

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

In the matter of resolving K.A.R. 82-3-111 issues	)	Docket No.:	20-CONS-3129-CPEN
Associated with Prairie Gas Operating, LLC	)		20-CONS-3144-CPEN
("Operator") in four consolidated dockets,	)		20-CONS-3220-CPEN
Regarding wells in Greeley and Hamilton	)		21-CONS-3199-CPEN
Counties, Kansas	)		
	)	CONSERVATION	DIVISION
	)		
	)	License No.:	35442

**PRAIRIE GAS OPERATING, LLC'S RESPONSE  
TO STAFF'S MOTION FOR SUMMARY JUDGMENT IN PART**

**COMES NOW PRAIRIE GAS OPERATING, LLC** (hereinafter "Prairie") by and through its attorney, Lee Thompson, Thompson Law Firm, L.L.C., submits this its Response to Staff's Motion for Summary Judgment in Part ("Motion"). In summary, the Motion should be denied because it raises issues previously reviewed and considered in Prairie's Petition to Lift Suspension. In its final order the Commission noted that "the Commission **believes** the Earl #1, Fecht D #1, and Watson #1 may need to have casing integrity tests conducted upon them and/or be repaired or plugged. The Commission is broadening the issues in this proceeding, **so as to develop the record** in regard to these possible needs."<sup>1</sup> (Emphasis added). The Commission has not ruled on the adequacy of prior showings but rather broadened the issues so the parties could develop a record.

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<sup>1</sup> Dockets 20-CONS-3144 & 3220-CPEN, *Order on Petitions for Lifting of Suspension and Setting Prehearing Conference*, p.3, Para. 5 (April 20, 2021). Hereafter, "Order, April 20, 2021".

Staff's Motion if granted would improperly truncate the ability to develop a record on Staff's "beliefs" that the subject wells may have casing leaks.

### **RESPONSE TO PROCEDURAL BACKGROUND PARAGRAPHS**

1. Paragraphs 1 through 6 of the Motion summarize prior Commission filings. The referenced documents and docket filings speak for themselves. Staff's recitations are not verbatim; but the portions referenced appear to be accurate.
2. Prairie admits so much of paragraph 7 stating that Staff suspended Operator's license on September 14, 2020. The remaining statements are summaries but are not complete or accurate. The status of Prairie's compliance with the orders was noted in the Commission's Order on Petition for Lifting of Suspension.<sup>2</sup>
3. Paragraph 8 is a summary of Prairie's Petition which speaks for itself.
4. Paragraph 9 accurately states the record but fails to note that the verbiage regarding the Staff's argument is nothing more than an argument advanced by Staff and the position taken in the argument was not incorporated in or the basis for the Commission's order of April 20, 2021.<sup>3</sup>
5. Paragraph 10 references filings and summarizes the filings in Docket 21-3199. Again, Staff's Motion merely reiterates its arguments and positions, all of which are subject to a hearing in this matter when Prairie will have an opportunity to fully develop the record.

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<sup>2</sup> See *Id.* at p. 3, Para 4.

<sup>3</sup> See *Id.*, passim.

6. Paragraph 11 summarizes a portion of the Commission's order of April 20, 2021, which order, *inter alia*, stated with regard to the penalty orders which were relied upon by Staff to suspend Prairie's license:

The penalty orders allowed Operator to achieve compliance through returning the wells to service; if Operator does so, it is in compliance. Further, the Commission finds, in these dockets, that dewatering amounts to a return to service. Thus, if at any time since the issuance of the penalty orders in these dockets, Operator has fully equipped the Earl #1, Fecht D #1, and Watson #1 wells and produced fluids from each of them, simultaneously or otherwise, then Operator has complied with the Commission's penalty orders.<sup>4</sup>

7. Paragraphs 12, 13 & 14 accurately state prior orders.

**RESPONSE TO SUMMARY JUDGMENT AND STANDARD OF PROOF  
PARAGRAPHS**

8. Paragraphs 15, 16 & 17 accurately summarize portions of statutory provisions and relevant precedents. Staff fails to note, however, that the doctrine of collateral estoppel, issue preclusion, also applies. The applicability of the legal doctrine is discussed below in paragraph 13.
9. Prairie denies the allegation in paragraph 18 of Staff's Motion for the reasons stated below.

