

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of whether Somerset Energy, Inc.'s)
injection authority at eight wells subject to permit E-)
31,866 should be revoked.) Docket No. 25-CONS-3193-CUIC
CONSERVATION DIVISION
License Nos. 6143

In the matter of the petition of Somerset Energy, Inc.)
to open a docket pursuant to K.S.A. 55-605(a).) Docket No: 25-CONS-3195-CMSC
CONSERVATION DIVISION
License Nos: 6143

PETITION FOR RECONSIDERATION BY
SOMERSET ENERGY, INC.

COME NOW Somerset Energy, Inc. ("Somerset"), and pursuant to K.A.R. 82-1-235 and K.S.A. 77-529(a), respectfully petition for reconsideration of the Kansas Corporation Commission's ("Commission") December 31, 2024, Order Consolidating Dockets and Designating Presiding Officer ("Order"). In support of its Petition for Reconsideration, Somerset states:

1. Somerset seeks reconsideration of that portion of the Order which limits the purpose of this Docket to the following,

The purpose of these consolidated dockets shall be to determine what obligations Somerset may have as it pertains to the Nevius #OW-6 well, and how the status of the Nevius #OW6 well should impact Somerset's use of the eight wells within a quarter mile of that well.

2. Somerset requests that the Commission reconsider this portion of the Order and broaden the purpose of this Docket to, 1) determine what obligations Somerset may have as it pertains to the Nevius #OW-6 well, and how the status of the Nevius #OW6 well should impact Somerset's use of the eight wells within a quarter mile of that well, and 2) determine if Commission Staff is engaging in an enforcement practice against Somerset and other Kansas oil and gas operators of

leveraging injection authority, and other approvals or authorizations, such as approval of T-1 transfers in order to compel operators to accept responsibility for abandoned wells that they are not legally responsible for under K.S.A. 55-179.

3. Somerset has alleged in its Petition that,

16. As it relates to the Nevius #OW-6 well and the actions taken against Somerset, KCC Staff has taken actions which actually cause waste, ignore statutory procedures and deny due process in an attempt to unlawfully compel Somerset to accept legal responsibility for an orphaned well which Somerset is not responsible for under K.S.A. 55-179.

17. In light of the above referenced facts, Somerset believes the action being required of it and other operators by KCC Staff constitutes waste.

18. . . . the Commission is charged with a statutory duty to prevent waste, and to administer K.S.A. 55-179 as it is written

4. The Eastern Kansas Oil & Gas Association ("EKOGA") has filed a Petition to Intervene in this Docket which also alleges,

Many of EKOGA's members have also been subjected to the wide spread practice by Commission Staff of leveraging injection authority, approval/withholding of approval of T-1 transfers and other practices by Commission Staff in order to compel operators to accept responsibility for abandoned wells that they are not legally responsible for under K.S.A. 55-179

5. K.S.A. 55-605(a) provides in pertinent part, "[a]ny person, may institute proceedings before the Commission upon any question **relating to the enforcement of this act** or for the Enforcement of, any rule, regulation or order thereunder, and jurisdiction is hereby conferred upon the Commission to hear and determine the same."

6. K.S.A. 55-605(a) creates a statutory right for ANY PARTY to institute proceedings before the Commission for the purposes referenced above. This right cannot be ignored, nor does the Commission have authority to refuse a party its right to institute proceedings under such statute. Somerset's Petition to Open Docket Pursuant to K.S.A. 55-605(a) clearly raised issues relating to the

enforcement of such act and it was therefore error for the Commission to narrow the scope of this Docket beyond what was requested by Somerset.

7. K.A.R. 82-3-403 indicates that it was "Authorized by K.S.A. 55-151, 55-152, 55-605, 55-901; implementing K.S.A. 55-151, 55-605, 55-901, 55-1003.)" Since K.A.R. 82-3-403 is the regulation that Staff relies upon in taking the subject actions against Somerset, such actions clearly concern the "enforcement" of the Crude Oil and Natural Gas Conservation Act referenced in K.S.A. 55-605(a).

