

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the matter of the failure of Benjamin M. Giles)
("Operator") to comply with K.A.R. 82-3-120.)
)
)
_____) License No: 5446

**ORDER ON REQUESTS FOR INTERVENTION,
REQUESTS FOR INTERIM RENEWAL OF OPERATOR'S LICENSE,
AND REQUESTS FOR HEARING**

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 the following:

I. Procedural Background

1. On October 17, 2019, the Commission issued a *Penalty Order* against Benjamin M. Giles (Operator) for one violation of K.A.R. 82-3-120 because unplugged wells remained on Operator's expired license.

2. Between October 22 and October 25, 2019, MWM Oil Co., Inc. and RAG Oil Co., LLC, jointly filed a petition for intervention and requested an evidentiary hearing on the *Penalty Order*. Separately, Community National Bank & Trust did the same. In addition, Charlene A. Giles, Executor of the Estate of Benjamin M. Giles, requested an evidentiary hearing on the *Penalty Order* and requested that Operator's license be renewed on an interim basis.

3. On October 25, 2019, the Unsecured Creditors' Committee of MWM Oil Company, Inc. filed a statement in support of MWM Oil and RAG Oil's petition for intervention.

4. On November 4, 2019, Commission Staff filed responses to the filings submitted by the various entities described above, opposing the interventions and the motion to renew Operator's license on an interim basis, and motioning to strike the Unsecured Creditors' filing.

5. On November 7, 2019, MWM Oil, RAG Oil, Community National Bank, the Unsecured Creditors, and the Estate filed a joint reply to Staff's responses.

6. On November 12, 2019, the Unsecured Creditors filed a response in opposition to Staff's motion to strike, arguing that its October 25, 2019, filing was in fact a petition for intervention.

7. On November 18, 2019, Staff filed a sur-reply to the November 7, 2019, joint reply.¹

II. Findings of Fact

8. The Commission takes up three issues today. First, the Commission shall consider the various petitions for intervention, including Staff's motion to strike the Unsecured Creditors' filing. Second, the Commission shall consider renewing Operator's license on an interim basis. Finally, the Commission shall consider the requests for hearing on the *Penalty Order*.

A. The Petitions for Intervention

9. K.S.A. 55-162 and K.S.A. 55-164, the statutes authorizing the Commission to impose the *Penalty Order* in this matter, provide that this proceeding shall be governed by the Kansas Administrative Procedure Act (KAPA). Thus, the KAPA's statute regarding intervention, K.S.A. 77-521, must guide the Commission's determination of the petitions for intervention. Further, the Commission's own regulation regarding intervention, K.A.R. 82-1-225, also governs this proceeding.

10. In pertinent part, K.S.A. 77-521 and K.A.R. 82-1-225 say the same thing: the Commission *shall* grant intervention if various requirements are met,² but also, independently, that

¹ *Reply to Joint Reply to Staff's Response* (Nov. 18, 2019).

² K.S.A. 77-521(a); K.A.R. 82-1-225(a).

the Commission *may* grant intervention if it determines “that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”³

11. The Commission sees no reason to contemplate the various requirements that would *mandate* intervention, as the Commission finds that it can and should grant *discretionary* intervention, under K.S.A. 77-521(b) and K.A.R. 82-1-225(b), because the interventions sought are in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

12. Staff provides two main arguments as to why MWM Oil, RAG Oil, and Community National Bank should not be granted intervention. First, Staff argues the potential interveners cannot meet the definition of “party” under K.A.R. 82-1-204(i); that regulation states that a “party” is “a person with an articulated interest in a commission proceeding” who meets one of various conditions, including being “allowed to intervene as a party.” Staff states the potential interveners have no articulated interest in Mr. Giles’ *license*.⁴ It does not logically follow, however, that the potential interveners have no interest in the *proceeding*, during which actions may be taken regarding wells in which petitioners *have* articulated an interest.

13. Second, Staff contests the potential interveners’ assertion that the potential interveners are in the *best* position to address the causes of the *Penalty Order*.⁵ But the Commission is not so much interested in the causes as it is a solution. One does not have to be in the *best* position in order to assist in remedying a compliance issue. MWM Oil and RAG Oil, stating that they are the working interests and overriding royalty interests in the wells described in the *Penalty Order*,⁶ may well assist in achieving compliance. Community National Bank & Trust, as secured creditor of MWM and RAG

³ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

⁴ *Response to Petitions for Intervention, Requests for Hearings, and Emergency Motions to Lift Shut-In Order*, ¶ 10 (Nov. 4, 2019).

⁵ *Id.* at ¶ 8.

⁶ *[MWM and RAG Oil’s] Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order*, ¶ 1 (Oct. 22, 2019).

Oil's interests,⁷ may also assist in achieving compliance. The Unsecured Creditors could also plausibly contribute to the wells being brought into compliance with Commission regulations. While Staff's motion to strike the Unsecured Creditors' October 25, 2019, filing may be technically correct,⁸ the Commission shall construe the filing as a petition to intervene.⁹ At this early stage, such interventions will not impair orderly and prompt conduct of proceedings.

14. Based upon the above, the Commission finds MWM Oil, RAG Oil, Community National Bank & Trust, and the Unsecured Creditors should be granted intervention.

