

**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

RESPONSE TO STAFF'S MOTION TO STRIKE

Benjamin M. Giles ("Operator") submits this response to Commission Staff's Motion to Strike Operator's Reply. In support of its response, Operator states as follows:

1. The following pleadings and order precede Staff's motion to strike:
 - a) June 2, 2017 - Operator filed a motion for an order declaring that Operator had performed its obligations under the Settlement Agreement adopted by the Commission in this docket, directing Staff to rescind the penalty it improperly assessed against Operator under the Settlement Agreement, and reinstating Operator's license.
 - b) June 8, 2017 - the Commission entered an order finding that the \$5000 penalty Staff assessed to Operator and Staff's suspension of Operator's license were of no force and effect for 30 days from the date of the order.
 - c) June 12, 2017 - Staff filed a response to Operator's June 2, 2017 motion.
 - d) June 26, 2017 - Operator filed a reply to Staff's response to Operator's June 2, 2017 motion.

2. Through email correspondence among Operator's counsel of record, Staff litigation counsel and the Commission assigned prehearing officer, Operator believed all parties had come

to an agreement that Operator would be permitted to file a reply to Staff's response and that such reply was due on June 26, 2017. Nowhere in the email correspondence is there a reference to a particular time on June 26, 2017 by which the reply was to be filed. The referenced email correspondence is attached as Exhibit A. It is also attached as Attachment A and Attachment B to Staff's motion to strike.

3. On June 26, 2017, Operator filed its reply and emailed copies of the same to litigation counsel and the Commission assigned prehearing officer. Exhibit B.

4. On June 29, 2017, Staff filed a motion to strike the reply on several bases, including that the filing of a reply is not permitted under Commission regulations, was not authorized by the Commission, was untimely filed, and that it was somehow defamatory.

5. Operator respectfully requests that the Commission deny Staff's motion to strike. The email correspondence exchanged among Operator's attorney, Staff litigation counsel, and the Commission assigned prehearing officer evidence an agreement—or at least an understanding—among the parties that Operator would be permitted to file a reply, and that the reply was due June 26, 2017, without any further time-based condition. Operator filed his reply on time, on June 26, 2017. *See Exhibits A and B.* As such, Staff should be estopped from attempting to strike Operator's reply on the basis that it is not permitted, not authorized, or untimely. Operator denies that its reply is defamatory, as the reply is based in fact.

6. Operator contends that no commission regulation prohibits the filing of a reply, that replies are routinely filed before the Commission and in civil practice, and that K.A.R. 82-1-218(d) plainly allows for the filing of a reply as an "other proper pleading". Should the Commission find that the reply was untimely filed, Operator contends the late filing was excusable based upon the contents of the email correspondence attached as Exhibit A, and that no prejudice would result

from allowing the filing of the reply 144 minutes after 5pm on June 26, 2017. Accordingly, Operator requests that Staff's motion to strike be denied.

7. If Staff desires to file a sur-reply, as it indicates it could, Operator would not object.

For the foregoing reasons, Operator respectfully requests that the Commission deny Staff's motion to strike Operator's reply.

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

CERTIFICATE OF SERVICE

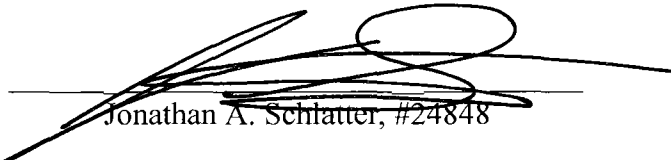
I, Jonathan A. Schlatter, hereby certify that on this 8th day of July, 2017, I caused the original of the foregoing Reply to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and emailed true and correct copies of the same to the following 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

Jonathan Schlatter

From: Michael Duenes <m.duenes@kcc.ks.gov>
Sent: Friday, June 16, 2017 9:12 AM
To: Jonathan Schlatter
Cc: Jon Myers
Subject: RE: 17-CONS-3100-CPEN -- Benjamin M. Giles

I agree that Monday, June 26th is the correct date.