8. Expanding the scope of this Docket as requested in this Petition for Reconsideration will also streamline this Docket and allow for the issues to be simplified. If the scope and purpose of this Docket is broadened to,

1) determine what obligations Somerset may have as it pertains to the Nevius #OW-6 well, and how the status of the Nevius #OW6 well should impact Somerset's use of the eight wells within a quarter mile of that well, and

2) determine whether Commission Staff is engaging in an enforcement practice against Somerset and other Kansas oil and gas operators of leveraging injection authority, and other approvals or authorizations, such as approval of T-1 transfers in order to compel operators to accept responsibility for abandoned wells that they are not legally responsible for under K.S.A. 55-179.

Somerset will voluntarily plug the Nevius #OW6 well, pursuant to K.S.A. 55-180(a) under the expressly stated, legal contention that Somerset is not, and shall not become legally responsible for said well by virtue of voluntarily plugging it. These actions will be done in order to prevent permanent underground waste from occurring by allowing Somerset to continue to operate its eight (8) injection wells without interruption. However, the Commission will nevertheless still need to determine in this Docket whether Somerset was legally responsible for the care and control of the Nevius #OW-6 well, and whether such well should have impacted Somerset's use of the eight wells within a quarter mile

of that well. The importance of this determination is, if Somerset is determined to have had no legal responsibility for the Nevius #OW-6 well, Somerset will, 1) have a cause of action against any person who is legally responsible for the Nevius #OW-6 well pursuant to K.S.A. 55-180(d), and 2) will be eligible to seek reimbursement from the abandoned oil and gas well fund pursuant to K.S.A. 55-180(f)(1) once the Commission finalizes its rules and regulations on such issue.

9. One of the main reasons for pursuing this Docket was in hopes of creating legal precedent that would end the practice of leveraging injection authority, and other approvals or authorizations, such as approval of T-1 transfers in order to compel operators to accept responsibility for abandoned wells that they are not legally responsible for under K.S.A. 55-179. Thus, so long as Somerset retains the right to bring such issue before the Commission in an attempt to create such legal precedent, Somerset will voluntarily plug the Nevius #OW-6 well while still expressly contending that it was not and is not legally responsible for such well.

10. This proposal will eliminate the need to pursue further the Petition for Judicial Review of Non-Final Agency Action filed in the District Court for Miami County, Kansas as Case No. MI 2025 CV 23, and the provisional remedies to be sought in such litigation as the waste Somerset sought to prevent will have been avoided.

11. Counsel for Somerset has conferred with Commission Staff and the parties have agreed to voluntarily extend the deadline established in the Order on Motion for Preliminary Order issued on February 6, 2025 for Somerset to shut-in the eight wells within a quarter mile of the Nevius #OW-6 or plug the Nevius #OW-6, until March 6, 2025. The parties understood that the Commission would likely rule on this Petition for Reconsideration on February 18, 2025, and thus the extension will allow Somerset an opportunity to either comply with such order or pursue a provisional remedy in the

pending judicial review proceeding.

12. This paragraph 12 is intended only to preclude the possibility of any future arguments that Somerset waived the issues or arguments referenced in this paragraph by not raising them in this Petition for Reconsideration. Thus, Somerset makes the arguments set forth below for the sole purpose of preserving them in the pending judicial review proceeding in the event the Petition for Reconsideration of the Order Consolidating Dockets and Designating Presiding Officer is denied. If Somerset's Petition for Reconsideration of the Order Consolidating Dockets and Designating Presiding Officer is granted the arguments below will become moot. If the Petition for Reconsideration of the Order Consolidating Dockets and Designating Presiding Officer is denied, Somerset hereby requests in the alternative that the Commission reconsider and reverse its Order on Motion for Preliminary Order entered herein on February 6, 2025 for the following reasons:

