

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

In the matter of the failure of Ace Energy, ) Docket Nos.: 23-CONS-3195-CPEN  
LLC (Operator) to comply with K.A.R. 82-3- )  
407 at the Grundy B #5 SWD well in ) CONSERVATION DIVISION  
Greenwood County, Kansas. )  
\_\_\_\_\_ ) License No.: 34998

In the matter of the failure of Ace Energy, ) Docket No.: 23-CONS-3268-CPEN  
LLC (Operator) to comply with K.A.R. 82-3- )  
407 at the Grundy B #5 SWD well in ) CONSERVATION DIVISION  
Greenwood County, Kansas. )  
\_\_\_\_\_ ) License No.: 34998

**PRE-FILED REBUTTAL TESTIMONY**

**OF**

**DUANE SIMS**

**ON BEHALF OF COMMISSION STAFF**

**DECEMBER 22, 2023**

1 **Q. Are you the same Duane Sims who pre-filed direct testimony in this docket on October**  
2 **27, 2023?**

3 A. Yes.

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

5 A. The purpose of my testimony is to discuss the assertions contained in the pre-filed testimony  
6 of Jonathan Freiden, given on behalf of Ace Energy, LLC (Operator) in consolidated Docket  
7 23-CONS-3195-CPEN. The docket concerns the Grundy B #5 SWD well (Subject Well).

8 **Q. On page 3, lines 4-7 of Mr. Freiden’s testimony, he states that after the Subject Well**  
9 **failed a mechanical integrity test (MIT), District #3 Staff “summarily refused our MIT**  
10 **extension request without basis.” Why was there a deadline regarding the Subject Well?**

11 A. Under K.A.R. 82-3-407(c), when a well fails an MIT, the operator “shall have no more than  
12 90 days from the date of initial failure” to 1) repair and retest the well; 2) plug the well; or 3)  
13 isolate the leak or leaks to demonstrate that the well does not pose a threat to usable water or  
14 endanger correlative rights.

15 The Subject Well failed an MIT on September 19, 2022. Under K.A.R. 82-3-407(c),  
16 Operator had a regulatory deadline of December 18, 2022, to bring the well into compliance.

17 **Q. Did Operator contact District #3 Staff to request an extension of the deadline?**

18 A. No, Operator did not.

19 **Q. Did Staff grant an extension?**

20 A. No, Staff did not grant an extension. K.A.R. 82-3-407(c) clearly states that after a well fails  
21 an MIT, an operator has no more than 90 days to bring that well into compliance. As I testified  
22 in my pre-filed direct testimony, a failed MIT could mean that a well has a casing leak or the  
23 integrity of the tubing or packer has failed. Either way, a well with failed integrity has the

1 potential to pollute usable water, cause waste, or endanger correlative rights. The 90-day  
2 deadline in the regulation is important to limit the potential for a well with a failed MIT to  
3 cause environmental or economic damage.

4 **Q. On page 3, lines 27-28 of Mr. Freiden's testimony, he states that Operator performed an**  
5 **MIT on the Subject Well on December 28, 2022, and that the well failed the MIT. Were**  
6 **you aware of an MIT performed on the Subject Well on December 28, 2022?**

7 A. Mr. Freiden's testimony is the first time I have heard that an MIT was performed on the  
8 Subject Well on December 28, 2022. On December 27, 2022, Operator scheduled an MIT for  
9 the Subject Well in KOLAR; however, Operator scheduled the MIT for December 30, 2022.  
10 To my knowledge, no MIT was performed on the Subject Well on December 30, 2022. I have  
11 no personal knowledge of any MIT being performed on the Subject Well after the failed MIT  
12 on September 19, 2022. Operator certainly did not file a form with the Commission indicating  
13 that the Subject Well had failed another MIT on December 28, 2022.

14 **Q. On page 3, lines 28-30 of Mr. Freiden's testimony, he testifies that he understood**  
15 **Commission regulations to mean that after the Subject Well failed a second MIT on**  
16 **December 28, 2022, Operator had another 90 days to bring the well into compliance. Is**  
17 **that your understanding of Commission regulations?**

18 A. That is certainly not my understanding. K.A.R. 82-3-407(c) is clear that after a well fails an  
19 MIT, an operator has 90 days to bring that well into compliance. Under Mr. Freiden's  
20 understanding, an operator could keep performing failed MITs on a well and never bother  
21 fixing the well because the 90-day clock would keep restarting after each failure.

