

**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 Notice of Denial of	)	Docket No.: 17-CONS-3529-CMSC
License Renewal Application for Agricultural)	
Energy Service, Kansas Operator License	)	CONSERVATION
Number 34089	)	DIVISION
)	
	)	License No.: 34089

**AGRICULTURAL ENERGY SERVICES' MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM IN SUPPORT**

COMES NOW Agricultural Energy Services, LLC, a Kansas Limited Liability Company (AES), by and through its attorneys, Lee Thompson, Thompson Law Firm, L.L.C., and Karl F. Hirsch, Hirsch, Heath & White, P.L.L.C., and files this Motion for Summary Judgment and Memorandum in Support as to the Notice of Denial of License Renewal Application of Agricultural Energy Services, LLC served on March 24, 2017 and now at issue in Docket No.: 17-CONS-3529-CMSC.

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List of Exhibits Supporting Motion and Memorandum

EXHIBIT

TITLE

- | | |
|----|--|
| 1. | Notice of Denial of License Renewal Application |
| 2. | AES Information Request No. 2 to Staff and Response. |
| 3. | Declaration of Montgomery Escue |
| 4. | Staff Motion to Close Docket 13-CONS-299-CMC |
| 5. | KCC Order Granting Motion to Close Docket |

STANDARD GOVERNING SUMMARY JUDGMENT

1. The KCC has the power and authority to consider and rule on Motions for Summary Judgment in matters set for hearing on its docket. The Corporation Commission of the State of Kansas (KCC) has consistently applied standards applicable under the code of civil procedure in ruling on motions for summary judgment as to matters on its docket.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In evaluating a summary judgment motion, the Commission must resolve all facts and inferences reasonably drawn from the evidence in favor of the non-moving party. If reasonable minds could differ as to the conclusion drawn from the evidence, summary judgment must be denied.¹

STATEMENT OF UNDISPUTED MATERIAL FACTS

Procedural History and Basis of the Notice of Denial

2. On March 24, 2017, Litigation Counsel for the Conservation Division of the KCC served a “Notice of Denial of License Renewal Application” (“Notice”) on AES. (Hereafter “AES Notice”, attached as Exhibit 1.)
3. The license application was 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 you are associated with

¹ In the Matter of a General Investigation of TAG Mobile, LLC, 2017 Kan. PUC LEXIS 795, *6-7 (Kan. Corp. Comm’n Mar. 7, 2017), citing *Waste Connections of Kansas, Inc. v. Ritchie Corp.*, 296 Kan. 943, 962 (2013) and *Gaumer v. Rossville Truck & Tractor Co.*, 292 Kan. 749, 751-52 (2011).

First National Oil, Inc., License #6230 which has unplugged wells on its expired, suspended license and has not complied with the Commission's Order in Docket 14-CONS-189-CPEN." *Id.*

4. K.S.A. 55-155(c)(4) states:

(c) No application or renewal application shall be approved until the applicant has:

(4) demonstrated to the commission's satisfaction that the following comply with all requirements of chapter 55 of the Kansas Statutes Annotated, and amendments thereto, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is not registered with the federal securities and exchange commission: (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. The AES Notice was a summary order pursuant to K.S.A. 77-537 and stated that AES could request a hearing on the Notice of Denial by filing a written request for a hearing within 15 days. *See Ex. 1.*
6. AES timely filed its Request for Hearing with the KCC on March 30, 2017.
7. The KCC issued an "Order Designating Prehearing Officer and Setting Prehearing Conference" assigning a Docket Number, on May 18, 2017.
8. The Prehearing Officer entered an Order Continuing Prehearing Conference from July 6, 2017 until August 10, 2017 for the "purpose of allowing parties full opportunity to file pleadings, objections and motions in this matter."
9. On July 5, 2017, AES submitted Information Request No. 2 to Staff. On July 19, 2017, Staff responded to AES Request No. 2. *See Exhibit 2.*

Facts Material to Compliance with KSA 55-155(c)(4)

10. Item 2 of AES Request No. 2 requested that staff “provide all Information you have or rely on which proves or relates to any claim that:

- a. First National is an officer, director, partner or member of AES;
- b. First National is a stockholder owning in the aggregate more than 5% of the stock of AES; and
- c. That First National is a spouse, parent, brother, sister, child, parent-in-law or sister-in-law of AES.

