

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

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

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

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

ORDER DENYING MOTION TO CONSOLIDATE

The two above-captioned dockets are already consolidated; Operator seeks to consolidate these two dockets with five other consolidated dockets. Commission Staff opposes. For the following reasons, Operator's request is denied.

1. This is a summary of the two above-captioned dockets:
 - a. On February 14, 2023, the Commission issued a Penalty Order against Operator in Docket 23-3195 for violation of K.A.R. 82-3-407, alleging failure to conduct a mechanical integrity test on the Grundy B #5 SWD. On March 15, 2022, Operator requested a hearing.
 - b. On April 13, 2023, the Commission issued a Penalty Order against Operator in Docket 23-3268 for violation of K.A.R. 82-3-407, alleging improper injection at the Grundy B #5 SWD. On May 12, 2023, Operator requested a hearing.

- c. On May 25, 2023, the two above-captioned dockets were consolidated; no procedural schedule has been established.¹
2. This is a summary of the five other consolidated dockets:
 - a. On July 28, 2022, the Commission issued a Penalty Order against Operator in Docket 23-3017 for violation of K.A.R. 82-3-120 and K.A.R. 82-3-133 by operating under a suspended license. On August 25, 2022, Operator requested a hearing.
 - b. On August 9, 2022, the Commission issued a Penalty Order against Operator in Docket 23-3029 for violation of K.A.R. 82-3-407, alleging failure to conduct mechanical integrity tests at two wells on the Larsen lease. On August 25, 2022, Operator requested a hearing.
 - c. On September 20, 2022, the Commission issued a Penalty Order against Operator in Docket 23-3087 for violation of K.A.R. 82-3-400, alleging unauthorized injection at wells on the Gale Mullen, Mullen, and Underwood leases. On October 13, 2022, Operator requested a hearing.
 - d. On December 1, 2022, the Commission issued a Penalty Order against Operator in Docket 23-3135 for violation of K.A.R. 82-3-400 and/or K.A.R. 82-3-409, alleging Operator either conducted unauthorized injection at the Grundy B #5 SWD during the 2021 calendar year, or submitted an inaccurate report. On December 29, 2022, Operator requested a hearing.
 - e. On November 30, 2022, Commission Staff initiated Docket 23-3143, which pertains to whether Operator's November 28, 2022, license renewal application should be approved.

¹ See Docket 23-3195, Order Consolidating Dockets (May 25, 2023).

f. These five docket have been consolidated since February 2023; all pre-filed testimony has been on file since July 18, 2023.²

3. Operator wants the two dockets consolidated with the five dockets because the two dockets involve the Grundy B #5 SWD, and so does Docket 23-3135 (one of the five dockets). Operator presents multiple arguments; for example: (1) that Staff put the matters at issue in the two dockets in dispute in the five dockets by including a certain inspection report as an attachment to pre-filed testimony in the five dockets;³ (2) “the exact same evidence is pertinent [in the two consolidated dockets and Docket 23-3135]”;⁴ (3) the dockets “revolve[] around the exact same act of alleged unauthorized injection;”⁵ (4) maintaining separate proceedings is prejudicial to Operator and causes Operator to incur more expenses;⁶ (5) maintaining separate proceedings “creates the unfair opportunity for Staff to have two bites at the same apple and may create the issue of two separate outcomes,⁷ and (6) such procedural flaws are prejudicial to Operator’s due process rights.⁸ Operator argues Staff will not be prejudiced by consolidation, and judicial efficiency will be furthered by consolidation.⁹

4. The Commission agrees with Staff that the alleged violations at issue in the two consolidated dockets are different from those alleged in Docket 23-3135. The penalty orders in the two consolidated dockets, collectively, allege Operator failed to conduct a mechanical integrity test on the Grundy B #5 SWD by December 18, 2022, and then failed to shut-in the well after the Commission issued its penalty order for failure to conduct the mechanical integrity test. On the other

² See Docket 23-3017, Presiding Officer Order Consolidating Dockets (Feb. 14, 2023); Docket 23-3017, Presiding Officer Order on Motion to Compel and to Amend Procedural Schedule (Jun. 6, 2023).

³ Motion to Consolidate, ¶ 5 (Aug. 8, 2023).

⁴ *Id.* at ¶ 6.

⁵ *Id.* at ¶ 7.

⁶ *Id.* at ¶ 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at ¶¶ 9-11.

hand, the penalty order in Docket 23-3135 alleges Operator either conducted unauthorized injection at the Grundy B #5 SWD during the 2021 calendar year, or submitted an inaccurate report for the 2021 calendar year. While the well is the same, the factual allegations are distinct. In other words, contrary to Operator’s argument, the same evidence does not appear to be pertinent in all proceedings, the dockets do not “revolve[] around the exact same act of alleged unauthorized injection,” and Staff is not being provided two bites at the same apple. The Commission sees no prejudice to Operator in the two consolidated dockets proceeding separately from the five consolidated dockets, and no impact on Operator’s due process rights.

5. While the factual allegations are different, that is not necessarily a bar to consolidation – many of the five consolidated dockets are at best only loosely related. Under K.A.R. 82-1-224, the Commission may consolidate two or more dockets for hearing on a common record if the Commission deems it in the public interest. Sometimes judicial efficiency calls for such consolidation, and Operator raises such arguments here. For a few reasons, however, the Commission is not swayed.

6. First, the five consolidated dockets are all older than the two consolidated dockets, and are at a different procedural stage. The five consolidated dockets stem from orders issued between late July 2022 and early December 2022; the two consolidated dockets stem from orders issued between mid-February 2023 and April 2023. All pre-filed testimony has been submitted in the five consolidated dockets. Aside from some pending motions that are being resolved via Commission order today, the five consolidated dockets are ripe for an evidentiary hearing. On the other hand, no pre-filed testimony has been submitted in the two consolidated dockets. If all matters are consolidated, further rounds of pre-filed testimony would be needed, delaying hearing in the five consolidated dockets, and potentially resulting in stale pre-filed testimony regarding the five consolidated dockets. The possibility of dispensing with additional pre-filed testimony and taking only live testimony

concerning the two consolidated dockets¹⁰ feeds into another Commission concern. As the pre-filed testimony in the five consolidated dockets is already extensive and addresses many issues, the Commission is concerned further consolidation for hearing on a common record will make such hearing unwieldy. In other words, the Commission is not convinced additional consolidation will further judicial efficiency. Under K.A.R. 82-1-224, the Commission has discretion in deciding whether to consolidate two or more dockets for a hearing on a common record. For the above reasons, the Commission does not find it in the public interest to consolidate the two consolidated dockets with the five consolidated dockets.

THEREFORE, THE COMMISSION ORDERS:

- A. Operator's August 8, 2023, Motion to Consolidate is denied.
- B. A prehearing conference before Presiding Officer Myers is scheduled for **Thursday, September 14, 2023, at 9:30 a.m.** by telephone. The conference call information is: telephone number (253) 205-0468, Meeting ID 5248125436.¹¹ Parties should be prepared to develop a procedural schedule including the submission of pre-filed testimony.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 09/07/2023



Lynn M. Retz
Executive Director

Mailed Date: 09/07/2023
JRM

¹⁰ See Reply in Support of Motion to Consolidate, at Conclusion (Aug. 30, 2023).

¹¹ If prompted, there is no Participant ID; just press pound to continue.

CERTIFICATE OF SERVICE

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

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

US Mail and electronic service on 09/07/2023.

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