



**ORDER CONSOLIDATING DOCKETS**  
**AND SETTING PROCEDURAL SCHEDULE**

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 finds and concludes as follows:

**Background:**

1. On June 27, 2017, the Commission issued a Penalty Order against Benjamin M. Giles (Operator) alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO, API #15-015-01490-00-01, in Butler County, Kansas and assessed the Operator a \$2,600 penalty for the violations.<sup>1</sup>

2. On August 1, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-111 at the Paulsen #1, API #15-015-01020-00-02, in Butler County, Kansas and assessed the Operator a \$100 penalty for the violation.<sup>2</sup>

3. On September 28, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-604(a) and (b) at the Ralston Lease Tank Battery in Butler County, Kansas and assessed the Operator a \$500 penalty for the violations.<sup>3</sup>

4. On October 12, 2017, the Commission issued a Penalty Order against the Operator alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO,

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<sup>1</sup> Penalty Order at 2, 5-6, *Matter of the Failure of Benjamin M. Giles ("Operator") to Comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO well in Butler County, Kansas*, Docket No. 17-CONS-3684-CPEN (June 27, 2017) [*hereinafter* 17-3684 Docket].

<sup>2</sup> Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-111 at the Paulsen #1 in Butler County, Kansas*, Docket No. 18-CONS-3057-CPEN (Aug. 1, 2017) [*hereinafter* 18-3057 Docket].

<sup>3</sup> Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-604 at the Ralston Lease Tank Battery in Butler County, Kansas*, Docket No. 18-CONS-3160-CPEN (Sept. 28, 2017) [*hereinafter* 18-3160 Docket].

API #15-015-01211-00-02 (Wright #1), in Butler County, Kansas and assessed the Operator a \$10,100 penalty for these violations.<sup>4</sup>

5. On October 26, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-602 at the Wright #1 and assessed the Operator a \$100 penalty for such violation.<sup>5</sup>

6. On October 26, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-608 at the Wright #1 and assessed the Operator a \$250 penalty for such violation.<sup>6</sup>

7. The Operator filed a timely request for hearing in all dockets and each docket has proceeded on its own individual schedule to date.

8. On February 19, 2018, Commission Conservation Division Staff (Staff) moved the Commission, unopposed by the Operator, to consolidate the aforementioned dockets and approve the following procedural schedule for the consolidated matter:

Deadline for Discovery	March 30, 2018
Deadline for Dispositive Motions	March 30, 2018
Staff's Pre-filed Direct Testimony	April 23, 2018
Operator's Pre-filed Direct Testimony	April 30, 2018
Rebuttal Testimony	May 7, 2018
Evidentiary Hearing	May 17, 2018, 10:00 a.m. 266 N. Main, Suite 220 Wichita, Kansas 67202 <sup>7</sup>

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<sup>4</sup> Penalty Order at 2, 6-7, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3167-CPEN (Oct. 12, 2017) [*hereinafter* 18-3167 Docket].

<sup>5</sup> Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82 3-602 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3188-CPEN (Oct. 26, 2017) [*hereinafter* 18-3188 Docket].

<sup>6</sup> Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82 3-608 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3189-CPEN (Oct. 26, 2017) [*hereinafter* 18-3189 Docket].

<sup>7</sup> Motion to Consolidate Dockets, Cancel Prehearing Conferences, Continue Procedural Deadlines, and Reschedule Evidentiary Hearings at 3-4 (Feb. 19, 2018).

Staff cited a potential settlement and judicial efficiency as the primary reasons for consolidation.<sup>8</sup>

**Analysis:**

9. Staff's motion should be granted in accordance with the Commission's regulations for joinder of proceedings. Pursuant to K.A.R. 82-1-224(a), "[f]or good cause shown, the joinder of any proceeding with another proceeding may be permitted by the commission [but] . . . issues that are not germane to each other and that require separate and distinct proof shall not be joined in the same proceeding." However, "[t]wo or more dockets may be consolidated by the commission for hearing on a common record if the commission deems it to be in the public interest to do so."<sup>9</sup>

10. The Commission finds that Docket Nos. 17-3684, 18-3057, and 18-3160 are not germane to each other and will require separate and distinct proof. However, the Commission will consolidate Docket Nos. 17-3684, 18-3057, and 18-3160 for judicial efficiency and economy as such would be in the public interest in accordance with K.A.R. 82-1-224(b) because the dockets concern the same Operator. For the ease of the record, the two violations in the 17-3684 Docket shall hereinafter be referred to as Counts 1 and 2. The violation concerning the 18-3057 Docket shall be referred to as Count 3, and the two violations in the 18-3160 Docket as Counts 4 and 5.

11. The Commission finds that Docket Nos. 18-3167, 18-3188, and 18-3189 are germane and should be joined in accordance with K.A.R. 82-1-224(a) because said dockets all concern the Wright #1. The violations in these dockets shall be consolidated as Counts 6 and 7 (18-3167), Count 8 (18-3188), and Count 9 (18-3189).

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> K.A.R. 82-1-224(b).

12. Kansas law favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.<sup>10</sup> As the partial impetus for the current motion, the Commission encourages the Parties to work towards an amicable resolution of these matters and to file any settlement with the Commission before April 23, 2018, the first due date for testimony.

13. Should these matters proceed to a hearing, the Commission takes note that the hearing would be nearly one month short of a year from the first alleged violation. As such, the Commission will not grant any further continuances of any procedural deadline except upon a showing of extreme circumstances.

**THEREFORE, THE COMMISSION ORDERS:**

A. Staff's Motion to Consolidate Dockets, Cancel Prehearing Conferences, Continue Procedural Deadlines, and Reschedule Evidentiary Hearings is granted.

B. The procedural schedule outlined in paragraph eight above is adopted. All other procedural deadlines are canceled in accordance therewith.

C. Any Party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). The petition shall be filed within 15 days after service of this Order, plus three days if mailed, and must state the specific grounds upon which relief is requested.<sup>11</sup> The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202..

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

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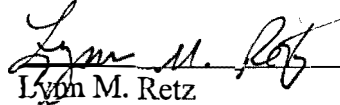
<sup>10</sup> *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

<sup>11</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

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

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/08/2018



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Lynn M. Retz  
Secretary to the Commission

Mailed Date: \_\_\_\_\_  
DLK/sc

**CERTIFICATE OF SERVICE**

17-CONS-3684-CPEN, 18-CONS-3057-CPEN, 18-CONS-3160-CPEN  
18-CONS-3167-CPEN, 18-CONS-3188-CPEN, 18-CONS-3189-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on 03/08/2018.

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/S/ DeeAnn Shupe  
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