See Id.

11. Staff’s Response to item 2 of AES Request No. 2 was: “Staff has no responsive information.” *Id.*

12. First National is not an officer, director, partner or member of AES; is not a stockholder owning in the aggregate more than 5% of the stock of AES; and is not a spouse, parent, brother, sister, child, parent-in-law, brother-n-law or sister-in-law of AES. *Declaration of Montgomery Escue*, attached as Exhibit 3.

13. The AES Notice explicitly states that the denial of AES’s license renewal application is because AES is associated with First National Oil which is not in compliance with the Commission’s Order in Docket 14-CONS-189-CPEN. *See Ex. 1.*

14. On October 6, 2014, Staff filed a Motion to Close Docket 13-CONS-299-CMC which arose out of First National’s Penalty Order in Docket No. 14-CONS-189-CPEN.

Motion attached as Exhibit 4.

15. In the Motion to Close Docket, Staff represented to the Commission that it had determined that there was not a sufficient relationship between First National and AES to pursue joint liability for the wells at issue. *Id.*

16. On November 16, 2014, The KCC issued an Order Granting Motion to Close Docket and ordered that First National's operator's license would remain suspended until such time as all 10 wells described in the original proceeding were plugged. Attached as Exhibit 5.

ARGUMENT

I. THE UNCONTROVERTED FACTS ESTABLISH THAT AES IS NOT ASSOCIATED WITH FIRST NATIONAL PURSUANT TO K.S.A. 55-155(c)(4) AND THUS IS ENTITLED TO SUMMARY JUDGMENT.

17. The AES Notice states that AES's license was being revoked because "pursuant to K.S.A. 55-155 (c)(4)" AES "appears" to be associated with First National Oil, Inc.". That AES Notice is addressed to AES as "Operator," and specifically addresses a license renewal application filed by AES.

18. K.S.A. §55-155(c)(4), on its face requires that an applicant (AES), must demonstrate that it and "the following" comply with all applicable KCC rules and regulations for any applicant which is not registered with the federal securities and exchange commission.

19. AES is not registered with the federal securities and exchange commission. See Ex. 3.

20. The entities specified as “the following” in the statute are “(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**.” AES is clearly the applicant. First National is not the applicant. First National is not a director, partner or member of AES. First National is not a stockholder holding more than 5% of AES. First National is not a spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in law of the foregoing. See Exs. 2 & 3.
21. The Staff has not come forward with any evidence which would rebut the Uncontroverted Fact submitted on behalf of AES. Indeed, Staff has specifically conceded that it has no information demonstrating that First National comes under the rubric of the individuals or entities defined as the “following” on the face of the statute. See Ex. 3.
22. Kansas courts have consistently held that an adverse party opposing summary judgment must come forward with evidence to establish a dispute as to a material fact². In this matter, AES has set out facts showing that First National does not meet the statutory language applicable for assessing some type of vicarious liability. Even more telling, Staff concedes it has no such evidence.
23. The Motion for Summary Judgment should be granted at the most basic level because there are no material facts in controversy. The statute does not address or govern any

² Nelson v. Nelson, 288 Kan. 570, 578, 205 P.3d 715 (Kan. 2009)

association other than those specifically identified. Nor does it address or govern the converse proposition, namely that the “following” named entities may include any connection which an applicant has with a separate corporation.

