

**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.)	Docket No: 17-CONS-3684-CPEN
Giles ("Operator") to comply with K.A.R.)	
82-3-104 and K.A.R. 82-3-111 at the Flying)	CONSERVATION DIVISION
J Geer #2 OWWO well in Butler County,)	
Kansas.)	License No: 5446

**ORDER DENYING MOTION FOR SUMMARY ORDER ON THE PLEADINGS,
DESIGNATING A PREHEARING OFFICER, AND SETTING PREHEARING
CONFERENCE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission makes the following findings and conclusions:

I. Background

1. On June 27, 2017, the Commission issued a *Penalty Order* against Benjamin M. Giles (Operator), finding the Operator in violation of K.A.R. 82-3-104 and K.A.R. 82-3-111, and assessing the Operator a \$2,600 penalty for these violations.¹
2. On July 31, 2017, the Operator filed a Request for Hearing and Motion for Summary Order on the Pleadings.
3. On August 17, 2017, Staff responded to the Operator's Motion for Summary Order on the Pleadings (Staff's Response).²
4. On September 6, 2017, the Operator replied to Staff's Response (Operator's Reply).³
5. On September 15, 2017, Staff responded to the Operator's Reply.⁴

¹ *Penalty Order*, ¶¶ 18-19 and Ordering Clauses A and B (June 27, 2017).

² See Staff's Response to Operator's Motion for Summary Order on the Pleadings (Aug. 17, 2017).

³ Operator's Reply to Staff's Response to Operator's Motion for Summary Order on the Pleadings (Sept. 6, 2017).

⁴ Staff's Response to Operator's September 6, 2017 Reply (Sept. 15, 2017).

II. Findings and Conclusions

6. At issue in this proceeding is whether the Commission's July 27, 2017 *Penalty Order* properly penalized the Operator for violation of K.A.R. 82-3-104 and K.A.R. 82-3-111. The findings of fact in the *Penalty Order*, along with the various pleadings subsequently filed in the docket, provide clear evidence that the issue is in dispute.⁵ The Operator has not supported its assertion that "none of the alleged factual disputes are substantive or material to resolving this matter"⁶ nor demonstrated that the alleged absence of *substantive or material* disputes is the relevant standard for granting a summary order on the pleadings. The Commission finds that cross-examination at an evidentiary hearing is the proper venue for weighing the opposing assertions provided by the parties.

7. The *Penalty Order* itself constitutes a summary order, in response to which the Operator may request a hearing.⁷ Having done so,⁸ the Commission grants the Operator's request for a hearing.

8. Upon its own motion and pursuant to K.S.A. 77-551(c), the Commission finds that a Prehearing Officer should be designated in this proceeding to address any matters listed in K.S.A. 77-517(b), and a Prehearing Conference should be scheduled.

9. Although a Prehearing Officer is designated in this docket, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room before 5:00 p.m. on the date scheduled for service. Any electronic service received after the deadline set forth in the procedural schedule, or any filing made after 5:00 p.m. on the date scheduled for service, shall be accompanied by a Motion to File Out-of-Time.

⁵ See e.g. *Penalty Order*, ¶ 8 (finding that "Operator did not contact Commission Staff about cementing the casing") and Operator's Request for Hearing and Motion for Summary Order on the Pleadings, ¶ 6 (alleging that "[c]ontrary to Staff's contention, Operator notified Staff by phone at least one day prior to cementing the long string casing into the Subject Well").

⁶ See Operator's Reply to Staff's Response, p. 1.

⁷ See K.S.A. 55-164(b), K.S.A. 77-537, and K.S.A. 77-542.

⁸ See Request for Hearing and Motion for Summary Order on the Pleadings, p. 1 (July 31, 2017).

THEREFORE, THE COMMISSION ORDERS:

A. The Operator's Motion for Summary Order on the Pleadings is denied.

B. The Prehearing Officer in this proceeding shall be Michael J. Duenes, Assistant General Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, 66604-4027, telephone number (785) 271-3181, email address m.duenes@kcc.ks.gov. The Commission may designate other Staff members to serve in this capacity.

C. A Prehearing Conference is scheduled for **Thursday, November 2, 2017 at 9:00 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#.

D. At the Prehearing Conference, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, scheduling of a hearing with the Commission, and any other issues that will promote the orderly and prompt resolution of this proceeding.

E. At the Prehearing Conference, without further notice, this proceeding may be converted into a conference hearing or a summary proceeding for disposition of this matter as provided by the Kansas Administrative Procedure Act (KAPA). Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA.⁹

F. A corporation shall appear before the Commission by a Kansas licensed attorney.¹⁰

G. The attorney designated to appear on behalf of the agency in this proceeding is Jon Myers, Litigation Counsel, telephone number (316) 337-6245, j.myers@kcc.ks.gov.

H. The parties have fifteen (15) days from the date of electronic service of this Order to petition for reconsideration.¹¹

⁹ K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

¹⁰ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

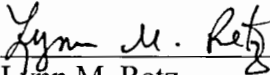
¹¹ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

I. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: OCT 12 2017



Lynn M. Retz
Secretary to the Commission

MJD

CERTIFICATE OF SERVICE

I certify that on 10/12/17, I caused a complete and accurate copy of this Order to be served electronically to the following:

Jonathan Schlatter
Morris Laing Evans Brock & Kennedy, Chtd.
300 N. Mead, Suite 200
Wichita, KS 67202
j.schlatter@morrislang.com
Attorney for Benjamin Giles

Jonathan R. Myers, Litigation Counsel
KCC Wichita Office

Michael Duenes, Deputy General Counsel
KCC Topeka Office

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission