

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Request to Transfer Wells                     )  
from Daylight Petroleum, LLC to Bluejacket                     )  
Operating, LLC.   )             Docket No. 25-CONS-3235-CMSC

**DAYLIGHT PETROLEUM, LLC'S REPLY TO STAFF'S RESPONSE TO  
MOTION TO DISMISS / MOTION FOR SUMMARY JUDGMENT**

Daylight Petroleum, LLC by and through its attorney, Keith A. Brock, hereby files this Reply to Staff's Response to Motion to Dismiss / Motion for Summary Judgment, pursuant to K.S.A. 77-519(a). In support hereof, Daylight Petroleum, LLC states:

**I.       NO DISPUTE OF MATERIAL FACT**

1.       Staff's Response to Motions to Dismiss / Motion for Summary Judgment ("Staff's Response"), acknowledges that there is no dispute of material fact in this Docket. Staff's Response acknowledges that there are absolutely no issues with 54 of the T-1 transfers from Daylight to Bluejacket or any of the wells listed thereon and yet Staff refuses to process those transfers because Daylight is involved in another Docket before the Commission.

2.       Staff's Response mentions an injection well being omitted from the Olnhausen Farm's T-1, but does not even mention any of the 54 other T-1 transfers, and certainly does not allege any issues with those transfers.

3.       The issues present in this Docket are legal questions regarding whether Staff has the legal authority to take the actions it has taken. Therefore, there is no dispute of material fact which would preclude summary judgment in this Docket.

**II.       STAFF DOES NOT HAVE AUTHORITY TO SUBJECTIVELY APPROVE OR DENY TRANSFERS OF  
WELL RESPONSIBILITY ON AN *AD HOC* BASIS**

4. Most of Staff's Response is spent arguing that Staff has authority to reject transfers of well responsibility. Daylight strongly disagrees with this legal contention for the reasons set forth in later sections of this Reply. However, even if it were assumed *arguendo* that Staff has authority to reject transfers of well responsibility, it would not follow that Staff would be able to utilize this authority to apply purely subjective criteria in place of express statutory and regulatory criteria.

5. Staff's argument is essentially that, Staff can establish subjective criteria that it believes to be in furtherance of the Commission's policy objectives (without engaging in formal rule making) and simultaneously enforce those subjective criteria on the Commission's behalf. This position is completely untenable. Even if Staff did have authority to deny transfers of well responsibility, the exercise of such power would be limited to the enforcement of existing statutory and regulatory law, and would not allow Staff to apply purely subjective standards which contradict applicable laws and regulations.

6. Staff cites concerns about the financial responsibility of Bluejacket as a basis for its denial of the subject T-1's. However, K.S.A. 55-155(d) sets forth objective criteria to assure financial responsibility that operators must meet in order to be entitled to operate wells in the State of Kansas. Bluejacket has met those legal criteria, and Staff is refusing Bluejacket the right to operate wells in Kansas, until Staff subjectively feels it is appropriate for Bluejacket to do so.

7. Similarly, Daylight has demonstrated financial responsibility pursuant to the objective criteria set forth in K.S.A. 55-155(d). However, Staff seeks to impose its own subjective restrictions on what wells Daylight may or may not transfer in order to ensure that Daylight meets Staff's subjective standards for financial responsibility.

8. This Docket represents a gross abuse of power, where Staff sets itself up as the rule

maker, the enforcer its subjective rules and the sole arbiter (subject to review by the Commission) of what operators can or cannot do in this State. The State of Kansas and certainly the Commission are bound by applicable law just as industry participants are bound by the law. The Commission's role is to enforce those laws, and when appropriate to establish new regulations in order to enforce those laws through formal rule making. However, this Docket represents a request by Staff that the Commission endorse Staff's decision to disregard applicable law in favor of Staff's subjective opinion.

