

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

In the Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-120.	) ) ) ) )	Docket No.: 20-CONS-3082-CPEN  CONSERVATION DIVISION  License No.: 5446
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**RESPONSE TO PETITIONS FOR INTERVENTION, REQUESTS FOR HEARINGS,  
AND EMERGENCY MOTIONS TO LIFT SHUT-IN ORDER**

Commission Staff (Staff) of the State Corporation Commission of the state of Kansas (Commission) files this Response, wherein Staff opposes the Petitions for Intervention, Requests for Hearings, Emergency Motions to Lift Shut-In order, filed by MWM Oil Co., Inc., and RAG Oil Co., LLC, collectively, and Community National Bank & Trust (together herein referred to as "Petitioners"). In support of its Response, Staff states as follows:

**BACKGROUND**

1. On October 17, 2019, the Commission issued a Penalty Order in this docket against Operator, finding that Operator committed one violation of K.A.R. 82-3-120(a) for operating wells on an expired license.<sup>1</sup>

2. On October 22, 2019, MWM Oil Co., Inc. ("MWM") and RAG Oil Co., LLC ("RAG Oil") filed a Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order.<sup>2</sup> MWM and RAG Oil are owners of non-operating working interests and royalty interests in the wells described in Exhibit A of the Penalty Order ("Subject Wells"), and the oil and

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<sup>1</sup> *Penalty Order*, ¶¶ 10 (Oct. 17, 2019). Complicating matters is the fact that Operator, Benjamin M. Giles, passed away September 23, 2018, and the estate of Mr. Giles, by and through the Executor, Ms. Charlene Giles, has been overseeing the operation of the wells since Mr. Giles' passing. While Commission Staff understands a certain amount of time is necessary to wind down operations under such conditions, the estate has continued to actively operate under the license, which has resulted in a variety of violations relating to those operations. Because the violations are not relevant for the purpose of this response, Staff will not recite them here, but rather mentions them for informational purposes.

<sup>2</sup> MWM and RAG Oil Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order (Oct. 22, 2019) ("MWM and RAG Oil Petition").

gas leases ("Leases") upon which the Subject Wells are situated.<sup>3</sup> MWM and RAG Oil stated no legal interest in the operating license at issue in this proceeding.

3. On October 25, 2019, Community National Bank & Trust ("Community National") also filed a Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order.<sup>4</sup> Community National is a secured creditor of MWM and RAG Oil, holding mortgages on oil and gas interests of MWM and RAG Oil.<sup>5</sup> Community National stated no legal interest in the operating license at issue in this proceeding.

### **ARGUMENT**

4. K.A.R. 82-1-204(i)(1) defines a party as a person with an articulated interest in a particular commission proceeding who meets any of the following conditions:

- An order is specifically directed to the person;
- The person is named as a party to a commission proceeding; or
- The person is allowed to intervene as a party in the proceeding.

5. Neither Petitioner meets the qualifications to be a party to this docket. The Penalty Order was issued against the license of Operator, Benjamin Giles, not against Petitioners. Petitioners have not been named as a party to this proceeding, in fact no other individual or entity has been named as a party to this proceeding beyond Operator. Further, as explained below, Petitioners are not legally entitled to intervention, nor should they be granted discretionary intervention, in this proceeding because the subject of this proceeding involves the operation of wells under an expired license, a license in which they have no legal interest.

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<sup>3</sup> *Id.* at ¶1.

<sup>4</sup> Community National Petition for Intervention, Request for Hearing and Emergency Motion to Lift Shut-In Order (Oct. 25, 2019) ("Community National Petition").

<sup>5</sup> *Id.* at ¶2.

6. Both Petitioners make identical conclusory statements that they meet all of the statutory requirements for intervention, and therefore should be allowed to participate in this proceeding.<sup>6</sup> However, both Petitioners fail to state specific facts as to what legal right, duties, privileges, immunities, or other legal interest may be substantially affected as a non-operating working interest owner or as a creditor if they are not allowed intervention in this docket.

