

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

IN THE MATTER OF THE REQUEST TO) DOCKET NO. 25-CONS-3235-CMSC
TRANSFER CERTAIN WELLS FROM)
DAYLIGHT PETROLEUM, LLC TO) License No: 35639
BLUEJACKET OPERATING LLC) 36169
)

MOTION TO DISMISS

COMES NOW Bluejacket Operating LLC (“Bluejacket” or “Intervenor”) and hereby submits this Motion to Dismiss the above captioned matter. In support of this Motion, Bluejacket states as follows:

BACKGROUND

1. Bluejacket is a Kansas based, oil and gas operating company that is duly registered with the Kansas Corporation Commission (“KCC”) and is fully bonded.
2. Between November 8, 2024 and November 20, 2024, Staff received Request for Change of Operator (T-1) Forms for approximately 55 leases (“Subject Leases”), which requested to transfer the leases from Daylight Petroleum, LLC (“Daylight”) to Bluejacket. The submitted T-1 forms include 228 of Daylight’s 240 wells (“Subject Wells”).
3. The T-1 transfers represent the assets purchased by Bluejacket from Daylight, who is another duly registered and bonded Kansas operator.
4. The T-1 forms did not include 11 wells on the Johnson lease or the Olnhausen Farms #6 well which are all located in Section 16, Township 30 South, Range 16 East, Wilson County, Kansas.
5. On January 21, 2025, Commission staff filed a Motion to open the above captioned matter with this Commission in Order to attempt to rescind the approved T-1s.
6. T-1s are the Forms necessary that approve the transfer of the Subject Leases and the Subject Wells.
7. The basis for this action is that the aforementioned 240 wells were not included in the transfer from Daylight to Bluejacket and are the subject of another independent Docket, 25-

CONS-3040-CMSC.

8. As noted in Staff's opening brief, Staff intend to rescind the already approved transfer forms until "Daylight's statutory and regulatory obligations at the Johnson lease and the Olnhausen Farms #6 well have been addressed."

LEGAL STANDARD

9. "Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes, therefore any exercise of authority claimed by the agency must come from within the statutes. There is no general or common law power that can be exercised by an administrative agency." *Pork Motel, Corp. v. Kansas Dep't Health & Env't*, 234 Kan. 374, 378, 673 P.2d 1126, 1132 (1983); *Cantu v. Kansas Dep't Revenue*, No. 116,616, 416 P.3d 1046 (Table), 2018 WL 2074275, at *3 (Kan. Ct. App. May 4, 2018) (quoting *Pork Motel*).

10. A Commission order is lawful as long as the order falls "within the statutory authority of the commission, and if the prescribed statutory and procedural rules are followed in making the order. An order is considered reasonable if it is supported by substantial competent evidence. The Commission's action is arbitrary and capricious if it is unreasonable or without foundation in fact." *Citizens' Utility Ratepayer Bd. v. Kansas Corp. Comm'n*, 47 Kan.App.2d 1112, 1124, 284 P.3d 348, 356 (2012) (internal citations omitted) (citing *Farmland Indus., Inc. v. Kansas Corp. Comm'n*, 24 Kan.App.2d 172, 175, 943 P.2d 470, rev. denied 263 Kan. 885 (1997)).

11. The arbitrary and capricious test for judicial review of an agency's decision "relates to whether a particular action should have been taken or is justified, such as the reasonableness of an agency's exercise of discretion in reaching the determination, or whether the agency's action is without foundation in fact." *Lario Oil & Gas Co. v. Kansas Corp. Comm'n*, 57 Kan.App.2d 184, 205, 450 P.3d 353, 367 (2019); see also *Muir v. Kansas Health Policy Auth.*, 50 Kan.App.2d 854, 862, 334 P.3d 876, 881 (2014) ("Whether an agency's decision is arbitrary or capricious tests 'the reasonableness of the [agency's] exercise of discretion in reaching the determination' at issue.") (quoting *Kansas Racing Mgmt., Inc. v. Kansas Racing Comm'n*, 244 Kan. 343, 365, 770 P.2d 423 (1989)).

