

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

Before Commissioners: Susan K. Duffy, Chair  
Dwight D. Keen  
Andrew J. French

In the matter of the failure of Mike McClenning ) Docket No: 23-CONS-3023-CPEN  
dba Production Maintenance Service (Operator) )  
to comply with K.A.R. 82-3-111 at the Barton #3, ) CONSERVATION DIVISION  
HWR #1, Moyer #1, Welton #1, and Wilmoth )  
#24-1 wells in Montgomery County, Kansas. ) License No: 32219

**FINAL ORDER**

Operator contests a Penalty Order that concluded Operator violated K.A.R. 82-3-111 at the five captioned wells because the wells were inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for temporary abandonment status. The Penalty Order assessed a \$500 penalty and directed Operator to bring the wells into compliance. For the reasons described below, the Commission affirms its Penalty Order.

**I. Procedural Background**

1. On July 28, 2022, the Commission issued its Penalty Order, which described the facts as follows: (1) Operator was responsible for the five wells; (2) Commission Staff reviewed Commission records, which indicated the wells were in violation of K.A.R. 82-3-111; (3) Staff sent letters to Operator, requiring Operator to bring the wells into compliance by a date certain; and (4) the date had elapsed, with no evidence in the possession of the Commission indicating compliance with K.A.R. 82-3-111.<sup>1</sup> On August 30, 2022, Operator filed a request for hearing.

2. On February 1, 2023, the Commission held its evidentiary hearing. Commission Staff was represented by its Litigation Counsel Tristan Kimbrell; Operator represented himself.<sup>2</sup> Parties

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<sup>1</sup> See Penalty Order, ¶¶ 4-5.

<sup>2</sup> See K.A.R. 82-1-232(a)(2); Tr. 2:17 to 3:4.

acknowledge notice was proper.<sup>3</sup> At hearing, the Commission heard and accepted testimony from Staff witness Ryan Duling, and also Operator witness Mike McClenning, both of whom submitted pre-filed testimony between November and December 2022.<sup>4</sup>

## **II. Findings of Fact and Conclusions of Law**

3. Under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities. No party contests, and Commission records indicate, that Operator is a Commission-licensed operator pursuant to K.S.A. 55-155 and that the wells at issue exist for the production of hydrocarbons. Accordingly, the Commission has jurisdiction over this matter.<sup>5</sup>

4. K.A.R. 82-3-111 requires, generally speaking, that within 90 days (or, in certain circumstances, within 365 days) after operations cease at any well, that the well be plugged, returned to service, or have temporary abandonment status.<sup>6</sup> The evidence and Commission records indicate Operator claimed each of the five wells on its annual well inventory, submitted in conjunction with Operator's license renewal application, each year from November 2013 to November 2021.<sup>7</sup> From 2018 through 2021, Operator reported each well as inactive.<sup>8</sup> The evidence and Commission records also indicate Operator submitted temporary abandonment applications for each of the wells, for the first time, in March 2022, and there reported four of the wells had been shut-in since 2011.<sup>9</sup>

5. Regarding those four wells, Operator does not contest that the violations occurred. Rather, he argues he took "steps toward bringing the wells into compliance with K.A.R. 82-3-111"<sup>10</sup>

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<sup>3</sup> Tr. 3:17-21.

<sup>4</sup> Duling's pre-filed testimony was admitted at Tr. 10:2-8; McClenning's was admitted at Tr. 28:6-14.

<sup>5</sup> See also Tr. 3:13-16.

<sup>6</sup> See K.A.R. 82-3-111.

<sup>7</sup> See Pre-Filed Rebuttal Testimony of Duling, Exhibit RD-3 (Dec. 19, 2022); K.A.R. 82-1-230(h) (administrative notice of commission files and records).

<sup>8</sup> See Pre-Filed Rebuttal Testimony of Duling, Exhibit RD-3 (Dec. 19, 2022); K.A.R. 82-1-230(h).

<sup>9</sup> See Penalty Order, Exhibit A; K.A.R. 82-1-230(h).

<sup>10</sup> Pre-Filed Direct and Rebuttal Testimony of McClenning 1:19-22 (Dec. 5, 2022).

and “did make efforts to comply with the regulations to the best of my ability.”<sup>11</sup> He also notes that the wells were plugged in August and September 2022.<sup>12</sup> Thus, Operator contends the Commission should “show some flexibility” and eliminate the penalty.<sup>13</sup>

