

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

In the matter of the request to transfer wells) Docket No. 25-CONS-3235-CMSC
from Daylight Petroleum, LLC to Bluejacket)
Operating, LLC.) CONSERVATION DIVISION
)
) License No. 35639 & 36169

RESPONSE TO MOTIONS TO DISMISS / MOTION FOR SUMMARY JUDGMENT

Comes Now Staff of the Kansas Corporation Commission (Staff and Commission, respectively), in response to the Motion to Dismiss filed by Bluejacket Operating, LLC (Bluejacket) on March 27, 2025, and in response to the Motion to Dismiss / Motion for Summary Judgment filed by Daylight Petroleum, LLC (Daylight) on March 28, 2025. Staff respectfully requests that the motions filed by Bluejacket and Daylight be denied. In support of its response, Staff states the following:

I. Background and Standard of Proof

1. On January 21, 2025, Staff filed a Motion regarding 55 Request for Change of Operator (T-1) Forms which were filed requesting that 421 wells belonging to Daylight be transferred to Bluejacket.¹ Staff's motion was based on several concerns regarding the financial burden that could be placed upon the State if the T-1 forms were processed. Notably, eleven wells on the Johnson lease and the Olnhausen Farms #6 well located in Section 16, Township 30 South, Range 16 East, Wilson County, Kansas were not included as part of the transfer requests.

2. On January 22, 2025, Staff cancelled the T-1 forms between Daylight and Bluejacket that had been previously approved in error.

¹ Staff's initial motion stated that Staff had received 55 T-1 forms where Daylight was requesting to transfer 228 of its 240 wells to Bluejacket. However, Staff had instead received 55 T-1 forms where Daylight was requesting to transfer 421 of its wells not including the 11 wells on the Johnson lease and the Olnhausen Farms #6. Staff requests the Commission take administrative notice of its records. See K.A.R. 82-1-230(h).

3. On February 20, 2025, the Commission held a hearing in Docket 25-CONS-3040-CMSC (Docket 25-3040) regarding a breakout well on Daylight's Johnson lease as the result of injection into the Olnhausen Farms #6 well.

4. On March 25, 2025, Bluejacket filed a Motion to Dismiss in the captioned docket. Bluejacket's motion argues that it is entitled to the transfer of its assets, and that Staff has provided no basis for not approving the T-1 forms. On March 28, 2025, Daylight filed a Motion to Dismiss / Motion for Summary Judgment. Daylight's motion argues that there are no disputes of material fact, that the docket must be dismissed as a matter of law, and that the T-1 form is simply a notice that a transfer of operator responsibility has occurred.

5. The Commission has authority to rule on motions for summary judgment under K.S.A. 55-162 and K.S.A. 55-164. The Commission has consistently applied the standards of the Kansas Rules of Civil Procedure when considering and ruling on such motions.

6. Pursuant to K.S.A. 60-256(c)(2), summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Thus, the Commission should render summary judgment if: 1) There is no genuine issue as to any material fact, and 2) Movant is entitled to judgment as a matter of law.

7. The Kansas Supreme Court has written that when ruling on a motion for summary judgment, "[t]he trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case."

II. Transferring ownership is different than transferring operatorship.

8. K.A.R. 82-3-101(48) defines an “operator” as “a person who is responsible for the physical operation and control of a well . . .” It follows that to “operate” a well is to be “responsible for the physical operation and control of the well.” Additionally, K.A.R. 82-3-410 provides that authority to operate an injection well shall not be transferred from one operator to another without the approval of the Conservation Division.² The regulation continues that the transferring operator must inform Staff of “the intent to transfer authority to operate an injection well from one operator to another.”³ As discussed in more detail below, the same applies to non-injection wells which are transferred pursuant to K.A.R. 82-3-136 and K.S.A. 55-155(f).

9. Based on the motions filed by Bluejacket and Daylight it appears that there is a misunderstanding between owning a lease and operating a lease which needs to be addressed. Bluejacket’s motion appears to allege that the actions taken by Staff in this docket impact its real property interests in the leases it has purchased from Daylight.⁴ However, Staff contends that it is not disputing Bluejacket’s ownership of the leases. Instead, Staff’s focus is on the transfer of operatorship of the leases and Bluejacket’s ability to operate the leases, as well as, attempting to address the issue that Daylight will have no assets and only liabilities left under its license. There is a distinct difference between ownership of a lease and operatorship of a lease. Further, the Commission has also acknowledged this distinguishment in prior orders.⁵ In Kansas, it is not uncommon for an operator to own a lease or wells but have a different operator in place to conduct operations on that lease or wells.