7. K.A.R. 82-1-225 discusses intervention which applies to both KAPA and non-KAPA proceedings. It states that the presiding officer shall grant a petition for intervention if the following conditions are met:

- The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least three days before the hearing,
- The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interest may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law, and
- The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

8. As noted previously, the Penalty Order at issue in this docket pertains to the expiration of an operating license and the continued unauthorized operation of wells under that expired license. Neither Petitioner has identified any legal interest in the expiration or continuation

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<sup>6</sup> MWM and RAG Oil Petition, p. 4. Community National Petition, p. 2.

of Operator's license.<sup>7</sup> Rather, MWM and RAG Oil merely hold non-operating working interest in wells identified under Operator's license, and Community National's stated interest is even further tangentially related to Operator's license as a creditor to MWM and RAG Oil.

9. Petitioners MWM and RAG Oil aver that allowing them to intervene in this proceeding will help achieve an orderly and prompt resolution, because it will allow the Commission to "work directly with the party in the best position to address the causes of the penalty order."<sup>8</sup> Petitioner Community National argues that allowing it to participate will "not impair the orderly and prompt conduct of the proceedings" because by granting its petition, "the Commission will have another interested party wanting to keep the Subject Wells and Leases operational and able to be sold..."<sup>9</sup> Staff disagrees.

10. First, the party in the best position to address the causes of the penalty order is Operator's Estate. Operator was licensed by the Commission to operate the well, and as such, the only entity with a legal interest in the license is the Estate. Additionally, Operator's estate, not Petitioners remains obligated to comply with the Commission's directives, regardless of who owns a non-operating working interest, or is a creditor of a non-operating working interest owner. To be clear, Petitioners do not have an oil or gas license for the subject well, and are therefore not in a position to address the causes of this Penalty Order, or assume responsibility for the wells under a transfer request, had such a request been made, which it was not.

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<sup>7</sup> While Petitioners mention that the wells under Operator's license are to be sold at auction on December 5, 2019, that alleged fact has no bearing on whether the wells were operated under an expired license, which is the subject of this proceeding.

<sup>8</sup> MWM and RAG Oil Petition, p. 5.

<sup>9</sup> Community National Petition, p. 3.

*Response to Motion to Lift Shut-In Order*

11. Petitioners do not have the standing in this matter to request a motion to lift the shut-in order applied in this docket. As stated above the Penalty Order does not involve Petitioners, Petitioners are not listed on the license that was suspended therefore they would have no say in the day-to-day operations of the wells, and Petitioners do not have a license to operate the wells.

12. Petitioners argue that both physical and economic waste will occur as a result of the shut-in order, and that funds have been made available to bring some of the Subject Wells into production and address compliance issues on the leases. The fact of the matter is that many of the wells and leases subject to the licensure underlying the Penalty Order have environmental issues that require immediate attention and there is no licensed operator to operate the wells in the event of a lift of the shut-in order. Continuing to allow the estate to operate under this license will not cure the outstanding violations with Operator's license.

13. Further, the non-operating working interest owners (MWM and RAG Oil) have filed for bankruptcy and as such do not have the funds or means to resolve the issues that the Commission has with the wells on this license or other environmental concerns before the sale date. Since Petitioners have no legal interest in this matter and are unable to address the causes of the Penalty Order, there is no legal reason Petitioners should be allowed to intervene in this proceeding. Petitioners interest is not in curing the environmental concerns associated with the expired and suspended license, but is solely focused on getting as many assets to the sale date on December 5, 2019.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission to deny Petitioner's Motion for Intervention and for any further relief as the Commission deems just and proper.

Respectfully submitted,




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**VERIFICATION**

STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF SEDGWICK            )

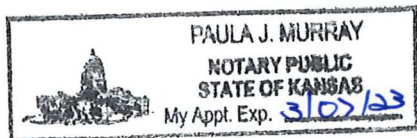
Kelcey A. Marsh, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Response*, and attests that the statements therein are true to the best of his knowledge, information and belief.

  
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Kelcey A. Marsh, S. Ct. #28300  
Litigation Counsel  
State Corporation Commission  
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 4 day of Nov, 2019.

  
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Notary Public

My Appointment Expires: 3/07/23



## CERTIFICATE OF SERVICE

20-CONS-3082-CPEN

I, the undersigned, certify that a true copy of the attached Response to Petitions for Intervention, Request for Hearings, and Emergency Motions to Lift Shut-in Orders has been served to the following by means of first class mail and electronic service on November 4, 2019.

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