9. An administrative agency's regulations have the force and effect of law and are issued to benefit the agency **and the public**. *Murphy v. Nelson*, 260 Kan. 589, 595 (1996). The general rule is that "an administrative agency may not violate or ignore its own rules, and where it fails to follow the rules which it has promulgated, its orders are unlawful." *Id.*

10. In summary, even if Staff does have authority to approve or deny transfers of well responsibility, such authority must be exercised in accordance with applicable law and not in contradiction of it.

### **III. LEGAL EFFECT OF T-1 TRANSFERS**

11. Staff asserts the following arguments in support of its contention that Staff has authority to approve or deny T-1 transfers,

- a. Restricting transfer of operatorship affects Bluejacket's ability to operate the leases, not the ownership of the leases;
- b. The title of the form is "Request for Change of Operator;"
- c. K.A.R. 82-3-136(c) prohibits transfer of operator responsibility to anyone who is not licensed as an operator;
- d. Authority to operate an injection well cannot be transferred without the approval of the conservation division pursuant to K.A.R. 82-3-410.

12. None of these arguments provide any legal basis for Staff to exercise authority to

approve or deny transfers of well responsibility.

13. Staff's argument that restricting transfer of operatorship affects Bluejacket's ability to operate the leases, not the ownership of the leases is unclear. It is true that the Commission does not regulate ownership of leases, and only regulates the operatorship of leases. However, the relevance of this distinction in this Docket is unclear. If Staff is contending that due process rights are not implicated because restricting the ability to operate does not impose upon a protected property interest, this is simply incorrect. *See, Eg., Kempke v. Kansas Dept. of Revenue*, 281 Kan. 770, 776 (2006). While the Commission does enforce statutory and regulatory law concerning the licensure of operators and other rules and regulations concerning wells and the operation thereof, this does not empower Staff to impose additional subjective criteria not found in the law.

14. Staff's argument concerning the title of the T-1 form is without merit. The applicable law is K.A.R. 82-3-136 and that regulation is what governs the rights and responsibilities of the parties. Staff's argument that K.A.R. 82-3-136 is somehow modified or overridden by the title placed on a form disregards the entire rule making process and all aspects thereof. This argument is without legal merit.

15. The prohibition against assigning operator responsibility to anyone without a valid operator license does not create a basis for Staff to approve or deny T-1 forms. The Commission certainly has the authority and even the obligation to enforce K.A.R. 82-3-136, therefore, the Commission would obviously not recognize as valid a purported transfer of operator responsibility to a someone who did not have a valid license. Such a purported transfer would simply be void and treated as invalid regardless of whether Staff processed it through the KOLAR system or not. This simple prohibition, certainly wouldn't open the door to Staff being able to approve or deny transfers

of operator responsibility based purely on subjective criteria and opinion of Staff as argued in Staff's Response.

16. While it is true that the authority to inject into an injection or disposal well (i.e. the transfer of a permit issued under K.A.R. 82-3-403) must be approved by Staff pursuant to K.A.R. 82-3-410, that does not alter the process of transferring responsibility for the physical care and control of those wells pursuant to K.A.R. 82-3-136.

17. K.A.R. 82-3-136 makes it abundantly clear that, i) a notice/report of operator responsibility is not due until 30 days after the change of operator, and ii) the failure to file a T-1 transfer is punishable by a monetary penalty, not the voidance of the transfer. Staff makes various policy arguments why it should be empowered to approve or deny T-1 transfers, but the Commission cannot violate its own regulations even if it believes it is good policy to do so. Moreover, the Commission does not need to violate its regulations, as it can easily enforce its regulations through the issuance of penalty orders and the like against past and present operators.

18. Clear legal paths exist for the Commission to accomplish its objectives, and both the law and sound policy require the Commission to utilize those legal paths that already exist, as opposed to reverting to an ad hoc form of regulating which Staff is urging here.