- A) On December 13, 2024 Somerset also filed the Motion for Preliminary. This motion essentially requested the Commission issue an order permitting Somerset to continue operating its eight (8) injection wells in the same manner as they had been operated for the previous ten (10) years while the subject docket was pending before the Commission (i.e. until the matter is decided at a hearing scheduled for April 17, 2025). The Motion for Preliminary Order was verified and was also supported by verified pre-filed testimony filed on the same date which stated that if Somerset's injection wells were shut in, the oil bank created through such injection activities would dissipate and permanent underground waste **would occur**. The prevention of waste is the primary duty of the Commission. *Southwest Kansas Royalty Owners Association v. Kansas Corporation Commission*, 244 Kan. 157, 166 (1989); *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722 (1950); *Colorado Interstate Gas Co. v. State Corporation Commission*, 192 Kan. 1 (1963); K.S.A. 55-601; K.S.A. 55-603.
- B) On December 26, 2024 KCC Staff filed the Response to Motion for Preliminary Order Authorizing Applicant to Continue to Operate Existing Wells During the Pendency of this Docket. This response was not verified, nor was it supported by any evidence of any kind. This response stated Staff's opinion that it was theoretically **possible** for the Nevius #OW-6 to be causing pollution, but KCC Staff had not conducted any tests in order to determine whether pollution was in fact occurring.

- C) On February 6, 2025 the Commission issued its Order on Motion for Preliminary Order. Said order denied Somerset's Motion for a Preliminary Order and directed Somerset to "shut-in the eight wells within a quarter mile of the Nevius #OW-6 during the pendency of this proceeding. Alternatively, Somerset may plug the Nevius #OW-6 within two weeks and continue to operate the eight wells in the interim, or reach any other agreement with Commission Staff."
- D) It was unreasonable for the Commission to deny Somerset's Motion for Preliminary Order under the circumstances. The Commission had before it uncontroverted evidence that,
- 1) the wells at issue have been operating in their current status for approximately 10 years with no evidence whatsoever of any pollution having ever occurred, and
 - 2) if Somerset is required to shut in the eight (8) injection wells it would cause a portion of the oil reserves beneath the lease to become permanently and irreversibly lost (i.e. underground waste would occur).

Since the Commission's primary duty is to prevent waste, (*See e.g. Southwest Kansas Royalty Owners Association v. Kansas Corporation Commission*, 244 Kan. 157, 166 (1989)) it was unreasonable under the circumstances for the Commission to cause waste by not allowing Somerset to continue operating its injection wells for another two (2) months until the hearing in exactly the same way they have been operated for the last ten (10) years. The Commission had no evidence before it that pollution was actually occurring. In fact, Commission Staff's response expressly disclosed that Commission Staff had done nothing at all to determine whether pollution was occurring at the Nevius #OW-6 and that Staff had ZERO evidence indicating pollution was in fact occurring. Therefore, it was unreasonable under the circumstances for the Commission to enter an order that will certainly cause underground waste to occur.

- E) For the responses set forth above, the Order on Motion for Preliminary Order is based upon a determination of fact, made or implied by the KCC that is not supported by substantial competent evidence and is unreasonable, arbitrary and capricious. The Order on Motion for Preliminary Order erroneously interpreted and applied the law by disregarding the KCC's primary duty which is to prevent waste and also its duty to prevent unfair discrimination among producers from a common source of supply.
- F) Since the Nevius #OW-6 has not broken out, Somerset is clearly not a legally responsible party for said well pursuant to any of the six categories listed in K.S.A. 55-179(b)(1)-(6).

