

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: 18-CONS-3160-CPEN  
Giles (“Operator”) to comply with K.A.R. )  
82-3-604 at the Ralston Lease Tank Battery ) CONSERVATION DIVISION  
in Butler County, Kansas. )  
\_\_\_\_\_ ) License No: 5446

**ORDER DENYING REQUEST FOR RESCISSION OF PENALTY ORDER,  
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:

1. On September 28, 2017, the Commission issued a *Penalty Order* against Benjamin M. Giles (Operator), finding the Operator in violation of K.A.R. 82-3-604(a) and (b).<sup>1</sup>
2. On October 31, 2017, the Operator filed a “Request for Hearing,” requesting rescission of the *Penalty Order*, or alternatively, requesting a hearing.<sup>2</sup>
3. On November 9, 2017, Commission Conservation Staff (Staff) responded to the Operator’s Request for Hearing.<sup>3</sup>

**Findings and Conclusions**

4. At issue in this proceeding is whether the *Penalty Order* properly penalized the Operator for violation of K.A.R. 82-3-604. The findings of fact in the *Penalty Order* and the Operator’s Request for Hearing provide evidence that the issue is in dispute.<sup>4</sup> The Commission

<sup>1</sup> *Penalty Order*, ¶¶ 13-14 and Ordering Clauses A and B (Sept. 28, 2017).

<sup>2</sup> Request for Hearing, p. 3 (Oct. 31, 2017).

<sup>3</sup> See Response to Request for Hearing (Nov. 9, 2017).

<sup>4</sup> See e.g. *Penalty Order*, ¶¶ 8, 10, and Exhibits A and B (finding that “the diked area around the Ralston lease tank battery [was] full of fluid, with oil floating on the surface” and a “sample of the fluid inside the diked area tested at

finds that cross-examination at an evidentiary hearing is the proper venue for weighing the opposing assertions provided by the parties. Moreover, the *Penalty Order* itself constitutes a summary order, in response to which the Operator may request a hearing.<sup>5</sup> Having done so, the Commission grants the Operator's request for a hearing.

5. 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.

6. 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.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Operator's request for rescission of the *Penalty Order* in this docket 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](mailto: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, January 25, 2018 at 9:00 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#.

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17,500 parts per million of chlorides," and "rain water does not contain brine or crude oil") and Operator's Request for Hearing, p. 2 (alleging that "the fluid sitting in the Subject Dike on August 23, 2017 was rainwater").

<sup>5</sup> See K.S.A. 55-164(b), K.S.A. 77-537, and K.S.A. 77-542.

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.<sup>6</sup>

F. A corporation shall appear before the Commission by a Kansas licensed attorney.<sup>7</sup>

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](mailto:j.myers@kcc.ks.gov).

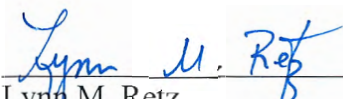
H. The parties have fifteen (15) days from the date of electronic service of this Order to petition for reconsideration.<sup>8</sup>

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: JAN 4 2018

  
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Lynn M. Retz  
Secretary to the Commission

MJD

**Order Mailed Date**

**JAN 5 2018**

<sup>6</sup> K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

<sup>7</sup> K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

<sup>8</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

**CERTIFICATE OF SERVICE**

I certify that on JAN 4 2018, I caused a complete and accurate copy of this Order to be served electronically, addressed to the following:

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KCC Central Office

Michael Duenes  
Assistant General Counsel  
KCC Topeka Office

/s/ DeeAnn Shupe  
DeeAnn Shupe

**Order Mailed Date**

**JAN 5 2018**