#### **IV. THE SIMPLICITY OF THIS DOCKET**

19. In this Docket,

- i. Bluejacket has a valid operator's license issued by the Commission;
- ii. There is zero affiliation between Bluejacket and Daylight;
- iii. Bluejacket has paid significant value for the leases it purchased from Daylight;
- iv. Staff is refusing to allow Bluejacket to operate the leases it purchased from Daylight, simply because Daylight is involved in another Docket before the

Commission;

- v. Both Bluejacket and Daylight have significant operations outside the state of Kansas; and
- vi. Staff has offered no evidence to support its allegation that the transfers at issue in this Docket will result in the state being left with substantial plugging liability.

20. Based upon these simple and uncontroverted facts it would be unlawful for the Commission to take any action besides ordering Staff to process the T-1 transfers at issue in this Docket and instructing Staff against such actions in the future.

**V. STAFF'S ACTIONS PREJUDICE THE PUBLIC AND CREATE POTENTIAL LEGAL RISK TO THE COMMISSION**

21. In this Docket, Staff asserts vehemently that if the subject T-1 transfers are approved Daylight will be left with only liabilities and unable to fulfil its regulatory obligations in the state of Kansas. Yet in Docket No. 25-CONS-3040-CMSC the Commission received testimony from Staff which acknowledged it has no evidence or even knowledge whatsoever that supports these allegations. *See*, Transcript, pages 34-38 attached hereto. Moreover, the Commission received evidence that Daylight operates in Kansas, Oklahoma, Texas and Louisiana, and has about 4,000 well bores. *See*, Transcript, pages 306-308 attached hereto. Thus, Staff initiated its actions in this Docket with no evidentiary support for its positions whatsoever, and is now maintaining said actions and reiterating its factual contentions despite having since received direct evidence that its factual claims are false.

22. These actions are not only arbitrary, unlawful and prejudicial to Daylight and Bluejacket. These actions create significant liability on the part of the Commission. 42 U.S.C. § 1983 creates a cause of action against governmental entities and employees who in the exercise of their power and authority deprive citizens of their rights, privileges and immunities secured by the

Constitution or other laws. The significance of this act is that the Commission and its employees are bound to follow the law in the same way that industry participants are. When the power the Commission holds is abused, the risk is not only an order being overturned, it also gives rise to monetary claims and liability.

23. In this case, Daylight and Bluejacket clearly met all of the regulatory and statutory requirements imposed upon them. However, Staff is attempting to override these express regulatory and statutory requirements in order to impose its purely subjective standards of judgment upon the parties. This is a clear violation of the equal protection clause, substantive due process clause and takings clause of the United States and Kansas constitutions. Staff is imposing unique and disparate conditions and criteria upon Bluejacket to operate wells, and upon Daylight to transfer wells, than what the law requires. In addition, Daylight and Bluejacket are being deprived of their legitimate claim of entitlement to operate said wells after having met all legal criteria for doing so.

WHEREFORE, Daylight Petroleum, LLC respectfully requests the Commission dismiss this Docket, finding as a matter of law that the T-1 transfers must be approved and ordering Staff to process said T-1 transfers forthwith and assign the wells listed thereon and applicable injection authorities to Bluejacket.

*/s/ Keith A. Brock*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 18<sup>th</sup> day of April, 2025, addressed to:

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*/s/ Keith A. Brock*

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Keith A. Brock



1 throughout the state where we do long-term monitoring  
2 and remediation, so.

3 Q. Okay. So just to clarify, the -- the  
4 objection is that you don't believe that the KCC needs  
5 any help, so. That -- is that what you're saying?

6 A. Well, I think so. I think I -- again,  
7 our -- our preference would be to locate an  
8 abandoned -- locate the abandoned well and plug it to  
9 eliminate the threat.

10 Q. Shifting gears a little bit more, how many  
11 employees does Daylight have?

12 A. That I don't know.

13 Q. Do you know how many corporate offices that  
14 they have?

15 A. No.

16 Q. Do know anything about the nature of their  
17 operations in other states?

18 A. Only what I think you have provided.

19 Q. Are you familiar with Daylight's current  
20 financial position?

21 A. No.

22 Q. Are you familiar at all with Daylight's  
23 corporate structure?

24 A. No.

25 Q. Are you familiar with Daylight's track --

1 my screen froze just for a second. And I --

2 CHAIRMAN FRENCH: Keith, if you can hear  
3 us, you are breaking up, and you're frozen. You may  
4 want to turn your camera off.