II. THE PLAIN LANGUAGE OF K.S.A. §55-155 (c)(4) DOES NOT PERMIT THE ACTION THE KCC IS ATTEMPTING TO TAKE AGAINST AES

24. The issue presented in this motion, and in the AES Notice is very clear. It is whether AES may be deprived of a license because First National is “associated” with AES pursuant to KSA 55-155(c)(4). The words and meaning of the statute are plain and unambiguous and do not included the words “associate or associated with”.
25. The most fundamental rule of statutory construction is that intent of the legislature governs if intent can be ascertained.³ A significant corollary holds that legislative intent should initially be ascertained based on the language enacted.⁴ In this process, the courts hold that legislative intent should be ascertained where possible by focusing solely on the statutory language, giving common words their plain and ordinary meanings.⁵
26. In recent years the courts have also eschewed reliance on statutory interpretations based on policy or some theory not supported by the language of the legislature. For example, the Supreme Court in a restraint of trade case considered whether it could apply a policy

³ *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605,607, 214 P. 3d 676 (2009).

⁴ *Patron v. Lopez*, 289 Kan. 1089, 1097, 220 P. 3d 345 (2009).

⁵ *State v. Raschke*, 289 Kan. 911, 914, 219 P.3d 481 (2009)

based rule of reason to the Kansas Restraint of Trade Act as is applicable under federal law. The Kansas Supreme Court held it could not do so given the plain language of the Kansas Act. It noted that it is loath to read unwritten elements into otherwise clear legislative language.⁶

27. The applicant is AES. AES is not registered with the federal securities and exchange commission. Therefore, if you take the statute and insert AES wherever the word applicant appears, and you insert all of the relevant parties, their titles, and their relation, the plain and unambiguous language of K.S.A. §55-155(c)(4) clearly **cannot** be applied to AES in the manner that the KCC is attempting. First National is not one of the individuals or entities delineated as coming within the scope of the statute. The only entity not in compliance with KCC regulations, is First National Oil, Inc. The plain language of the statute does not authorize enforcement against First National against AES.

28. Even if one were to disregard the legal authority that reliance should be placed solely on the plain and unambiguous language of the statute, relevant legislative history further demonstrates that KSA 55-155(c)(4) was not intended to reach unrelated corporate entities. During the 2015 legislative session, House Bill No. 2231 was offered and changes were made to K.S.A. §55-155. The Committee on Agriculture and Natural Resources formally describes House Bill No. 2231 in its preamble and statement of intent as, “An Act concerning oil and gas; relating to licensing of well operators, fees;

⁶ *O’Brien v. Leegin, Creative Leather Products, Inc.* 294 Kan. 318, 348-49, 277 P. 3d 1062 (2012).

exceptions...” Of relevance, the term “operators” is in plural. An operator in Kansas is not limited to corporations and includes individuals. In fact, the KCC offered testimony before this House Committee regarding certain portions of the proposed changes concerning individual homeowners who were operators for the purposes under Kansas law and who used wells for their personal homes, but also possessed wells on their property for other purposes. “These individual homeowners are particularly concerning to the KCC because of the KCC’s inability to enforce rules and regulations against them. The KCC is unable to determine if an individual well operator is using gas for a purpose other than heating a personal home.”⁷

29. Therefore, to the extent that K.S.A. §55-155 seeks to impose joint liability on specified entities or relatives is not without purpose; those portions of the statute are intended to affect well operators who are individual homeowners, not corporate entities. Individual homeowners which the KCC admits in testimony are difficult to enforce rules and regulations against.

30. The plain language of K.S.A. §55-155 does not authorize the action that the KCC is attempting to take against AES, a corporate entity. Although the officers, directors, partners, members and stockholders of a corporate entity have spouses, parents, etc., corporate entities do not. First National Oil, Inc. is not the spouse, parent, etc. of AES or of any of its officers, directors, etc. While the KCC intends to gain control over

⁷ Supplemental Note on House Bill No. 2231, Session of 2015, P. 2-2231, ¶ 3.

individual homeowners, it cannot use the clear language of K.S.A. §55-155 in the manner attempted against AES.