12. Under Kansas law, an agency "acts arbitrarily or capriciously when its actions are overtly and patently in violation of the law or are unreasonable and without foundation in fact." *Krueger v. Board of Woodson Cnty. Comm'rs*, 31 Kan.App.2d 698, 702, 71 P.3d 1167, 1170

(2003), *aff'd* 277 Kan. 486, 85 P.3d 686 (2004). In addition, our Supreme Court has held that an action is unreasonable when it is “taken without regard to the benefit or harm to all interested parties,” and that an action is arbitrary and capricious if it is unreasonable or lacks any factual basis. *Sunflower Racing, Inc. v. Board of Wyandotte Cnty. Comm’rs*, 256 Kan. 426, 431, 885 P.2d 1233, 1237 (1994). Under K.S.A. 77–621(c)(8), courts examine the reasonableness of an agency’s exercise of discretion in reaching their decisions. The “useful factors” that may be considered include, inter alia, (a) whether the agency’s explanation of its action runs counter to the evidence before it, and (b) whether the agency’s explanation is so implausible that it could not be ascribed to merely a difference in views. *Romkes v. Univ. Kan.*, 49 Kan.App.2d 871, 892, 317 P.3d 124, 137 (2014); *Wheatland Electric Coop., Inc. v. Polansky*, 46 Kan.App.2d 746, 757, 265 P.3d 1194, 1197 (2011).

BLUEJACKET IS ENTITLED TO TRANSFER OF ITS ASSETS

13. Bluejacket is a third-party operator that is in full compliance with KCC rules and regulations and applicable statutory provisions. (Kan. Admin. Regs. 82-3-120 and K.S.A. 55-155)

14. Bluejacket purchased the Subject Wells from Daylight via contractual agreement, and the property interests have been duly transferred via assignment and recorded as provided for by law. *See* K.S.A. 58-2221.

15. Thus, the real property interests at issue, the Subject Leases, have been transferred as required under Kansas law. *See, e.g., Ingram v. Ingram*, 214 Kan. 415, 421, 521 P.2d 254, 259 (1974) (“oil and gas leasehold interests are to be treated as real property under the statutes pertaining to the recording of instruments conveying or affecting real estate”).

16. But the Commission’s actions have placed these property interests in limbo.

17. Commission Staff have opened this Docket seeking to rescind already approved transfer forms.

18. The basis for their actions is a separate and independent action that does not pertain to the interests purchased by Bluejacket and sold by Daylight.

19. Bluejacket understands Commission staff may have a concern about a particular lease and/or well. But those interests were neither purchased by Bluejacket nor conveyed by Daylight. Those interests are not relevant to the transfer of the Subject Wells to Bluejacket.

20. As admitted by Staff in its filing, the T-1s have already been approved.

21. They are attempting to rescind those forms, thus imperiling Bluejacket’s property interests, and possibly impairing Bluejacket’s vested rights. *See e.g. Kansas Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 261 Kan. 17, 41, 927 P.2d 466, 484 (1996) (“Rights are vested when the right to enjoyment, present or prospective, has become the property of a particular person as a present interest.”).

22. Bluejacket has properly transferred the Subject Leases and Wells, recorded the property interests as required by law, and the T-1s have been approved. Thus, Bluejacket has a right to operate the wells they purchased without staff interference.¹ *See also Harding v. Sinclair Oil & Gas Co.*, 172 Kan. 724, 724, 243 P.2d 199, 200 (1952) (holding where oil is found pursuant to terms of valid existing lease, lessee or his assignee has a vested right to produce the oil).

23. Additionally, it should be noted that Commission Staff seeks not only to rescind the T-1s but also to condition the transfer on resolution of issues that are wholly separate from this transfer—resolution of another docket addressing interests not at issue here.