B. The Requests to Renew Operator's License on an Interim Basis

15. The Estate and the various interveners request that Operator's license be renewed on an interim basis. Under K.S.A. 55-150(e), an "operator" is "a person responsible for the physical operation and control of a well." Mr. Giles, having passed away, is incapable of being responsible for the physical operation and control of a well.¹⁰ Thus, he cannot be an operator. Further, under K.S.A. 55-155(c), the applicant for an operator's license must provide, demonstrate, and pay various things. Mr. Giles cannot accomplish these tasks and thus cannot obtain an operator's license, or have one issued in his name. Finally, under K.A.R. 82-3-120, an application for a license must be signed and verified by the applicant or an authorized agent of the applicant. Mr. Giles is incapable of signing and verifying a license application, and nothing of record indicates an authorized agent of Mr. Giles has

⁷ *[Community Bank's] Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order*, ¶ 2 (Oct. 25, 2019)

⁸ The Unsecured Creditors' October 25, 2019, filing does not clearly and directly ask for intervention.

⁹ The Unsecured Creditors' response to Staff's motion to strike makes clear it wishes to intervene, by stating that its October 25, 2019, filing already asked for intervention.

¹⁰ See also *MWM Oil and RAG Oil's Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order*, pp. 7-8 ("[T]here is no responsible party in existence...to plug and abandon the Subject Wells."); *Community National Bank's Petition for Intervention, Request for Hearing and Emergency Motion to Lift Shut-In Order*, p. 4 ("Petitioner adopts in their entirety the arguments presented by [MWM Oil & RAG Oil]"); *[The Estate's] Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License*, ¶ 5 ("The other factual allegations set forth [by MWM Oil and RAG Oil] are understood to be correct and are incorporated herein by this reference.").

signed and verified an application. Accordingly, renewing Operator's license would be a violation of Commission statutes and regulations.

16. The Commission notes, however, that any person planning to operate wells may apply for an operator's license. The proper way to obtain a new license is to file an application with the Conservation Division.¹¹ If one of the parties to this proceeding wishes to obtain a license, it will need to do so pursuant to K.S.A. 55-155 and K.A.R. 82-3-120. If the unplugged wells on Operator's expired license are transferred to a license in good standing, then the *Penalty Order* against Operator would not prevent the wells from being produced.

17. The Commission further notes the requesting parties attached a paper application to their November 7, 2019, *Joint Reply to Staff's Response*. This constitutes submission to the Commission, not the Conservation Division. Further, the application lists "The Estate of Benjamin M. Giles" as the applicant, which is incongruous with the requested renewal of *Operator's* license. In addition, the paper application attached to the *Joint Reply* is unsigned, was not notarized, and did not actually enclose a check, among other potential issues. If the Estate, or anyone else, wishes to obtain a license, or transfer the wells on Operator's license to a current license, then such entity is encouraged to contact Staff with any questions regarding the process.

18. With respect to the requests for an order lifting the requirement that Operator's wells be shut-in, such requests are under advisement.

C. The Requests for Hearing on the *Penalty Order*

19. The Estate, MWM Oil, RAG Oil, Community National Bank, and the Unsecured Creditors have requested a hearing on the *Penalty Order* in this matter. No party has opposed this request. The Commission finds a Prehearing Officer should be designated in this proceeding to address any matters listed in K.S.A. 77-517(b), and that a Prehearing Conference should be scheduled.

¹¹ See K.A.R. 82-3-120(b).

III. Conclusions of Law

20. For the above reasons, the Commission concludes it should issue an order in accordance with its findings.

THEREFORE, THE COMMISSION ORDERS:

A. MWM Oil, RAG Oil, Community National Bank & Trust, and the Unsecured Creditors are granted intervention. To the extent their interests coincide, all interveners and the Estate are encouraged to jointly file any future pleadings.

B. Staff's motion to strike is denied.

C. The requests to renew Operator's license on an interim basis are denied.

D. The requests for hearing on the *Penalty Order* are granted.

E. The Prehearing Officer in this proceeding shall be Jonathan R. Myers, Assistant General Counsel, Kansas Corporation Commission, 266 N. Main Street, Suite 220, Wichita, Kansas, 67202-1513, telephone number (316) 337-6245, email address j.myers@kcc.ks.gov. The Commission may designate other Staff members to serve in this capacity. **The Commission directs electronic service of all filings in the docket to include service on the Prehearing Officer and mailed service of all filings to be directed to the Prehearing Officer's attention.**

F. A Prehearing Conference is scheduled for **Wednesday, December 18, 2019, at 2:00 p.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 3902542751.

G. 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.

H. 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.¹²


I. A corporation shall appear before the Commission by a Kansas licensed attorney.¹³

J. The attorney designated to appear on behalf of the agency in this proceeding is Kelcey Marsh, Litigation Counsel, telephone number (316) 337-6200, k.marsh @kcc.ks.gov.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 11/21/2019 _____



Lynn M. Retz
Executive Director

Mailed Date: 11/21/2019 _____

JRM

¹² K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

¹³ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

CERTIFICATE OF SERVICE

20-CONS-3082-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 11/21/2019.

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CERTIFICATE OF SERVICE

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/s/ DeeAnn Shupe
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