III. THE KCC'S CONSTRUCTION OF K.S.A. §55-155 AS APPLIED VIOLATES AES'S DUE PROCESS RIGHTS.

31. The AES Notice if enforced would violate the due process of AES under the 14th Amendment to the United States Constitution. The KCC's construction of K.S.A. 55-155(c)(4) as applied is also void for vagueness.
32. An "as applied" void-for vagueness challenge contains two elements: fair notice and enforcement standards. A statute is impermissibly vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Additionally, a statute that authorizes or encourages arbitrary and discriminatory enforcement is impermissibly vague and also requires that ordinary people be able to understand what conduct is prohibited.⁸
33. Fair notice may not be challenged by those whose conduct a statute clearly applies. *Id.* Regarding enforcement, due process requires clear guidelines to follow. Here, it is absolutely clear that the statute does not apply to First National as one of the "following" entities upon which to base an imputation of liability against AES. First National cannot be a mother, no father, or next of kin of AES and is not a closely related corporation. Therefore, any argument now by the KCC that the statute as applied includes First National Oil, Inc. nullifies the application of K.S.A. §55-155 as void for

⁸ *United States v. Franklin*, 554 F.3d 903, 910 (10th Cir. 2009)

vagueness. Furthermore, application in the manner attempted by the KCC encourages arbitrary and discriminatory enforcement. The KCC is attempting to grasp at straws by imputing familial relationships to a corporate entity to satisfy a debt owed by a completely separate corporate entity unrelated to the Applicant.

34. Therefore, for all of the foregoing reasons, the KCC's application of K.S.A. §55-155 as applied against AES is void for vagueness and violates AES's due process guaranteed under the 14th Amendment to the United States Constitution.

IV. THE DOCTRINE OF CLAIM PRECLUSION BARS THE KCC FROM RELITIGATING THE RELATIONSHIP OF AES AND FIRST NATIONAL OIL, INC.

35. The AES Notice seeks to impose a species of vicarious liability on AES due to noncompliance with a prior penalty order issued as to First National in Docket 14 CONS-189-CPEN. Subsequently, Staff filed a Motion to Close Docket No. 13-CONS-299-CMSC. *See* Ex. 4. On its face, the Motion to Close Docket stated that it arose out of the prior penalty order suspending First National's license in Docket No. 14-CONS-189-CPEN. *See id.* It is abundantly clear in the referenced Motion that Staff considered whether there was some basis to allege that the corporate veil of First National or AES should be pierced due to Montgomery Escue's voluntary actions.

36. In the Motion to Close Docket in Docket No. 13-CONS-299-CMSC, the Commission Staff states:

The undersigned investigated whether the corporate veil could be pierced with regard to First National and Agricultural Energy Services, LLC (“AES”), and determined there was not a sufficient relationship between the entities to pursue joint liability for the wells.

See Ex. 4.

37. Even if contrary to all logic and statutory authority the KCC would be allowed to pursue a claim for joint liability by AES due to First National’s non-compliance, it is barred by the doctrine of claim preclusion.

Claim preclusion prohibits a party from asserting in a second lawsuit any matter that might have been asserted in the first lawsuit. [Citation omitted.] Thus, a legal theory does not even need to be raised in the first action, more or less considered by the court, in order for it to be precluded in a later action under the claim preclusion doctrine, if it arose out of the same claim or factual transaction which the first action determined. [Citation omitted.]⁹

38. The issue of a putative connection or affiliation between AES and First National was clearly raised and considered in the prior proceedings relating to First National and when the Commission entered its order closing Docket 13-CONS-299-CMSC. *See Ex. 5.* Therefore, the KCC cannot in good faith take the position that there was no consideration of joint liability between First National and AES when the First National docket was ordered closed. Thus, the attempt to do so in this proceeding is legally barred by the doctrine of claim preclusion.

⁹ *Rhoten v. Dickson*, 290 Kan. 92, 107, 223 P.3d 786, 798 (2010)

CONCLUSION

WHEREFORE, the plain language of the statute does not permit the action that the KCC is attempting to take against AES; the KCC's use of K.S.A. §55-155 as applied to AES violates due process and is void for vagueness; and the KCC is barred by the doctrine of claim preclusion from asserting joint liability on AES due to any status held by First National. For these reasons, the license of AES should be renewed and AES should be granted summary judgment on the issue presented in this docket.