**RESPONSE TO AGUMENT PARAGRAPHS AND COUNTER ARGUMENT**

10. Paragraph 19 is disputed. For the following reasons:

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<sup>4</sup> See *Id.*

- a. Staff alleges that Prairie provided incorrect fluid levels on its TA applications for the Earl #1 and Watson # 1. The citation to Jehlik testimony, however, does not prove that Prairie provided incorrect fluid levels. The testimony simply states that Operator had misinterpreted the fluid level tape.<sup>5</sup>
- b. Paragraph 19 states that Operator did not dispute the high fluid levels in its Direct Testimony on March 9, 2020. The paragraph, however, fails to establish that such levels resulted from a casing leak. The high fluid level was not identified in the penalty order at issue and Operator's direct testimony established that there was no basis to conclude that a formal penalty notice had been issued relative to a casing leak on either the Watson # 1 or the Earl # 1 as of the date of the submission.<sup>6</sup>
- c. The reference to the order closing the relevant Dockets that "staff was not prevented from taking appropriate action related to the relevant wells" is accurate but does not establish that the Staff may unilaterally impose conditions it deems violative of Commission regulations without a proper Penalty Order. For example, a license suspension must be based on non-compliance with the Commission's order.<sup>7</sup>
- d. As noted in paragraph 6 above, and as determined by subsequent inspection, Prairie has complied with the relevant penalty orders.

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<sup>5</sup> Docket 20-CONS-3129-CPEN, Pre filed Testimony of Ken Jehlik, p. 4: 19.

<sup>6</sup> Docket 20-CONS-3129-CPEN, Pre filed Testimony of Patrick Bass, p. 2: 7 – p. 4, 8.

<sup>7</sup> Order, April 20, 2021, p. 3, Para. 4.

11. Paragraph 20 is denied. Paragraph 20 infers that fluid levels were the reason for issuance of a penalty order in Docket 20-3220. However, Staff fails to accurately note that the Penalty Order issued in Docket 20-3220 was premised on failure to comply with K.A.R. 82-3-111 and that the Commission Order of April 20, 2021 held that “if at any time since the issuance of the penalty orders in these dockets, Operator has fully equipped the Earl #1, Fecht D #1 , and Watson #1 wells and produced fluids from each of them, simultaneously or otherwise, then Operator has complied with the Commission's penalty orders.”<sup>8</sup>
12. Paragraphs 21, 23 & 24 all assert an argument based on a putative notice of denial of TA status. Staff premises its argument on a purported notice that Staff invoked its right of denial under K.A.R. 83-3-111. The cited notice, however, was a letter to counsel in response to Prairie’s inquiries. *See* Exhibit A attached. In the letter, Staff premised its invocation of a right of denial as “an administrative action related to the penalty orders.” Staff made the same argument based on the same facts in its response to Operator’s Motion to Lift Suspension.<sup>9</sup> The argument was not accepted in the Commission’s Order on the Petition to Lift Suspension of License.
13. Staff’s arguments about the conclusive impact of an informal notice of a letter to counsel invoking a right of denial based on administrative conclusions are all repetitive

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<sup>8</sup> Order, April 20, 2021, p. 3, Para.4.

<sup>9</sup> *See* Staff’s “Response to Petition by Prairie Gas Operating” March 24, 2021, pp.3-5, Attached to Staff’s Motion as Exhibit KCC-1.

of the arguments made on the Petition to Lift the Suspension. The argument, certainly in the context of a Motion for Summary Judgment, is barred by the doctrine of collateral estoppel. "Under the doctrine of collateral estoppel, an issue once actually [\*8] litigated and determined may not again be litigated in a subsequent action between the same parties or their privies." *State v. Parson*, 15 Kan. App. 2d 374, 377, 808 P.2d 444 (1991).

14. Even if the applicability of the informal notice of revocation of TA status were to be recognized and relitigated here, the Commission clearly contemplated and held that the prior Dockets did not conclusively resolve the issue of the need for casing integrity tests.

The Commission noted:

On the claims made in the briefs, the Commission believes the Earl #1, Fecht D #1, and Watson #1 **may** need to have casing integrity tests conducted upon them and/or be repaired or plugged. The Commission is broadening the issues in this proceeding, **so as to develop the record** in regard to these possible needs.<sup>10</sup> (Emphasis Added).

15. Paragraphs 25, 26, & 27 all argue that Operator has tried to muddy the waters by alleging it has performed proper maintenance work and that the counterproductive effect of shut-in tests extant in the Bradshaw field are irrelevant. The matter at issue is whether casing integrity tests are needed. The recognized need to broaden the record gives the Operator the opportunity to demonstrate in detail how the water issues in the Bradshaw field are pertinent. The Commission clearly recognized this concern by holding that dewatering the wells amounts to a return to service.<sup>11</sup>

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<sup>10</sup> Order, April 20, 2021, p. 3, para 5.

<sup>11</sup> Order April 20, 2021, p. 3, Para 4.