5 MR. BROCK: I don't know for sure --

6 CHAIRMAN FRENCH: We are not hearing you  
7 right now, Mr. Brock.

8 MR. BROCK: Did that fix it or --

9 CHAIRMAN FRENCH: We can hear you now, and  
10 I can see you now.

11 MR. BROCK: Okay. I -- so they're --  
12 they're redoing the Internet in Ottawa, and I -- so I  
13 apologize, but I -- I don't believe that it's in  
14 our -- in our system. I don't know --

15 CHAIRMAN FRENCH: Okay.

16 MR. BROCK: -- what I can do about it, so  
17 I --

18 CHAIRMAN FRENCH: Yeah. The only  
19 suggestion -- and you seem to be fine now.

20 MR. BROCK: Okay.

21 CHAIRMAN FRENCH: There seemed to be a  
22 momentarily blip. The only suggestion I would have  
23 is, if it does happen to be a bandwidth issue, you can  
24 always turn your camera off and that seems to make --  
25 you know, at least you can -- you can continue with

1 audio, but. We'll hope that it just doesn't happen

2 again. But you can proceed, Mr. Brock. Unless you're

3 frozen again. All right. Why don't we go --

4 MR. BROCK: So --

5 CHAIRMAN FRENCH: We're going to recess for

6 just a moment to resolve this technical issue. We are

7 now off the record.

8 (An off-the-record discussion was held.)

9 CHAIRMAN FRENCH: Okay. What we're going

10 to do is, we're going to go back on the record, let

11 you continue your questioning. If we have, you know,

12 further connection issues, I will have you turn your

13 camera off, and I apologize for that.

14 MR. BROCK: No.

15 CHAIRMAN FRENCH: But -- okay. At this

16 time we are back on the record. And Mr. Brock is

17 proceeding with his examination. And it looks like we

18 are frozen again. Mr. Brock, if you would turn your

19 camera off, and we'll see if we --

20 MR. BROCK: Thank you.

21 CHAIRMAN FRENCH: -- reacquire your audio.

22 MR. BROCK: Okay. Can you hear me now?

23 CHAIRMAN FRENCH: We do hear you. And if

24 we have further issues, what we may do is, just have

25 you call in on the telephone.

1 MR. BROCK: Absolutely. I'd be happy to do  
2 that.

3 CHAIRMAN FRENCH: Please -- we are still on  
4 the record. So please, proceed with your cross  
5 examination of Mr. Hoffman.

6 Q. (By Mr. Brock:) Okay. Mr. Hoffman, right  
7 as I cut out, I had asked you the question, do you  
8 have any personal knowledge of -- no. I had asked if  
9 you were familiar with Daylight's track record or  
10 regulatory compliance in other states. I'm not sure  
11 if you answered it or not, but I didn't --

12 A. No, I'm not, Keith.

13 Q. Okay. Do you have any personal knowledge  
14 of the nature of the transaction where Daylight sold  
15 54 of its Kansas leases?

16 A. Nothing beyond what -- what you've shared.

17 Q. Do you know what the sales price was?

18 A. Not off the top of my head, no.

19 Q. Do you know if properties outside of Kansas  
20 were involved?

21 A. I do not.

22 Q. Do you know when the first -- when the  
23 negotiations for that transaction first began?

24 A. Again, not beyond what you've provided in  
25 that e-mail.

1 Q. And, so just to clarify, without having any  
2 direct knowledge whatsoever, you still testified under  
3 oath that operator is attempting to divest itself of  
4 interest in the State of Kansas in order to walk away  
5 from an issue involved in this docket, and you further  
6 allege that Daylight's actions were designed to enable  
7 Daylight to reduce the capital available to address  
8 the problem it created.