Respectfully Submitted,
Agricultural Energy Services, LLC

/s/ Lee Thompson
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Attorneys for Applicant,
Agricultural Energy Services, LLC

CERTIFICATE OF SERVICE

I hereby certify on this 7th day of August 2017, the original of this motion and attached exhibits were filed with the KCC by means of the e-filing EXPRESS and also as an attachment to an electronic mail message upon:

Joshua Wright
j.wright@kcc.ks.gov
Litigation Counsel
Kansas Corporation Commission
Conservation Division

And
Michael J. Duenes
m.duenes@kcc.ks.gov
Assistant General Counsel
Kansas Corporation Commission

/s/ Lee Thompson
LEE THOMPSON

Conservation Division
266 N. Main St., Ste. 220
Wichita, KS 67202-1513

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner



Phone: 316-337-6200
Fax: 316-337-6211
<http://kcc.ks.gov/>

Sam Brownback, Governor

NOTICE OF DENIAL of LICENSE RENEWAL APPLICATION

March 24, 2017

Agricultural Energy Services
Attn: Montgomery Escue
P.O. Box 31865
Edmond, OK 73119

License #34089

Operator:

Commission Staff is in receipt of your March 21, 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 you are associated with First National Oil, Inc., License #6230, which has unplugged wells on its expired, suspended license and has not complied with the Commission's Order in Docket 14-CONS-189-CPEN.

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 1

Before the Kansas Corporation Commission
Information Request by Agricultural Energy Services, LLC (AES)

AES Request No. 2

Company Name: AES Request to Staff
Docket Number: 17-CONS-3529-CMSC
Request Date: July 5, 2017
Date Information Needed: July 19, 2017

Please provide the following:

1. Please provide all "Information" (hereafter referenced as "Information" in subsequent requests), of any kind, nature or form, including but not limited to all documents, data, recordings electronic data, studies and any other material which proves or relates to the statement in the Notice of Denial of License Renewal Application ("Notice") that AES "is or appears to be associated with entities that are not in compliance with Commission statutes, regulations, and orders."

Staff attaches the following responsive materials:

- A. Penalty Order 17-CONS-3014-CPEN**
- B. Suspension Letter 17-CONS-3014-CPEN**
- C. Current well inventory of First National Oil, Inc., License #6230**
- D. Invoice, dated October 11, 2016**
- E. Record of partial payment through collections**
- F. Kansas Secretary of State Annual Reports, First National Oil, Inc.**
- G. Commission Order, dated March 14, 2013**
- H. Correspondence between KCC legal staff and First National Oil, Inc.**
- I. Transfer of Operator (T-1) forms transferring wells from First National Oil, Inc., License #6230 to Agricultural Energy Services (AES) License #34089**
- J. License Renewal Application, Agricultural Energy Services (AES) License # 34089 (2017).**
- K. Kansas Secretary of State Annual Report, Agricultural Energy Services (AES), filed June 13, 2016.**
- L. Order Approving Settlement Agreement 16-CONS-4029-CEXC**

*** Staff will supplement this response should other relevant materials become available**

2. Please provide all Information you have or rely on which proves or relates to

any claim that:

- a. First National is an officer, director, partner or member of AES;
- b. First National is a stockholder owning in the aggregate more than 5% of the stock of AES; and
- c. That First National is a spouse, parent, brother, sister, child, parent-in-law or sister-in-law of AES.

Staff has no responsive information.

3. Please provide all "Information" you have or rely on which proves or relates to any claim that:

- a. AES is an officer, director, partner or member of First National;
- b. AES is a stockholder owning in the aggregate more than 5% of the stock of First National; and
- c. AES is a spouse, parent, brother, sister, child, parent-in-law or sister-in-law of First National.