16. The fact that the issues were broadened does not hold nor make any affirmative finding regarding the ultimate fact of whether casing integrity tests are needed. Indeed the docket was broadened “so as to develop the record in regard to these possible needs.” The development of the record will disclose whether in fact: (a) the staff’s allegation that Operator misread a tape is true; (b) whether the production of the wells permitted by the final Order has in fact caused improper migration of water; and (c) whether in fact fluid levels are violative of K.S.A. 82-3-104 or are caused by a casing leak; and (d) whether proper notice has been given of a violation of K.S.A. 82-3-104.
17. Staff takes the position in paragraph 22 that the material facts at issue involved whether Staff denied TA Applications because of high fluid levels in Issue and properly invoked K.A.R. 82-3-111(c) and whether Operator has performed casing integrity tests. As noted above, Staff wants the Commission to prevent Operator from fully developing the record, the very reason for broadening the issues. This Response demonstrates that Staff is making the same arguments it made on the Order on the Petition to Lift License Suspension. Taken to its logical conclusion, Staff may arbitrarily assert the “potential” for casing leaks without evidence of specific fluid levels endangering water quality at specific locations. The Operator is entitled to require Staff to fully demonstrate the basis for imposing denial of Temporary Abandonment status. As demonstrated previously, Operator properly has returned the wells to service. The discrete issue of a need for a casing integrity test should be addressed in the context of a specific notice of violation

and penalty order. Even assuming, however, that the broadening of the issues to encompass the need for a casing integrity test is held to obviate any due process notice requirements, Operator should be entitled to see current testimony and evidence of the need for such tests and the opportunity to respond thereto in the context of the schedule adopted in this matter.

**Respectfully Submitted**

**PRAIRIE GAS OPERATING, LLC**

**By s/ Lee Thompson**

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**Attorney for Operator**

**CERTIFICATE OF SERVICE**

I hereby certify on this 16th day of July 2021, the above and foregoing Response to Staff's Motion for Summary Judgment in Part was filed in the referenced docket by the express electronic filing system which will also serve notice upon the Kansas Corporation Commission, Conservation Division at 266 N. Main, Suite 220, Wichita Kansas.

**s/ Lee Thompson**

LEE THOMPSON



Conservation Division  
266 N. Main St., Ste. 220  
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Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

March 8, 2021

Lee Thompson  
Thompson Law Firm, LLC  
1919 N. Amidon, Suite 315  
Wichita, Kansas 67203  
*Attorney for Prairie Gas Operating, LLC*

**Re: Prairie Gas License Suspension**

Mr. Thompson,

This letter is in response to your January 13, 2021 communication. I can confirm Prairie Gas' license is currently suspended which requires all of its wells to be shut in. There are currently two dockets, 20-CONS-3129-CPEN and 20-CONS-3220-CPEN, that Staff believes Prairie Gas is not in compliance with Kansas statutes and regulations requiring its license to be suspended.

Specifically, the wells at issue are the Earl #1 and Watson #1 in Docket 20-CONS-3129-CPEN and the Fecht D #1 in Docket 20-CONS-3220-CPEN. Each of these wells were found to be in violation of K.A.R. 82-3-111 when their respective penalty orders were issued. Operator filed temporary abandonment applications on each of these wells which were later denied or revoked due to a high fluid level. It is Staff's position that these high fluid levels are evidence of a potential casing leak in the wells at issue. Under K.A.R. 82-3-111(c), after an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the conservation division and in accordance with its regulations.

In your letter, you suggest that the putative issues of a threat to usable water should be addressed in a specific penalty finding and order so that Prairie Gas may respond as allowed by law to an allegation. However, Staff's position is that this has already occurred. Both of these dockets penalize Prairie Gas for violations of K.A.R. 82-3-111. While Prairie Gas initially appealed the penalty orders, it withdrew its appeal prior to a hearing being held on the matter. Therefore, an Order Closing Docket was issued by the Commission in Dockets 20-CONS-3129-CPEN and 20-CONS-3220-CPEN. Those Orders state that closing the dockets will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the penalty orders. Thus, Staff is invoking its right of denial under K.A.R. 82-3-111(c), which is an administrative action related to the penalty orders. Under K.A.R. 82-3-111(c) Prairie Gas must repair the wells or plug them. In order to tell what repairs need to be made, a casing integrity test needs to be performed to ensure the protection of fresh and usable water.



Staff is aware that Operator alleges that the fluid levels in the wells have been reduced due to Operator pumping down the fluids during the period in which its license was suspended. Staff would reiterate that Prairie Gas is not allowed to conduct oil and gas operations under a suspended license. However, that does not resolve Staff's main concern, which are the potential casing leaks that appear to be present in the wells at issue. Staff is also aware that Prairie Gas alleges that they have spent \$100,000 getting the wells into compliance. If Prairie Gas can provide any invoices or other documentation that indicate Prairie Gas has conducted down-hole repairs to these wells, then Staff will gladly take those into consideration.

Sincerely,

/s/ Kelcey Marsh  
Kelcey Marsh  
Litigation Counsel  
Kansas Corporation Commission

cc: Kenny Sullivan, Eric MacLaren, Michele Pennington, District #1