- G) The Commission does have two competing statutory duties, as it recognized in its Order on Motion for Preliminary Order, i.e. "the prevention of various types of waste (K.S.A. 55-602)" and "the prevention of pollution of the soils and waters of the state from oil and gas activities (K.S.A. 74-623)." However, only one of these duties (i.e. waste) was actually implicated in this Case. Staff failed to present any evidence that the Commission's competing duty to prevent pollution was actually implicated in this Case, and instead stated that Staff had not performed any tests to determine whether such duty was implicated through actual pollution. Thus, it was unreasonable under the circumstances for the Commission to enter an order which caused waste, when there was no evidence presented which demonstrated a competing statutory mandate was actually implicated.
- H) Both KCC Staff's actions and also the Commission's order are designed to resolve the pending docket without affording Somerset due process. If Somerset shuts down its eight injection wells which have been in operation for more than ten (10) years, it will be permanently and irrevocably damaged through the loss of a portion of its previously recoverable oil reserves. On the other hand, if Somerset plugs the Nevius #OW-6, Somerset will have no legal remedy in which to recover the cost incurred to plug the Nevius #OW-6. The subject wells have been operating for more than a decade and there has been no evidence presented which justifies immediately shutting them down before due process is afforded. This is especially true since the KCC has scheduled the hearing in this matter a mere two months from now. There is no evidence to support the need to immediately shut these wells down. The only purpose for doing so is to utilize Somerset's injection wells as a means of coercing Somerset to "voluntarily" accept responsibility for the Nevius #OW-6 when K.S.A. 55-179 clearly indicates that Somerset is not legally responsible for such well.
- I) K.S.A. 55-179 set's forth six categories of persons who may be legally responsible for abandoned wells. K.S.A. 55-179(b)(1) is the category that is relevant to the Nevius #OW-6. K.S.A. 55-179(b)(1), provides the following as a category of person potentially responsible for an abandoned well "[a]ny person causing pollution or loss of usable water through the well, including any operator of an injection well, disposal well or pressure maintenance program." (Emphasis added). As indicated previously Staff has no evidence that Somerset is causing pollution or loss of usable water at the Nevius #OW-6 and thus could not directly impose legal responsibility for said abandoned well on Somerset though a show cause proceeding instituted under K.S.A. 55-179(a). Therefore, KCC Staff ordered Somerset to shut down eight of its injection wells, unless it voluntarily accepted responsibility for the Nevius #OW-6, and has imposed incredibly short deadlines in which Somerset must comply (i.e. KCC Staff ordered Somerset to shut down said wells within 10 days or face a \$10,000 penalty and the Commission ordered Somerset to shut down said wells in two weeks) even though said wells had been operated for 10 years previously

WHEREFORE, for the reasons set forth in 1-11 Somerset Petitions the Commission to reconsider and amend the Order in order broaden the scope of this Docket to:

- 1) determine what obligations Somerset may have as it pertains to the Nevius #OW-6 well, and how the status of the Nevius #OW6 well should impact Somerset's use of the eight wells within a quarter mile of that well, and
- 2) determine whether Commission Staff is engaging in an enforcement practice against Somerset and other Kansas oil and gas operators of leveraging injection authority, and other approvals or authorizations, such as approval of T-1 transfers in order to compel operators to accept responsibility for abandoned wells that they are not legally responsible for under K.S.A. 55-179.

Alternatively, if the Commission declines to reconsider and amend the Order in order to broaden the purpose of this Docket as referenced above, Somerset Petitions the Commission to reconsider and amend the Order on Motion for Preliminary Order to grant Somerset's Motion for Preliminary Order for the reasons set forth in Paragraph 12 above, and for such other and further relief as the Commission deems just and equitable.



Keith A. Brock, #24130
ANDERSON & BYRD, LLP
216 S. Hickory ~ P.O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
kbrock@andersonbyrd.com
Attorneys for Somerset Energy, Inc.

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

Keith A. Brock, of lawful age, being first duly sworn on oath, states: That he is the attorney for Somerset Energy, Inc. and is duly authorized to make this affidavit; that he has read the foregoing

Petition to Intervene, knows the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

Keith A. Brock

SUBSCRIBED AND SWORN to before me this 14th day of February, 2025.



Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail, this 14th day of February, 2025, addressed to:

TODD BRYANT, GEOLOGIST SPECIALIST
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
todd.bryant@ks.gov

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
kelcey.marsh@ks.gov

TROY RUSSELL
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 3
137 E. 21ST STREET
CHANUTE, KS 66720
troy.russell@ks.gov

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
jon.myers@ks.gov

DUANE SIMS
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 3
137 E. 21ST STREET
CHANUTE, KS 66720
duane.sims@ks.gov

/s/ Keith A. Brock

Keith A. Brock