, the well listed on the September 2011 T-1 form.³⁰

30. Accordingly, the Commission's conclusion that the September 2011 T-1 form regarding the Forbeck B #1, API #15-191-20913, demonstrates that the Forbeck #1, API #15-191-21073, is no longer being operated by Operator is inaccurate, as is the implication that the

²⁷ Pre-filed Testimony of Jeff Klock, Exhibit I.

²⁸ *Id.* at Exhibit B, p. 4. Staff notes that this situation drives home the importance of the burden of proof. Operator drilled the Forbeck #1 in 1998. In violation of Commission regulations, Operator let its license expire without filing a T-1 transfer of operator form or filing any paperwork showing the well is plugged. The location now has thick vegetation making inspection impossible. The burden of proving this well is in compliance with Commission regulations, or that Operator is not responsible for the non-compliance, should properly lie with Operator, as outlined by K.S.A. 55-179(c).

²⁹ See Pre-filed Testimony of Ed Broyles, Exhibit 4.

³⁰ See also Pre-filed Testimony of Jeff Klock, 4:1-3: "Q: Has another operator subsequently filed paperwork regarding the wells you've testified about? A: No."; and Tr. 22:14-18: "Q: Mr. Klock . . . the eight subject wells of this show cause, were they or were they not transferred? A: No. They were not. They were not transferred to another operator via T-1."

T-1 form demonstrates a transfer of the well at issue.³¹ Thus, Staff requests clarification and/or reconsideration of Operator's responsibility for the Forbeck #1 in light of the above.

d. The Relief Provided by the Commission

31. Staff requests that the Commission clarify and/or reconsider its decision regarding the relief provided in this case compared to the relief requested by Staff. The Commission determined that Operator was responsible for six of the eight wells at issue in this docket.

32. In its motion for an order to show cause, Staff requested:

[I]f Operator does not bring the wells at issue into compliance, its license should be suspended and any injection authority associated with the unplugged wells should be revoked.³²

33. In its opening statement at hearing, Staff requested:

[T]hat an order be given by the Commission to the operator. The operator should have 30 days to plug the wells, transfer the wells to an active operator's license, or return them to service. If the operator fails to do so, its license should be suspended and the wells placed on the State plugging list, to be plugged as priority and as funds allow, with the costs to be assessed to the operator.³³

34. In its order, the Commission did not address Staff's request for the license to be suspended or for injection authority to be cancelled, or for a compliance deadline to be given, or for any plugging costs to be assessed to Operator.

35. Failure to suspend Operator's license and failure to allow Staff to assess the costs of plugging, both in this case specifically and in future similar cases, could have serious implications for Staff's ability to implement K.S.A. 55-155 to ensure actors associated with entities out of compliance with Commission regulations cannot be associated with entities attempting to obtain a license. Failure to implement these remedies will make it both difficult to

³¹ See Order on Unplugged Wells, ¶19.

³² Motion for an Order to Show Cause, ¶8.

³³ Tr. 6:22 to 7:6.

determine whether an entity is out of compliance and difficult to determine the steps necessary to bring an entity into compliance.

36. In its order, the Commission determined that “the Commission is currently responsible to plug” the wells because Operator is defunct.³⁴ The Commission also found, however, that “Staff is free to investigate whether an operator other than [Operator] may also be legally responsible for the care and control of the subject wells.”³⁵

37. Under K.S.A. 55-179(a)(2), if the person legally responsible for a well is no longer in existence, the Commission shall plug the well or cause it to be plugged. Staff believes there is an important distinction between the Commission plugging a well and the Commission being responsible for the well, notes that no party requested a finding that the Commission is responsible for the wells, and further believes it would be inappropriate to come to such a conclusion when the possibility of other responsible parties has not been explored. In other words, while it would be appropriate for the Commission to authorize Staff to plug the wells and assess the costs if Operator fails to meet its statutory obligations and no other responsible parties can be found, it is premature to conclude that the Commission is *responsible* for the wells.

38. Since many similar dockets, albeit via default proceedings, have provided exactly the relief Staff requested in this case,³⁶ and given the potential consequences a departure from such relief may have on Staff’s ability to enforce K.S.A. 55-155 in the manner in which it has been so doing; and given the lack of consideration in the Commission’s Order of Staff’s requested relief; Staff requests clarification and/or reconsideration of the relief granted.

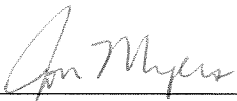
³⁴ Operator did, however, attend the hearing.

³⁵ Order on Unplugged Wells, ¶23.

³⁶ See, e.g., Dockets 18-CONS-3009-CSHO thru 18-CONS-3047-CSHO.

WHEREFORE, for the reasons set forth herein, Staff respectfully requests the Commission issue an order clarifying and/or reconsidering the Commission's October 31, 2017 Order on Unplugged Wells at it pertains to the matters addressed above, and for any other relief the Commission may consider appropriate.

Respectfully submitted,



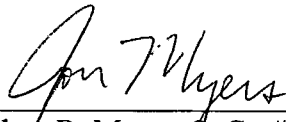
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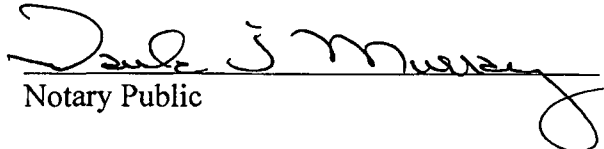
VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

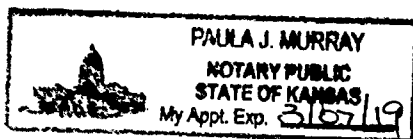
Jonathan R. Myers, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Petition*, and attests that the statements therein are true to the best of his knowledge, information and belief.


Jonathan R. Myers, S. Ct. #25975
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 13 day of Nov, 2017.


Notary Public

My Appointment Expires: 3/07/19



CERTIFICATE OF SERVICE

I certify that on 11/13/17, I caused a complete and accurate copy of this Petition to be served electronically to the following:

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