Michael J. Duenes, *Assistant General Counsel*
Office of General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road | Topeka, KS | 66604-4027
Phone (785) 271-3181 | <http://kcc.ks.gov/>
Fax (785) 271-3314 (Advisory)

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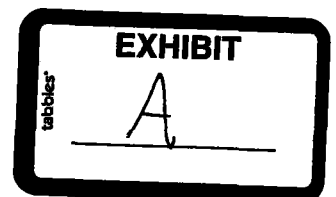
From: Jonathan Schlatter [mailto:jschlatter@morrislaing.com]
Sent: Friday, June 16, 2017 8:49 AM
To: Michael Duenes
Cc: Jon Myers
Subject: FW: 17-CONS-3100-CPEN -- Benjamin M. Giles

Mr. Duenes,

I've determined that my deadline to file a reply to Staff's response to my motion is June 26, 2017. Staff agrees that is the correct date. Please let us know if you disagree.

Thank you,

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



Jonathan Schlatter

From: Jon Myers <j.myers@kcc.ks.gov>
Sent: Thursday, June 15, 2017 9:01 AM
To: Jonathan Schlatter
Subject: RE: 17-CONS-3100-CPEN -- Benjamin M. Giles

Mr. Schlatter,

I believe your analysis regarding calculation of dates under K.A.R. 82-1-217 and 218 is correct. However, I would encourage you to contact the prehearing officer for any sort of confirmation of your right or timeframe to file a reply, and I would appreciate being informed of the results of any such communication.

Sincerely,

Jon Myers

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/>

From: Jonathan Schlatter [mailto:jschlatter@morrislaing.com]

Sent: Wednesday, June 14, 2017 4:43 PM

To: Jon Myers

Cc: Carnella Anderson

Subject: RE: 17-CONS-3100-CPEN -- Benjamin M. Giles

Jon,

I believe my deadline date to file a reply is June 25, 2017, which is a Sunday, so June 26, 2017.

In civil practice, there is no deadline to file a reply to a response to a motion (other than a motion for summary judgment) provided it is filed before the hearing. When practicing before the Commission we typically follow 82-1-218(d), which prescribes 10 days to file an "other proper pleading", and add 3 days for service by mailing under -217 (c). So, 13 days from June 12 is June 25. Does that sounds correct to you?

Jon Schlatter

Morris Laing Evans Brock & Kennedy, Cht.

316-262-2671

jschlatter@morrislaing.com

Jonathan Schlatter

From: do-not-reply@kcc.ks.gov
Sent: Monday, June 26, 2017 7:22 PM
To: Jonathan Schlatter
Cc: p.murray@kcc.ks.gov; c.maine@kcc.ks.gov
Subject: KCC E-Filing Filing Received

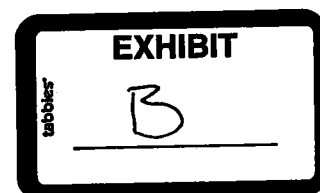
The Kansas Corporation Commission (KCC) E-Filing system has received a filing.

Transaction Id: 20170626_kwly84
Date submitted: 06/26/2017
File Name: Reply (Giles).pdf
Security: PUBLIC
Industry: Conservation
Filing Type: Pleading/Motion
Docket Number: 17-CONS-3100-CPEN
Caption: Reply of Operator

You will receive a Confirmation of Receipt when the Docket Room processes your filing.

/s/ Kansas Corporation Commission

KCC Help Desk: 785-271-3300



Jonathan Schlatter

From: Jonathan Schlatter
Sent: Monday, June 26, 2017 7:24 PM
To: Jon Myers; 'Michael Duenes'; 'Joshua Wright'
Cc: Carnella Anderson
Subject: RE: 17-CONS-3100-CPEN -- Benjamin M. Giles
Attachments: 12. Reply (Giles).pdf

Gentlemen,

Please find the attached reply filed on behalf of Mr. Giles.

From: Paula Murray [mailto:p.murray@kcc.ks.gov]
Sent: Monday, June 12, 2017 4:09 PM
To: Jonathan Schlatter <jschlatter@morrisolaing.com>
Cc: Jon Myers <j.myers@kcc.ks.gov>
Subject: 17-CONS-3100-CPEN -- Benjamin M. Giles

Jonathan, the attached Response was serviced out today.

Thanks,
Paula Murray
Legal Assistant



Conservation Division
Kansas Corporation Commission
266 N Main, Suite 220 | Wichita, KS | 67202-1513
Phone (316) 337-6208 | Fax (316) 337-6211 | <http://kcc.ks.gov/>

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