22 **Q. On page 5, lines 1-2 of Mr. Freiden's testimony, he suggests that the picture of the**  
23 **Subject Well in your March 22, 2023, field report looks nothing like the picture of the**

1       **Subject Well in a January 17, 2023, field report attached to his testimony. Do both**  
2       **pictures show the Subject Well?**

3       A. Yes, both pictures show the Subject Well, which was checked with GPS to verify the location.

4       **Q. On page 5, lines 6-8 of Mr. Freiden’s testimony, he is asked why the Grundy B #1 SWD**  
5       **well was not injecting fluid when it was lawfully permitted to do so, while the Subject**  
6       **Well was injecting when it was not lawfully permitted to do so. Mr. Freiden answers that**  
7       **it was “obviously a mistake.” Does a mistake mean that no regulatory violation**  
8       **occurred?**

9       A. Absolutely not. As I stated in my pre-filed direct testimony, Operator had a duty to know into  
10       which of its wells fluids were being injected. Even if it were a mistake, injecting fluid into a  
11       well without a permit is still a violation of the regulation because it is not a permitted activity.

12       **Q. On page 6, lines 12-14 of Mr. Freiden’s testimony, when asked if there was any pollution**  
13       **of fresh or usable water as a result of injecting fluid into the Subject Well, Mr. Freiden**  
14       **answered “Absolutely none.” Do you agree with Mr. Freiden’s assessment?**

15       A. No, I do not. To my knowledge, Operator has never discovered why the Subject Well failed  
16       its MIT. There could very easily be a leak in the casing of the Subject Well. By injecting fluid  
17       into the Subject Well, Operator could have caused pollution of usable waters. Simply put, we  
18       do not know what potential environmental or economic damage Operator caused by injecting  
19       fluid into a well with a failed MIT.

1 **Q. On page 6, lines 20-25 of Mr. Freiden’s testimony, he implies that after the Subject Well**  
2 **failed its MIT, the entire Grundy B lease on which the Subject Well is located was shut-**  
3 **in. Was the Grundy B lease shut-in during your field inspection of March 22, 2023?**

4 A. No, the lease was not shut-in during my field inspection. My field report from March 22,  
5 2023, contains pictures showing the Grundy B #9 oil well in both the upstroke and down  
6 stroke position, meaning the well was in operation. My field report also shows a picture of  
7 brine fluid flowing into the brine tank at the Grundy B tank battery. (The field report is  
8 attached to the Penalty Order in Docket 23-CONS-3268-CPEN as Exhibit C). On March 22,  
9 2023, the Grundy B lease was not shut-in, and the Grundy B #9 well was producing brine that  
10 had to be disposed of somewhere. The disposal lines leading from the brine tank to the Subject  
11 Well were cool to the touch, indicating that Operator was disposing of the brine fluids into  
12 the Subject Well.

13 **Q. Has your recommendation regarding this docket changed based upon Mr. Freiden’s**  
14 **testimony?**

15 A. No, it has not. Mr. Freiden admitted in his testimony that the Subject Well failed an MIT and  
16 was not brought into compliance within 90 days. Mr. Freiden also admitted in his testimony  
17 that fluids were being injected into the Subject Well after it had failed an MIT. Even if  
18 Operator meant to inject fluids into a different well, the fact is that Operator injected those  
19 fluids into a well that had failed an MIT. Such injection had the potential to pollute fresh and  
20 usable waters, cause waste, and endanger correlative rights. I believe the Commission should  
21 affirm both Penalty Orders in this docket.

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

23 A. Yes.

## **CERTIFICATE OF SERVICE**

23-CONS-3195-CPEN, 23-CONS-3268-CPEN

I, the undersigned, certify that a true and correct copy of the attached Prefiled Rebuttal Testimony of Duane Sims has been served to the following by means of electronic service on December 22, 2023.

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