² K.A.R. 82-3-410(a).

³ K.A.R. 82-3-410(a).

⁴ See Motion to Dismiss (Bluejacket Operating LLC), ¶¶15-16, 21 (Mar. 25, 2025). “Thus, the real property interests at issue, the Subject Leases, have been transferred as required under Kansas law.” “The Commission’s actions have placed these property interests in limbo.” “They are attempting to rescind those forms, thus imperiling Bluejacket’s property interests, and possibly impairing Bluejacket’s vested rights.”

⁵ See KCC Docket 23-CONS-3109-CPEN, *Final Order*, ¶30 (Oct. 3, 2023).

III. The Commission has authority over the transfer of operatorship.

10. K.A.R. 82-3-136 provides that if operator responsibility is transferred, the past operator shall report this transfer to the conservation division within 30 days of the change upon a form prescribed by the Commission. That the past operator shall furnish a list of all active and inactive wellbores on the lease, unit, gas storage facility, or secondary recovery unit with the notice of transfer. Transfers shall not be made to any individual, partnership, corporation, or municipality not currently licensed as an operator, gas gatherer, or gas storage operator. That within 90 days of any transfer, the new operator shall change the tank battery identification sign provided for in K.A.R. 82-3-126 to show new operator information.

11. The Commission has previously determined that it has broad authority under K.S.A. 74-623, K.S.A. 55-604, and K.S.A. 55-704 to approve or deny forms submitted by operators.⁶ This includes T-1 forms. The first section of K.A.R. 82-3-136 provides that, “If operator responsibility is transferred, the past operator shall report this transfer to the conservation division.”⁷ Daylight and Bluejacket interpret this to mean that the operators determine when responsibility for a well is transferred, and only need provide notice to Staff of the transfer.⁸ In other words, Staff and the Commission have no say in the transfer of well responsibility between operators. They make this interpretation despite the fact that the T-1 form is titled “Request for Change of Operator”. If the form prescribed by the Commission was merely intended to be a notice, then the form would be titled as such.

12. Bluejacket and Daylight’s understanding of the regulation completely ignores everything after the first section. K.A.R. 82-3-136(c) states that “Transfers shall not be made to

⁶ *Id.*

⁷ K.A.R. 82-3-136(a).

⁸ *See* Daylight Petroleum LLC’s Motion to Dismiss/ Motion for Summary Judgement, ¶14 (Mar. 28, 2025).

any individual, partnership, corporation, or municipality not currently licensed as an operator, gas gatherer, or gas storage operator.” If an operator were to transfer a well to an unlicensed person and then file a T-1, certainly Staff would not be forced to approve the T-1. Instead, Staff would not approve the T-1, and the well would remain the responsibility of the original operator. Thus, K.A.R. 82-3-136(c) appears to give Staff and the Commission authority to determine whether responsibility for a well is transferred between parties. The reason for this section is clear, the transfer of responsibility of wells to a person or operator without a license would sharply increase the likelihood of the transferred wells causing waste or pollution to usable waters.

13. Given that K.A.R. 82-3-136(c) allows Staff to refuse to transfer responsibility for a well when the new operator does not have a license, what does this mean for the interpretation of the rest of the regulation? K.A.R. 82-3-136(a) cannot be interpreted as meaning that in all instances operators determine when responsibility for wells transfers between them, as K.A.R. 82-3-136(c) appears to give Staff the authority to refuse the transfer of responsibility when the operator does not have a license. If K.A.R. 82-3-136(a) allows Staff to prevent the transfer of responsibility in one instance, then that implies that the section allows Staff to prevent the transfer of responsibility in other instances. It would be unreasonable for the regulation to allow Staff to prevent the transfer of responsibility of wells to an operator without a license but require Staff to automatically approve the transfer of responsibility from an operator that is leaving itself with no assets and only plugging liabilities. In an instance such as that, the transfer of responsibility for a well may increase the likelihood of waste or pollution. K.A.R. 82-3-136 should be interpreted as allowing Staff the ability to review proposed transfers of responsibility of wells and only approve those transfers when they will not pose a threat of waste, a threat of correlative rights, or a threat to the environment.