6. The Commission is not swayed by Operator’s argument. Operators are responsible for complying with Commission regulations; the evidence suggests these four wells were out of compliance not just at the time the Penalty Order was issued, but for years. Also, in early February 2022 and again in March 2022, months prior to the late-July 2022 issuance of the Penalty Order, Staff sent letters to Operator, stating the wells were out of compliance and providing a deadline to comply.<sup>14</sup> And although Operator contends he had difficulty scheduling the prompt plugging of the wells,<sup>15</sup> upon cross examination, he stated he had attempted to contact just two plugging contractors – the one he used, and an unidentified entity in Oklahoma that was no longer in business.<sup>16</sup> The facts do not militate in favor of eliminating the penalty, but for Operator to take his regulatory obligations more seriously. As the Commission has previously stated, “that [an] [o]perator incurred costs to meet part of its regulatory obligations, after being penalized for its failure to meet those obligations and specifically ordered to meet them, does not weigh much as a mitigating factor.”<sup>17</sup>

7. Regarding the fifth well – the Welton #1 – the situation is more nuanced. Operator argues he transferred the well to another operator in July 2013, and that at that time, the Commission lost the appropriate paperwork he had submitted.<sup>18</sup> Also, at hearing, Operator submitted an affidavit

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<sup>11</sup> *Id.* at 2:43-44.

<sup>12</sup> *Id.* at 2:35-36.

<sup>13</sup> *Id.* at 3:52-58.

<sup>14</sup> *See* Pre-Filed Rebuttal Testimony of Duling, RD-1 & RD; Penalty Order at Exhibit A; Tr. 12:12 to 13:2; K.A.R. 82-1-230(h).

<sup>15</sup> *See, e.g.*, Pre-Filed Direct and Rebuttal Testimony of McClenning, at 2:32-36.

<sup>16</sup> *See* Tr. 36:5-19 (McClenning testifying).

<sup>17</sup> KCC Docket 20-CONS-3182-CPEN, Final Order, ¶ 12 (Jan. 5, 2021); *see also* KCC Docket 22-CONS-3202-CPEN, Final Order, ¶ 7 (Jul. 26, 2022) (“The Commission is generally disinclined to credit an operator for doing what it has been explicitly ordered to do, such orders required because operator already failed to meet its regulatory obligations.”).

<sup>18</sup> *See, e.g.*, Pre-Filed Direct and Rebuttal Testimony of McClenning, at 2:36-38.

from a third party, stating the well was transferred to that third party in July 2013, and “has been being used as a residential gas well since that time.”<sup>19</sup> The probative value of such hearsay is weak.<sup>20</sup> Further, if appropriate paperwork was merely lost, presumably Operator could have resubmitted it sometime between July 2013 and the Penalty Order being issued in July 2022. Thus, although the Commission certainly does not believe Operator decided to concoct an elaborate ruse, the Commission does not especially credit such testimony and evidence. Still, the Commission does note that after the Penalty Order was issued, proper paperwork was received by the Commission, and that Commission records indicate the well is now in service.<sup>21</sup> But there is additional evidence that weighs heavily on the Commission’s decision regarding this well. Specifically, Operator annually certified his well inventory admitting responsibility for the well since 2013, annually reported the well as inactive, and in March 2022 submitted a temporary abandonment application for the well, which makes no sense if the well was in service.

8. In short, the Commission finds sufficient evidence to support a finding that Operator violated K.A.R. 82-3-111 regarding the Welton #1 – Operator’s own certifications and filings indicate the well was in violation. But to the extent the evidence is mixed, what is quite certain is that if Operator did not violate K.A.R. 82-3-111, then Operator violated K.A.R. 82-3-120(f), which states that falsification of a well inventory carries a penalty of up to \$5,000 and possible license suspension. Accordingly, the Commission is not inclined to amend its Penalty Order – the penalty assessed is appropriate for the circumstances.

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<sup>19</sup> See Tr. 29:13 to 30:17.

<sup>20</sup> It also does not necessarily attest to all facts needed to show Operator was in compliance with K.A.R. 82-3-111.

<sup>21</sup> K.A.R. 82-1-230(h); see also Tr. 38:24 to 39:15 (McClenning testifying).

**THEREFORE, THE COMMISSION ORDERS:**

A. The Penalty Order in this matter is affirmed. As described in the Penalty Order, Operator shall pay the \$500 penalty within 30 days, and if Operator fails to comply, then Staff is directed to suspend Operator's license until such time as Operator does comply.


B. Under K.S.A. 55-164(d), the Commission may order an operator to pay any costs and reasonable attorney fees incurred by the Commission in imposing and collecting any penalty. The Commission often assesses court reporter costs; in this case, they were \$380.75. The Commission in its discretion instead directs Operator to pay \$150 in court reporter costs for the evidentiary hearing, as incurred by the Commission in imposing the penalty in this matter, within 30 days.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>22</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 02/23/2023

  
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Lynn M. Retz  
Secretary to the Commission

Mailed Date: 02/23/2023

JRM

<sup>22</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

**CERTIFICATE OF SERVICE**

23-CONS-3023-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
02/23/2023  
first class mail and electronic service on \_\_\_\_\_.

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