

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

In the matter of the petition of Daylight) Docket No.: 25-CONS-3040-CMSC
Petroleum, LLC (Operator) to open a docket)
pursuant to K.S.A. 55-605(a) regarding a fluid) CONSERVATION DIVISION
leak in Section 16, Township 30 South, Range)
16 East, Wilson County, Kansas.) License No.: 35639

**RESPONSE TO MOTION FOR EXTENSION OF TIME TO
FILE OPERATOR PRE-FILED DIRECT AND REBUTTAL TESTIMONY**

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively), submits its response to the Motion for Extension of Time to File Operator Pre-filed Direct and Rebuttal Testimony (Motion) filed on behalf of Daylight Petroleum, LLC (Operator). In support of its response, Staff states as follows:

1. On August 22, 2024, the Commission issued an order in the captioned docket which designated a presiding officer and set a prehearing conference for September 12, 2024.¹ At the prehearing conference both parties agreed a procedural schedule needed to be set but disagreed on a timeframe for testimony to be filed. Staff recommended a procedural schedule that started at the beginning of October, while Operator recommended a schedule that would start around the beginning of January. After the prehearing conference, the parties had a discussion during which Operator's counsel recommended the November 22, 2024, date as Operator's deadline to have its testimony filed. Even though that deadline was 93 days after the Commission designated a presiding officer and scheduled a prehearing conference and 117 days after Operator initially petitioned for this docket to be opened, Staff agreed to that deadline. On September 24, 2024, the presiding officer issued an Order Setting Procedural Schedule in the captioned docket based on an agreement between the parties.²

¹ Order Designating Presiding Officer and Setting Prehearing Conference, Ordering Clause B (Aug. 22, 2024).

² Presiding Officer Order Setting Procedural Schedule (Sept. 24, 2024).

2. On November 22, 2024, Operator filed its Motion. In its Motion, Operator states that three witnesses are necessary to present its position to the Commission.³ Operator's Motion also states that it had located the three witnesses, but that one of the witnesses happened to withdraw from providing testimony the Wednesday before Operator's deadline.⁴ Operator's Motion fails to provide any legitimate reason why testimony for the other two witnesses was not timely filed. Operator's Motion requests that the deadline be extended to December 13, 2024, for the two witnesses it still has available and until December 31, 2024, to file testimony on the value of the commercial building and potential economic waste that would occur.⁵

3. Staff disagrees with the assertion in Operator's Motion that the captioned docket has had a condensed schedule. Operator not only initiated this docket, but as noted in paragraph 1 above, Operator has had an extended amount of time to locate its witnesses and prepare its testimony, and much more than the 60 days Operator's counsel indicated was needed to locate witnesses and file testimony. Operator's Motion presents no circumstances which prevented the timely filing of testimonies from two of the three witnesses Operator claims are needed. Further, while Operator's Motion claims the third witness withdrew from providing testimony days before Operator's deadline, Operator's Motion fails to provide any details that indicate a witness had been found and prepared to provide testimony. Operator's Motion also fails to provide any information about its ability to locate a replacement witness and have testimony timely filed by the deadline proposed in its Motion. Staff had indicated over email to Operator's counsel that it was not opposed to Operator having a two-week extension to file testimony for its third witness, if the testimony for the other two witnesses was timely filed. Staff would not be opposed to Operator having until December 13, 2024, to submit testimony for the third witness Operator

³ Motion for Extension of Time to File Operator Pre-Filed Direct and Rebuttal Testimony, ¶3 (Nov. 22, 2024).

⁴ *Id.*

⁵ *Id.* at ¶4.

claims is needed. Staff would also not be opposed to Operator having the testimony for its other two witnesses due December 13, 2024, if Operator can provide a legitimate reason as to why that testimony was not timely filed. If Operator cannot provide a legitimate reason, then Staff would object to any extension for the other two witnesses.

4. Additionally, Staff notes that Operator has submitted a request to transfer 421 of its 440 wells to another operator, Bluejacket Operating, LLC.⁶ This request includes all of Operator's wells in Wilson County, except for the eleven unplugged wells on the Johnson lease and the Olhausen #6 well which have been referenced in this docket. Additionally, the request raises other red flags as the proposed new operator was only just formed in October, got a license in November, and has no other wells on its license. To Staff, it appears possible that Operator is choosing to drag out and delay the procedural schedule as much as it can before attempting to leave the State with its unaddressed obligations. Regardless of whether this delay is intentional or not, Operator appears to be attempting to abuse the hearing process at the time and expense of the Commission and Commission Staff.

5. Operator's Motion states that Staff will undoubtedly argue that an extension will endanger fresh and usable water and therefore should be denied.⁷ The fact of the matter is that fresh and usable water is already endangered and the longer this process is delayed, the greater the damage to fresh and usable water will be. Operator's Motion alleges that pollution is not occurring and references 1966 KGS Survey Bulletin 183 as proof that pollution is not occurring.⁸ Of the 42 wells sampled as part of Bulletin 183, only nine wells collected samples from formations that were encountered during the drilling of the four monitoring wells on the Johnson lease. Of these nine wells sampled during 1961 and 1962, five provided chloride samples below

⁶ Staff requests the Commission take administrative notice of its records. *See* K.A.R. 82-1-230(h).

⁷ Motion for Extension of Time at ¶5.

⁸ *Id.*

35 ppm, three provided chlorides samples below 225 ppm, and one provided a chloride sample of 1,115 ppm. All other samples included in the bulletin were collected from formations that were deeper than the formations encountered during the drilling of the monitoring wells. As described in Staff's expert testimony, which was timely filed on November 1, 2024, the number of chlorides in the most recent samples taken from the monitoring wells range from 61.9 ppm to 2370 ppm and are generally increasing. The Kansas Geological Survey, Educational Series 10 publication states that the maximum recommended level of chlorides for drinking water is 250 ppm.⁹ If Operator's Motion is granted, then the water beneath the Johnson lease will continue to be polluted even more than it currently is. Granting the extension requested by Operator and allowing Operator to continue to delay the procedural schedule would go directly against the Commission's statutory duty to protect fresh and usable water.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission extend the procedural schedule as recommended by Staff in paragraph 3 above, and for any further relief as the Commission deems just and proper.

Respectfully submitted,

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⁹ Kansas Geological Survey, Educational Series 10, *Kansas Ground Water: An Introduction to the State's Water Quantity, Quality, and Management Issues compiled by Rex Buchanan and Robert W. Buddemeier*, p. 5 (Aug. 1993); see also http://www.kgs.ku.edu/Publications/Bulletins/ED10/05_qual.html.

CERTIFICATE OF SERVICE

25-CONS-3040-CMSC

I, the undersigned, certify that a true and correct copy of the attached Response to Motion for Extension of Time to File Operator Pre-Filed Direct and Rebuttal Testimony has been served to the following by means of electronic service on December 2, 2024.

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