

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

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the matter of the failure of Energyquest II,) Docket No.: 16-CONS-4068-CPEN
LLC (“Operator”) to comply with K.A.R. 82-)
3-400 regarding injection that took place) CONSERVATION DIVISION
during the 2015 calendar year.)
_____) License No.: 35216

**STAFF’S RESPONSE TO OPERATOR’S
MOTION TO DISMISS AND RESCIND PENALTY ORDER**

In this case, Operator filed Annual Fluid Injection (“U3C”) Reports indicating that it injected in excess of its permitted pressure. So under K.A.R. 82-3-400, the Commission issued a penalty. Operator now moves for dismissal, arguing that K.A.R. 82-3-400 does not allow the Commission to assess a penalty for injection in excess of permitted pressure. The Commission, however, has repeatedly ruled such arguments to be incorrect as a matter of law. Operator also argues that, contrary to its own reports, it did not actually inject in excess of its permitted pressure. This is a disputed question of fact, which makes the matter inappropriate for dismissal prior to hearing. Further, even if the disputed question of fact were resolved in favor of Operator, dismissal would still be inappropriate. Accordingly, Operator’s motion should be denied.

I. Argument

1. Seven times in the last year, the Commission has specifically ruled K.A.R. 82-3-400 allows the Commission to assess a penalty for injection in excess of the terms of a permit.¹ The regulation has not changed, and neither should the Commission’s ruling. The Commission should deny Operator’s motion for the same reasons it has recently denied all similar motions.

¹ See Dockets 16-CONS-011-CPEN, 16-CONS-021-CPEN, and 16-CONS-066-CPEN, specifically the Commission’s respective *Order Denying Motion to Dismiss and Rescind Penalty Order* (Nov. 5, 2015) and *Order on Appeal* (Feb. 11, 2016) issued in each docket, as well as Docket 16-CONS-088-CPEN, *Order Denying Motion to Dismiss and Rescind* (Dec. 8, 2015).

2. Operator also alleges that after the Commission's Penalty Order was issued, it submitted second U3C Reports indicating that it did not inject in excess of its permitted pressure, and that therefore the Commission's Penalty Order should be dismissed. Operator's submission of second U3C Reports is not an act that should result in dismissal of the Penalty Order, but instead indicates the existence of a contested factual issue rendering dismissal inappropriate. Either Operator violated K.A.R. 83-3-400 by injecting in excess of its permitted pressure, as Operator stated in its first U3C Reports and as stated in the Penalty Order, or Operator violated K.A.R. 82-3-409(b) by submitting inaccurate injection data, as Operator essentially argues through the submission of its second, post-penalty U3C Reports.

3. In Docket 16-CONS-088-CPEN, the Commission also considered a motion to dismiss from an operator that stated that post-penalty U3C Reports indicated that no injection in excess of a permit took place.² There, the Commission correctly noted that "whether the violations in [that] matter stemmed from actual over-injection or the filing of false information is a question of fact to be determined after a record is compiled."³ The Commission also explicitly stated "Submitting erroneous data constitutes noncompliance with K.A.R. 82-3-409(b)."⁴

4. Operator has exercised its right to request a hearing on this matter. It should be given exactly that. If the apparently contested facts as presented at hearing demonstrate violations of K.A.R. 82-3-400, then the Commission should affirm its Penalty Order. If evidence Operator apparently wishes to present instead demonstrates violations of K.A.R. 82-3-409(b), then the Commission should simply modify its Penalty Order. As in similar situations upon which the Commission has recently ruled, Operator's motion should be denied.

II. Conclusion

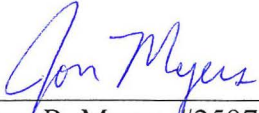
For the foregoing reasons, Operator's motion should be denied.

² See 16-CONS-088-CPEN, *Request for Hearing* (Aug. 20, 2015).

³ 16-CONS-088-CPEN, *Order Denying Motion to Dismiss and Rescind*, ¶8.

⁴ *Id.*, ¶10.

Respectfully submitted,

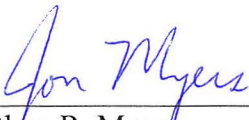


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CERTIFICATE OF SERVICE

I certify that on 9/9/16, I caused a complete and accurate copy of this Response to Operator's Motion to Dismiss to be served via United States mail, with the postage prepaid and properly addressed to the following:

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