

JUN 28 2017

CONSERVATION DIVISION
WICHITA, KS

**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 summary denial of
the application of AX&P, Inc. ("Operator")
for renewal of oil and gas well operator's
license.

) Docket No.: 17-CONS- 3701 - CMSC
)
) CONSERVATION DIVISION
)
) License No.: 3830

MOTION TO SET ASIDE
SUMMARY DENIAL OF LICENSE APPLICATION
AND/OR REQUEST FOR HEARING

COMES NOW AX&P, Inc. ("Operator") and gives the Commission to understand and be informed:

1. Operator is a Kansas corporation organized in 1988 for the purpose of acquiring, redeveloping and operating wells in Neodesha oil field, including the site of the historic 1892 Norman No. 1, the oldest continuously operated oil field in Kansas (and for that matter in the Mid-Continent). Operator sold all of its wells in 2015 and transferred responsibility for such wells to the purchaser, but still holds Operator's License No. 3830 and is in full compliance with the statutes of the State of Kansas and the rules and regulations of the Commission.

2. On June 5, 2017, Operator submitted its application for annual license renewal.

3. On June 19, 2017 Commission Staff issued a Notice of Denial of License Renewal Application, a true and correct copy of which is attached as Exhibit "A". Staff issued the Notice of Denial for the stated reason that "Staff believes individual(s) associated with Operator are also associated with" three (3) named former oil and gas operators not in compliance with Commission Orders.

4. K.S.A. 55-155(c)(4) provides that no renewal application shall be approved until the applicant has demonstrated that the following persons comply with all pertinent requirements, rules and regulations:

"(A) The applicant;

- (B) any officer, director, partner or member of the applicant;
- (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and
- (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law of the foregoing."

5. None of the non-compliant entities have ever owned an interest in Operator.

Neither Operator nor its officers, directors or stockholders have ever owned interests in the non-compliant entities.

6. K.S.A. 55-155 (c)(4) does not prohibit license renewal by reason of association with a non-compliant operator.

7. K.S.A. 55-155(d) provides alternate means for operator to assure financial responsibility, including subsection (3) thereof which requires that operator have no officer or director that has been or is associated substantially with another operator that has outstanding orders or unpaid fines. Perhaps Staff's Notice of Denial was a determination that Operator did not qualify for the method of assuring financial responsibility afforded by subsection (3). Such associations as have existed between Operator's officers and director and the non-compliant entities have been in form of the provision of fee based professional engineering, legal and business services and do not constitute substantial association within the meaning of K.S.A. 55-155(d)(3).

8. Nevertheless, Operator hereby elects to assure financial responsibility under the provisions of K.S.A. 55-155(d)(1), (2), (4) and (5) by tendering herewith a non-refundable \$50.00 and shows the Commission it has zero (0) wells for which Operator is presently responsible.

9. Operator is a Kansas corporation in good standing and qualified to transact business in the State of Kansas. Operator is entitled by law to the issuance of an oil and gas well operator's license having duly applied, qualified and tendered requisite fees.

10. K.A.R. 82-3-120(e) goes beyond the statutory provisions of K.S.A. 55-155(c) (4) regarding the requisite demonstration of an applicant's compliance to provide that applicant "has no officer or director that has been associated substantially with another operator" not in compliance. As aforesaid, Operator's officers and directors are not, and have not been,

"associated substantially" with the named non-compliant entities. Further, in this aspect, the regulation inconsistent with the act of the legislature, is unreasonable, arbitrary, and likely violates the right of free association arising under the First and Fourteen Amendments of the Constitution of the United States.

11. The Commission should summarily set aside the Notice of Denial and direct Commission Staff to issue Operator's license.

12. Alternatively, Operator requests a hearing upon the merits.

WHEREFORE, Operator prays the Commission set aside Staff's Notice of Denial and direct issuance of Operator's renewal license.

Dated this 26th day of June, 2017.

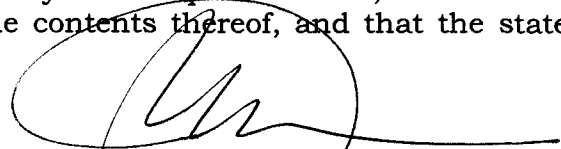


JON R. VIETS #9675
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P.O. Box 1176
Independence, KS 67301
(620) 331-0144
Attorney for AX&P, Inc.

VERIFICATION

STATE OF KANSAS)
) SS:
MONTGOMERY COUNTY)

The undersigned, after first being duly sworn upon his oath, states that he has read the foregoing Motion and knows the contents thereof, and that the statements therein made are true and correct.



JON R. VIETS

Subscribed and sworn to before me by Jon R. Viets this 26th day of June, 2017.



My Appointment Expires:

9-7-2020

Michelle L. Gustin

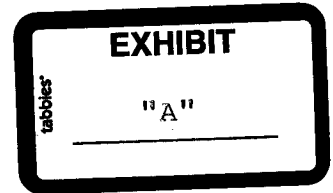
NOTARY PUBLIC

CERTIFICATE OF MAILING

I certify that on 26rd day of June, 2017, I mailed seven (7) copies of the foregoing Motion to Set Aside Summary Denial of License Application and/or for Request for Hearing by depositing the same in the U.S. Mail, postage paid, addressed to the following:

Amy Green
Secretary to the Commission
Kansas Corporation Commission
266 N. Main St., Suite 220
Wichita, KS 67202

JON R. VIETS



NOTICE OF DENIAL
of
LICENSE RENEWAL APPLICATION

June 19, 2017

A X & P, Inc.
Attn: Jon Viets
PO Box 1176
Independence, KS 67301

License #3830

Operator:

Commission Staff is in receipt of your June 5, 2017 license application. Your application is being denied pursuant to K.S.A. 55-155(c)(4) because you appear to be associated with entities that are not in compliance with Commission statutes, regulations, and orders.

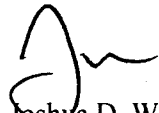
Specifically, Staff believes individual(s) associated with Operator are also associated with:

1. Kelt Energy, Inc., KCC License #4469, which has unplugged well(s) on its suspended license and has not complied with the Commission's Default Order in 16-CONS-204-CSHO.
2. Consolidated Gas & Energy Corp., KCC License #31834, which has unplugged well(s) on its suspended license and has not complied with the Commission's Default Order in Docket 16-CONS-433-CSHO.
3. Kelly Oil Company, KCC License #5632, which has unplugged well(s) on its suspended license and has not complied with the Commission's Default Order in Docket 16-CONS-3816-CSHO.

Under K.A.R. 82-3-120(i), this Notice of Denial constitutes a summary order pursuant to K.S.A. 77-537. You may request a hearing on this Notice of Denial by filing a written request for a hearing with the Commission, at 266 N. Main, Suite 220, Wichita, Kansas 67202, within 15 days of service of this Notice.

If no hearing is requested, then this summary order shall become final, effective upon the expiration of the time for requesting a hearing.

Sincerely,



Joshua D. Wright
Litigation Counsel
Kansas Corporation Commission

EXHIBIT

"A"

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