Staff has no responsive information.

Submitted by: Lee Thompson

Submitted to: Joshua Wright

Person who prepared response and can answer questions: Joshua Wright

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

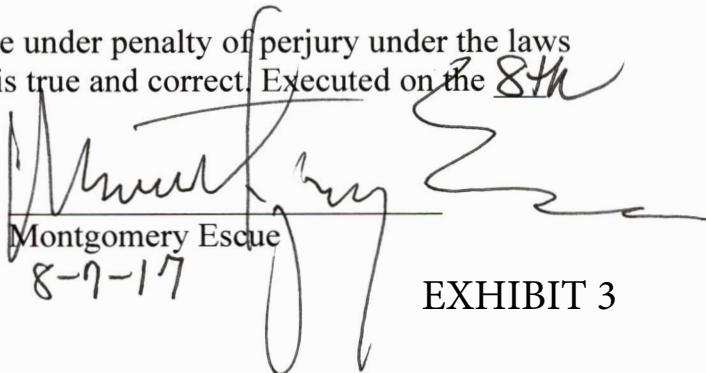
Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of the Notice of Denial of	)	Docket No.: 17-CONS- 3529- CMSC
License Renewal Application for Agricultural)	
Energy Service, Kansas Operator License	)	CONSERVATION
Number 34089	)	DIVISION
)	
	)	License No.: 34089

DECLARATION OF MONTGOMERY ESCUE

1. Montgomery Escue, the undersigned, submits this Declaration in accordance with Kansas law in support of the Motion of Agricultural Energy Service, LLC for Summary Judgment.
2. I am the President of AES a limited liability company which is not registered with the federal securities and exchange commission.
3. First National Oil, Inc. is not an officer, director, partner or member of AES; is not a stockholder owning in the aggregate more than 5% of the stock of AES; and is not a spouse, parent, brother, sister, child, parent-in-law or sister-in-law of AES.

Signed pursuant to KSA 53-601. I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on the 8th day of August, 2017.


Montgomery Escue

8-7-17

EXHIBIT 3

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the matter of an agreed schedule for First	)	Docket No. 13-CONS-299-CMSC
National Oil Inc. regarding several)	
applications, orders, and compliance matters.	)	CONSERVATION DIVISION
)	
	)	License No. 6230 (suspended)

MOTION TO CLOSE DOCKET

Staff moves the Commission for an Order closing this docket for the following reasons:

1. The Commission issued an order on March 13, 2013, setting a schedule for paying an \$800 fine and addressing 10 wells. The fine was paid, but none of the wells were returned to compliance by the deadlines in the schedule.
2. On December 3, 2013, First National's license was suspended for noncompliance with KCC Docket No. 14-CONS-189-CPEN. The license remains suspended, and there is no indication that First National is currently operating in Kansas.
3. The undersigned investigated whether the corporate veil could be pierced with regard to First National and Agricultural Energy Services, LLC ("AES"), and determined there was not a sufficient relationship between the entities to pursue joint liability for the wells.
4. In April 2014, Staff proposed that the parties jointly move the Commission for an order closing this docket that would specifically allow AES to take responsibility for any or all of the wells on the compliance agreement. AES did not acquiesce to the order, but AES did respond by filing well transfer forms, taking responsibility for the following seven wells:

EXHIBIT 4


Carter 1-36	API #15-175-00216
Carter 2-36	API #15-175-00218
Carter 3-36	API #15-175-10100
Diamond Sleeper 1-25	API #15-175-20550
Elliott 1-31	API #15-175-21015
Mueller D-2	API #15-175-20746
Stanley 1-24	API #15-175-20696

5. Five wells that were subject to the compliance schedule remain on First National's license:

Colburn 1	API #15-175-20193
Feiertag 2-26	API #15-175-21090
Irwin 1-34	API #15-175-20406
Reis 2	API #15-175-20816
Walker #1-35	API #15-175-21074

6. Staff moves the Commission to issue an order closing this docket that directs Staff to add these last five wells to the abandoned well plugging list, to be plugged according to their pollution potential with appropriate state funds. Staff does not have any information that the wells present a specific pollution threat at this time. First National's license should remain suspended until such time as compliance is obtained at these wells.

