

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

In the matter of the failure of Three Rivers) Docket No. 22-CONS-3045-CPEN
Exploration, LLC (Operator) to comply with)
K.A.R. 82-3-120.) CONSERVATION DIVISION
)
) License No. 33217
_____)

PRE-FILED TESTIMONY

OF

NANCY BORST

ON BEHALF OF COMMISSION STAFF

FEBRUARY 18, 2022

1 **Q. What is your name and business address?**

2 A. Nancy D. Borst, 266 N. Main St., Suite 220, Wichita, KS 67202.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Conservation Division of the Kansas Corporation Commission as an
5 administrative specialist in the licensing and legal departments.

6 **Q. Would you please briefly describe your background and work experience?**

7 A. I worked as the Communications Coordinator and Public Information Officer for Kingman
8 County from 2013 to 2017. Prior to that I was the managing editor of the Kingman Leader-
9 Courier newspaper. I have worked in various roles in journalism for the past forty-two years
10 and continue to own a freelance journalism business. I have a bachelor of science degree from
11 the University of Kansas. I have worked for the Kansas Corporation Commission since
12 February 2018 as an administrative specialist. My primary duties include processing and
13 reviewing license applications, processing open records requests, and processing legal filings.

14 **Q. Have you previously testified before this Commission?**

15 A. Yes.

16 **Q. What is the purpose of your testimony in this matter?**

17 A. The purpose of my testimony is to discuss the evidence supporting the Commission's findings
18 relating to the Penalty Order issued by the Commission against Three Rivers Exploration,
19 LLC (Operator) in this docket - Docket 22-CONS-3045-CPEN (Docket 22-3045).
20 Specifically, my testimony will discuss Operator's license.

21 **Q. Please provide a brief overview of the facts in this docket.**

22 A. Operator was penalized for one violation of K.A.R. 82-3-120, because Operator has
23 approximately 13 wells on its expired license. Operator failed to renew its license, obtain a

1 new license and transfer remaining wells onto that license, transfer the remaining wells to
2 another operator, or plug the remaining wells by the deadline provided.

3 **Q. Will you please explain the requirements of K.A.R. 82-3-120?**

4 A. Yes. K.A.R. 82-3-120 provides that each operator in physical control of any oil, gas, injection,
5 or monitoring well or gas storage facility shall maintain a current license even if the well or
6 storage facility is shut-in or idle.

7 **Q. When did Operator's license expire?**

8 A. Operator's license expired on March 30, 2020.

9 **Q. Did Commission Staff send a Notice of Violation (NOV) letter to Operator regarding the**
10 **unplugged wells on Operator's expired license?**

11 A. Yes. On June 10, 2021, Commission Staff sent an NOV letter to Operator requiring Operator
12 to take care of the unplugged wells on its license by June 24, 2021. That letter was attached
13 to the Docket 22-3045 Penalty Order as Exhibit A. Typically this letter would have been sent
14 within two weeks of the license expiration date. However, due to an emergency order issued
15 by Gov. Laura Kelly relating to the COVID-19 pandemic, deadlines for certain types of
16 licenses were stayed, meaning that the KCC could not enforce regulatory license expirations
17 until such time as the emergency order expired, which occurred at the end of May 2021.

18 **Q. Did Operator submit an application to renew its license for 2020-2021?**

19 A. No. All licenses that would have otherwise expired during the Governor's emergency order
20 remained active under the emergency order, provided the operator was in good standing at the
21 time of the issuance of the Governor's emergency order. However, nothing in the Governor's
22 emergency order prohibited operators from filing/renewing their licenses, and nothing in the
23 order alleviated an operator's obligation to pay the annual licensing fees or otherwise comply

1 with Commission regulations relating to oil and gas production activities. Rather, the order
2 merely allowed operators additional time to renew their respective licenses. Operator has not
3 submitted a license application to renew its license for 2020-2021. The last license renewal
4 application we received from Operator was submitted in 2019 and it was approved.

5 **Q. Could you renew Operator's license if a renewal application was submitted?**

6 No. It is my understanding the Operator's license is suspended due to non-compliance with a
7 Commission approved compliance agreement. Under K.A.R. 82-3-120(g)(1), if the applicant
8 is registered with the federal securities and exchange commission, the applicant shall
9 demonstrate to the commission that the applicant complies with all requirements of K.S.A.
10 55-101 et seq. and amendments thereto, all implementing regulations, and all commission
11 orders and enforcement agreements.

12 Additionally, under K.A.R. 82-3-120(g)(2), if the applicant is not registered with the
13 federal securities and exchange commission, the applicant shall demonstrate to the
14 commission that the following individuals comply with all requirements of K.S.A. 55-101 et
15 seq. and amendments thereto, all implementing regulations, and all commission orders and
16 enforcement agreements: (A) The applicant; (B) any officer, director, partner, or member of
17 the applicant; (C) any stockholder owning in the aggregate more than five percent of the stock
18 of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-
19 law, or sister-in-law of any of the individuals specified in paragraphs (g)(2)(A) through (C).
20 Either way, since Operator does not comply with all requirements of K.S.A. 55-101 et seq.
21 and amendments thereto, all implementing regulations, and all Commission Orders and
22 enforcement agreements, we would be unable to renew Operator's license.

1 **Q. Why is it appropriate to penalize Operator for failure to renew a license that you admit**
2 **cannot be renewed?**

3 A. Even though the license is suspended, Operator is still responsible for plugging the remaining
4 wells, or transferring the remaining wells to another operator – neither of which has occurred.

5 **Q. Did you have any communications with Operator regarding the unplugged wells on its**
6 **expired license?**

7 A. Yes. Dave Farthing called me on June 22, 2021, to ask about the license. I explained that the
8 license was suspended in Docket 17-CONS-3518-CMSC because Three Rivers Exploration
9 needed to plug two wells to be in good standing with the compliance agreement set forth in
10 this docket. Mr. Farthing said he was still paying for wells that had already been plugged and
11 there was “no way I can do anymore at the moment.” He asked if the matter could just sit until
12 September or October. He called me again on Aug. 10, 2021. I again explained what needed
13 to be done before the license could be renewed. He said he still owed property taxes on his
14 rigs so he could not renew the tags for those. I explained that he could appeal the Penalty
15 Order for unplugged wells on an expired license but he would need to retain an attorney
16 because his company is incorporated. Those two phone calls were the only communication I
17 have had from this operator regarding his license since it expired.

18 **Q. Please summarize your recommendations.**

19 A. I recommend the penalty assessed against Operator by the Commission be affirmed. Operator
20 failed to address the unplugged wells on its expired license by the deadline provided in the
21 NOV, or by the deadline set forth in the Penalty Order in this matter. Additionally, unplugged
22 wells remain on Operator’s expired license.

1 **Q. Does this conclude your testimony?**

2 A. Yes.

CERTIFICATE OF SERVICE

22-CONS-3045-CPEN

I, the undersigned, certify that a true and correct copy of the attached Prefiled Testimony of Nancy Borst has been served to the following by means of electronic service on February 18, 2022.

NANCY BORST
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
n.borst@kcc.ks.gov

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

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

DIANA E. STANLEY
DEPEW GILLEN RATHBUN & MCINTEER. LC
8301 EAST 21ST ST. NORTH, SUITE 450
WICHITA, KS 67206-2936
dstanley@depewgillen.com

CHARLES C STEINCAMP
DEPEW GILLEN RATHBUN & MCINTEER. LC
8301 EAST 21ST ST. NORTH, SUITE 450
WICHITA, KS 67206-2936
chris@depewgillen.com

/s/ Paula J. Murray

Paula J. Murray