14. In making its argument that Staff must automatically approve the transfer of responsibility for wells, Daylight cites to K.S.A. 55-155(f) in arguing that operators determine when responsibility for well transfers, with no input from Staff or the Commission.⁹ This argument again fails upon an examination of the statute. K.S.A. 55-155(f) provides that if an operator transfers responsibility for the operation of a well to another person, “such operator shall file a notice of transfer of operator with the commission in accordance with rules and regulations of the commission.” The statute explicitly states that transfer of wells must be done in accordance with Commission rules and regulations. Thus, it is the Commission’s regulations in K.A.R. 82-3-136 and K.A.R. 82-3-410 that govern the transfer of wells between operators. Consequently, K.S.A. 55-155(f) states that Commission regulations determine the transfer of wells, and as already argued, those regulations give Staff the authority to determine when responsibility for well transfers between operators. Further, the Commission has agreed that K.S.A. 55-155(f) does not restrict its authority to approve or deny forms submitted by operators.¹⁰ While Commission regulations do not trump statutes or restrict an operator’s rights under K.S.A. 55-155(f), they do recognize the distinction between the transfer of ownership of wells and the transfer of operatorship of wells.

15. Staff having authority to determine when responsibility for well transfers between operators is not solely an invention of Kansas; the staff of the state agencies regulating oil and gas operations determine when responsibility for wells transfers between operators in other states. For example, the Oklahoma Corporation Commission regulation controlling the transfer of wells provides that before operations of a well can be transferred, the transferor and transferee must

⁹ *Id* at ¶17.

¹⁰ Docket 23-3109 Final Order at ¶30.

submit Form 1073 or Form 1073MW listing the wells to be transferred.¹¹ The regulation then continues that “If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not approve any Form 1073 or Form 1073MW transferring well(s) to said operator until the operator complies with the order. The transferor of the well(s) listed on the Form 1073 or Form 1073MW remains responsible for the well(s) until any transfer is approved by the Commission.”¹²

16. Clearly, the practice of the Oklahoma Corporation Commission is not directly comparable to the Kansas Corporation Commission as Oklahoma has a regulation specifically stating that responsibility for a well remains with the prior operator until the Commission approves the transfer. However, the regulations in the State of New York much more closely mirror those in Kansas.

17. The New York Department of Environmental Conservation (DEC) regulates oil and gas in New York. There do not appear to be specific regulations regarding the transfer of well responsibility between operators; instead there is a general regulation requiring an operator to inform DEC of the date of transfer of unplugged wells.¹³ However, DEC has interpreted this to mean that its staff have the legal authority to approve or deny the transfer of well responsibility between operators. In the form operators must file to transfer wells, titled “Request for Transfer of Well Responsibilities,” the first paragraph of the form states:

The Transferor acknowledges that, until Department approval of this request for transfer of well responsibilities for the well(s) listed below, Transferor remains legally responsible for complying with all legal requirements for **each well**, including, but not limited to, the Environmental Conservation Law (ECL) and the Department’s regulations. As part of the Department’s evaluation of this transfer request, a well inspection may be conducted for

¹¹ O.A.C. 165:10-1-15(a).

¹² O.A.C. 165:10-1-15(c).

¹³ 6 CRR-NY 551.1.

each well. Any and all deficiencies found must be remediated to the Department's satisfaction before the transfer can be approved" (emphasis in original).¹⁴

The DEC's interpretation of its regulations to allow its staff to approve the transfer of well responsibility only after deficiencies at the well have been remediated has been endorsed in a recent administrative law decision.¹⁵ Similar to how the DEC interprets its regulations, the Commission should interpret K.A.R. 82-3-136 as giving Staff the authority to approve or deny the transfer of well responsibility between operators.

18. Lastly, the Commission has exercised its authority to deny T-1 forms in other matters that have come before it. For example, in Docket 24-CONS-3001-CSHO et. al., the Commission also determined that it had the authority to review T-1 forms at issue.¹⁶ Ultimately, the Commission determined that the T-1 forms at issue should not be processed.¹⁷ While the situations regarding the operators involved in these matters appear to be somewhat different, the end result is potentially the same where there is a risk of unplugged wells being left to the State. If the Commission allows an operator to transfer everything but its liabilities, then there is a real scenario where the State will end up plugging wells that it may have otherwise been able to have plugged by responsible operators, while those responsible operators were still around.

IV. The captioned docket is connected to Docket 25-3040.

19. Both Bluejacket and Daylight allege that the issues in Docket 25-3040 are separate from the captioned matter. Staff disagrees. In June 2023, Daylight's injection operations on the Olnhausen lease caused an abandoned well to break out beneath a building. This breakout was determined to be connected to Daylight's injection operations on the Olnhausen Farms lease,

¹⁴ Exhibit A.

¹⁵ *In the Matter of the Michael J. McCaffery, Individually and as Principal Officer of M.J. McCaffery Oil Co. and McCaffery & Krampf Oil Co., Respondents*, DEC Case No. CO 9-20210316-8, 2022 WL 3722802 (Aug. 17, 2022).

¹⁶ KCC Docket 24-CONS-3001-CSHO, *Final Order*, ¶16 (Nov. 21, 2024).

¹⁷ *Id.* at ¶19 and Ordering Clause B.

which Daylight is requesting to transfer to Bluejacket. Ultimately, Daylight opened Docket 25-3040 in order to avoid Staff's impending deadline regarding locating and plugging the well which had been caused to breakout. In that docket, which was opened in July 2024, Daylight alleged that it would cost over a million dollars to locate and plug the well. Subsequently, Bluejacket Operating is formed in October 2024 and shortly thereafter Daylight requests to transfer select producing wells while leaving the wells where it has liability behind. Staff believes these matters to be related, which is why it has flagged the T-1 forms at issue so that the Commission may have input on whether or not they are processed.

20. The Commission has previously indicated that it has no issue with Staff not automatically processing T-1 forms in order to address any regulatory concerns.¹⁸ Further, the Commission has indicated that it is desirable and encouraged to initiate a docketed proceeding where Staff is concerned with a potential lack of regulatory compliance and such concerns are not quickly resolved.¹⁹

21. Daylight and Bluejacket contend that the Johnson lease and the Olnhausen Farms #6 are not among the wells listed on the T-1s which are subject to the captioned docket and cannot be used a basis for denying the T-1s at issue in this docket.²⁰ However, Staff believes that contention is incorrect. For example, K.A.R. 82-3-136(b) provides that the past operator shall furnish a list of all active and inactive wellbores on the lease, unit, gas storage facility, or secondary recovery unit with the notice of transfer. However, as stated above the Olnhausen Farms #6 well was not included on the T-1 form even though Daylight has requested to transfer the Olnhausen Farms lease to Bluejacket.²¹ Based on K.A.R. 82-3-136(b), it appears that the form is incomplete

¹⁸ Docket 23-3109 Final Order at ¶34.

¹⁹ *Id.*

²⁰ See Bluejacket Motion to Dismiss at ¶19 and Daylight Motion to Dismiss at ¶7.

²¹ Staff requests the Commission take administrative notice of its records. See K.A.R. 82-1-230(h).

until the Olnhausen Farms #6 well is included. This example shows how these matters are more connected, than what Bluejacket and Daylight would lead the Commission to believe.

V. Public policy is served by being able to review T-1 forms.

22. Allowing Staff authority to approve or deny the transfer of well responsibility between operators is good public policy. Such authority will help to prevent waste, protect correlative rights, and protect usable waters. Additionally, it can potentially allow the State to avoid incurring the financial burden of plugging wells that operators have left behind as liabilities. It appears that the Commission recognizes this policy perspective. The Commission has previously indicated that the policy implications are horrific – any person could dump well-plugging liabilities upon the State by abandoning those wells under the shell of a defunct corporation and transfer viable wells to a new entity.²²

23. Here, there is evidence that this scenario could potentially occur. At the February 20, 2025, hearing with Daylight in Docket 25-3040, Daylight's Vice President of Operations, Art Benjamin, testified that Daylight had sold its producing assets in the area and had only retained its liabilities in the Johnson lease and the Olnhausen #6.²³ Further, Mr. Benjamin indicated that Daylight had no immediate plans to own or produce wells in Kansas.²⁴ To date, Daylight has not provided any indication of how it intends to address the wells on the Johnson lease. Daylight has provided options on how to address the Olnhausen Farms #6 well and the abandoned well it caused to break out, but none of the options Daylight has provided include taking affirmative action to locate and plug the abandoned well. How does allowing an operator to potentially leave millions in plugging liability prevent pollution, prevent waste, and protect correlative rights? Granting

²² Docket 24-CONS-3001-CSHO, Final Order at ¶18.

²³ KCC Docket 25-CONS-3040-CMSC, Evidentiary Hearing Transcript, p. 315:17-316:25.

²⁴ *Id.*

Daylight's request to transfer its assets while potentially leaving its liabilities behind appears to be the end result that the Commission has sought to avoid.

24. If operators are allowed to transfer the responsibility for wells without any input by Staff or the Commission, then operators with wells that are out of compliance with Commission regulations can divest themselves of their liabilities by transferring their producing wells to other operators while leaving behind the undesirable wells to be dealt with by the State. Allowing operators to divest themselves in such a manner without first resolving the liabilities may often result in more abandoned wells being added to the State plugging list and the potential for pollution of usable waters.