Respectfully submitted,



Lane R. Palmateer, #23661
 Litigation Counsel
 Kansas Corporation Commission
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 Phone: 316-337-6200
 Fax: 316-337-6106
 Email: l.palmateer@kcc.ks.gov

CERTIFICATE OF SERVICE

I certify that on 10/6/2014, I caused a complete and accurate copy of this Motion to be served via United States mail, with the postage prepaid and properly addressed to the following:

Lee Thompson
Thompson Law Firm LLC
106 E. 2nd Street
Wichita, Kansas 67202
Attorney for First National Oil, Inc.

Nelson B. Escue
First National Oil, Inc.
1755 S. Broadway Street, Suite 6
Oviedo, Florida 32765-2040

Stephen Pfeifer, KCC District #1

And delivered by hand to:

Jon Myers, Litigation Counsel

Patrick Shields, Well Plugging Coordinator

/s/ Lane R. Palmateer
Lane R. Palmateer
Litigation Counsel
Kansas Corporation Commission

compliance. Staff reports that it has no indication that First National is currently operating in Kansas.

3. In addition to docket closure, Staff requests that the five wells at issue remaining on First National's license be placed on the state plugging list, and that Operator's license should remain suspended until such time as compliance is obtained at the 5 wells. Staff notes that it does not have any information that the wells present a specific pollution threat at this time.

4. The Commission takes administrative notice of the Commission's databases, which indicate that Operator has a total of 8 unplugged wells on Operator's license, and further indicate that Operator's license, although suspended, will not expire until June 30, 2015. The Commission also takes administrative notice of Kansas Secretary of State online databases, which indicate that First National Oil Inc.'s current status with the Secretary of State is "active and in good standing."

II. CONCLUSIONS OF LAW

5. Staff's motion to close this docket should be granted, and Operator's license should remain suspended until such time as Operator complies with the compliance schedule. However, the Commission declines to order Staff to place the 5 wells on the state plugging list, as Operator appears to be responsible for the wells, and has an unexpired license.

THEREFORE, THE COMMISSION ORDERS:

- A. Staff's motion to close this docket is granted.
- B. Operator's license shall remain suspended until such time as all 10 wells described in Paragraph 4 of the Commission's March 13, 2013, Order in this docket are in compliance with Commission regulations.

CERTIFICATE OF SERVICE

I certify that on 11/16/14, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Lee Thompson
Thompson Law Firm LLC
106 E. 2nd Street
Wichita, Kansas 67202
Attorney for First National Oil, Inc.

Nelson B. Escue
First National Oil, Inc.
1755 S. Broadway, Suite 6
Oviedo, Florida 32765-2040

Steve Pfeifer
KCC District #1
210 E. Frontview, Suite A
Dodge City, Kansas 67801

And delivered by hand to:

Lane Palmateer
Conservation Division Central Office

/s/ Jonathan R. Myers
Jonathan R. Myers
Litigation Counsel
Kansas Corporation Commission

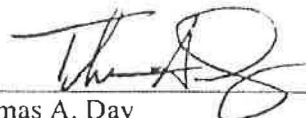
C. Any party affected by this Order may file a petition for reconsideration pursuant to K.S.A. 2011 Supp. 55-606 and 77-529(a). Such petition shall be filed within 15 days after service of this Order and must state the specific grounds upon which relief is sought. The petition for reconsideration shall be filed with the Commission's Executive Director, at 266 N. Main, Suite 220, Wichita, Kansas 67202-1513.

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Com.; Apple, Com.

Date: NOV 04 2014


Thomas A. Day
Acting Executive Director

Date Mailed: 11/6/14

JRM

I CERTIFY THE ORIGINAL
COPY IS ON FILE WITH
The State Corporation Commission

NOV 04 2014