9 A. Yes.

10 MR. BROCK: I have no further questions.

11 CHAIRMAN FRENCH: All right. Thank you,  
12 Mr. Brock. We will now move to commissioner  
13 questions.

14 Commissioner Keen, do you have any  
15 questions for Mr. Hoffman?

16 COMMISSIONER KEEN: Just a few, Mr. Chair.

17 CROSS EXAMINATION

18 BY COMMISSIONER KEEN:

19 Q. Good morning, Mr. Hoffman.

20 A. Good morning.

21 Q. How widespread, Ryan, is the KCC use of  
22 monitoring wells?

23 A. In -- you mean in lieu -- I mentioned we've  
24 got 41 projects statewide where we -- we monitor  
25 pollution. That's --

1 Tell me a little bit about Daylight. Let's  
2 start with that. How many states do you operate in?

3 A. We operate in four states.

4 Q. And which are they?

5 A. Kansas -- Kansas, Oklahoma, Texas, and  
6 Louisiana.

7 Q. All right. And I think you indicated this  
8 previously, recently, how many -- roughly, how many  
9 wells do you operate?

10 A. In total, we have -- we have about 4,000  
11 well bores.

12 Q. So what does that mean? You have a certain  
13 number of producers, a certain number of injectors?  
14 What are you trying -- what does that tell me?

15 A. Yeah. The majority -- well, of -- of the  
16 well bores, I mean, we're a -- we're a conventional  
17 oil and gas operating company. Most -- most of our  
18 fields that we operate are older fields, not -- not  
19 new developments. We -- we're not in the shale plays  
20 or any of that. We're in old conventional areas.  
21 With that, we have usually very large well counts. A  
22 large percentage of wells that are -- that are old  
23 well bores, but we -- we manage with the remaining  
24 wells. In some areas, we have active floods whether  
25 it be water floods or CO2 floods. So we have

1 injectors in those cases. In other areas, our  
2 injectors would be SWD wells, but the majority of our  
3 active wells that I would -- how I would characterize  
4 them are producing wells.

5 Q. Okay. How many wells do you have in  
6 Kansas?

7 A. I -- I don't recall the -- the total count,  
8 but it was over a thousand --

9 Q. Over --

10 A. -- prior to -- well -- well, this was --  
11 in -- in what we operated in Woodson and Wilson  
12 County.

13 Q. So you're predominantly operating in those  
14 two counties, if I understand it?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. And you say you have over a thousand wells  
19 in those two counties?

20 A. In those two counties, yes.

21 Q. Okay. Well, I -- I'm looking at public  
22 information here. No mousetrapping whatsoever. I'm  
23 looking at the survey website, and it shows that for  
24 2024, you had 295 wells.

25 A. So we have -- we sold -- in March of 2024,

1 we sold our Woodson County -- which I don't have the  
2 breakdown of the well count in the --

3 Q. Okay.

4 A. -- by area --

5 Q. Okay.

6 A. -- specifically. We sold our Woodson  
7 County acreage to Leiman in March of 2024. And then  
8 at the end of -- end of 2024, we sold our Wilson  
9 County production to Bluejacket.

10 Q. Okay. Again, I'm looking at the survey  
11 information here. It appears -- did Daylight acquire  
12 most of the wells in Kansas, roughly, as -- starting  
13 in 2018; is that close to right?

14 A. We -- we took over operatorship at that  
15 point in time. Our -- our -- our predecessor had  
16 acquired them before that.

17 Q. Who was the predecessor?

18 A. The -- Finishing Resources is the parent  
19 company. And they -- they own -- they own the wells.  
20 The previous operator -- it predated my time. I don't  
21 recall the name of the company.

22 Q. Okay. Now, your -- let's talk about your  
23 field staff a bit. Your production -- foreman  
24 production supervisor is whom again?

25 A. Our production superintendent is Rob