25. Conversely, if Staff are allowed to deny the transfer of well responsibility until the prior operator has addressed their liabilities, then prior operators will be less likely to attempt to transfer only select wells to the new operator. Requiring prior operators to bring wells into compliance before the transfer of responsibility for the wells would also ensure that the wells are brought into compliance much more quickly, thereby reducing the possibility of pollution.

26. The Kansas Court of Appeals has weighed in on the ability of the Commission to determine operator responsibility for wells as a means of preventing pollution. In *John M. Denman Oil Co., Inc. v. State Corporation Commission of the State of Kansas*,²⁵ the Court of Appeals took up a case regarding responsibility for several abandoned wells. Denman Oil argued that it had assigned the lease for the wells to TSCH, and therefore was not responsible for plugging the wells. The Court of Appeals held that Denman Oil and TSCH were joint and severally liable for the abandoned wells.²⁶ The Court stated that "Denman Oil and the industry groups argue that the KCC should defer to the contractual arrangements between the parties and here require only that TSCH,

²⁵ 51 Kan.App.2d 98 (2015).

²⁶ The Denman case concerned interpretation of K.S.A. 55-179, which was amended in 2021.

which accepted the final lease assignment, be responsible for plugging the wells. But such a rule would greatly hinder the KCC's ability to get wells plugged. If a leaseholder assigned it rights to a party financially unable to plug the wells, pollution could continue."²⁷ As the Appeals Court held, the Commission has authority to look beyond the lease assignments of operators to prevent pollution. To that end, Bluejacket has not provided any information or documentation which would indicate it has the capability to operate the 421 wells at issue, much less, address any compliance concerns that come from those wells.

VI. Conclusions

27. For the reasons described above, Bluejacket and Daylight have not met their burden to have summary judgement rendered in their favor in this matter. There are issues of material fact with potential regulatory issues being left behind by Daylight. If the liabilities are not addressed, then processing the request to transfer wells could potentially cause waste and pollution. As described above, there is also an issue with the T-1 forms not including the Olnhausen Farms #6 based on the language of K.A.R. 82-3-136.

28. Additionally, Daylight and Bluejacket are not entitled to judgement as a matter of law. The plain language of Commission's regulations makes it clear that an operator may not transfer responsibility for wells without Staff's approval. Staff did not approve the request to transfer wells from Daylight to Bluejacket based on legitimate concerns it has regarding the liabilities that Daylight did not include in the transfer and the ability of Bluejacket, a company which has no history of operating, to suddenly operate over 400 wells.

29. Beyond the plain language of K.A.R. 82-3-410, the language of K.A.R. 82-3-136 also appears to give Staff authority to approve or deny the transfer of well responsibility between

²⁷ Denman, 105.

operators. This is a responsibility that other states give to the staffs of their agencies overseeing oil and gas operators. It is also good public policy. The usable waters of the State of Kansas are best protected by allowing Staff authority to require operators to bring their wells into compliance with Commission rules and regulations before transferring those wells to other operators.

WHEREFORE, for the reasons described above, Staff respectfully requests the Commission deny Bluejacket and Daylight's Motions. If the Commission directs Staff to process the T-1 forms requesting wells to be transferred from Daylight to Bluejacket, then Staff respectfully requests the Commission also direct Daylight to address its liabilities by plugging the wells on the Johnson lease, as well as, locating and plugging the breakout well caused by the Olnhausen Farms #6 as a condition of the transfer. Further, Staff respectfully requests Commission approval to not transfer any injection authority regarding wells within the area of review of Daylight's remaining wells until they have been plugged and for any other relief the Commission determines to be just and equitable.

Respectfully Submitted,

/s/ Kelcey Marsh

Kelcey A. Marsh, S. Ct. No. 28300
Litigation Counsel | Kansas Corporation Commission
266 N. Main, Suite 220 | Wichita, KS 67202
Phone: 316-337-6200 | Kelcey.Marsh@ks.gov

CERTIFICATE OF SERVICE

25-CONS-3235-CMSC

I, the undersigned, certify that a true and correct copy of the attached Response has been served to the following by means of electronic service on April 11, 2025.

KEITH A. BROCK, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067-0017
kbrock@andersonbyrd.com

DEANNA GARRISON
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
deanna.garrison@ks.gov

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
kelcey.marsh@ks.gov

CHRISTOPHER J MCGOWNE
MCGOWNE LAW OFFICES, P.A.
PO BOX 1659
HAYS, KS 67601-8659
cjmcgowne@mcgownelaw.com

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
jon.myers@ks.gov

KRAIG STOLL, EP&R SUPERVISOR
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
kraig.stoll@ks.gov

/s/ Paula J. Murray
Paula J. Murray