24. It is important for the agency to provide its basis for a decision that appears to deviate from a policy it adopted earlier—especially when the need for deviation in a particular case is not so obvious as to remove the need for explanation. *See Water Dist. No. 1 of Johnson Cnty. v. Kansas Water Auth.*, 19 Kan.App.2d 236, 243-44, 866 P.2d 1076, 1082 (1994).

25. Here, the Staff’s decision is not supported by substantial evidence and is otherwise unreasonable, arbitrary and capricious.

26. “Substantial competent evidence,” as required to support agency action based on a determination of fact, is “relevant evidence that provides a substantial basis of fact from which the issues can be reasonably determined.” *Schneider v. Kansas Sec. Comm’r*, 54 Kan.App.2d 122, 132, 397 P.3d 1227, 1236 (2017).

27. “[A]n agency’s conclusion could be set aside, even if supported by substantial evidence, if it was based on faulty reasoning.” *Citizens’ Util. Ratepayer Bd.*, 47 Kan.App.2d at 1128, 284 P.3d at 358.

28. First, the Commission alleged that because Bluejacket was a new operator, they had no ability to gauge Bluejacket’s ability to operate or comply with its rules.

¹ A license “may be revoked at the pleasure of the governing body of the municipality provided the revocation is not arbitrary, unreasonable or discriminatory.” *Rests. Wichita, Inc. v. City of Wichita*, 215 Kan. 636, 640, 527 P.2d 969, 972 (1974)

29. Yet Bluejacket has already complied with all applicable rules, regulations and statutory requirements.

30. “An agency may not violate its own rules, and where it fails to follow the rules that it has promulgated, its orders are unlawful.” *McMillan v. McKune*, 35 Kan.App.2d 654, 660, 135 P.3d 1258, 1263 (2006).

31. Staff offered no basis for their action, other than a generalized concern. They have not supported this concern with any reasonable supporting basis. Under the applicable legal standard, the Staff’s decision is not supported with substantial evidence.

32. Further, they have attempted to tie the two separate transactions together.

33. But this is simply not supported by the facts or law.

34. Daylight and Bluejacket entered into a legal transaction, consummated the transaction, and otherwise complied with all relevant requirements.

35. Thus, there is no basis to deny the T-1s.

36. The arbitrary and capricious test for the validity of an agency’s action “relates to whether the particular action should have been taken or is justified, such as the reasonableness of an agency’s exercise of discretion in reaching a determination or whether the agency’s action is without foundation in fact.” *Sokol v. Kansas Dep’t Soc. & Rehab. Servs.*, 267 Kan. 740, 746, 981 P.2d 1172, 1177 (1999)

37. “An agency action is arbitrary and capricious if it is unreasonable or without foundation in fact.” *Sajadi v. Kansas Bd. Healing Arts*, 61 Kan.App.2d 114, 122-23, 500 P.3d 542, 550 (2021).

38. Here, Staff is attempting to rescind already approved transfers, and condition those transfers on resolution of issues that are unrelated to the purchase, sale and transfer of the Subject Leases and Subject Wells.

39. They have done so based on concerns about the resolution of another independent matter.

40. There is no basis in law, or fact, for attempting to prevent the transfer of certain assets that were legally purchased and have otherwise been conveyed.

41. If Commission Staff is concerned about resolution of another matter, they have ample opportunity and ability to otherwise enforce their rules and regulations as appropriate in that matter.

42. Preventing Bluejacket from receiving its assets despite not being a party to Docket No. 25-CONS-3040-CMSC, nor having any interest in the other assets that were not sold and conveyed, is absurd, unreasonable, arbitrary and capricious as a matter of law.

CONCLUSION

43. Bluejacket and Daylight have entered into a valid, legal agreement that is binding on both parties.

44. The parties have properly documented the transaction, conveyed the assets and recorded all appropriate documents.

45. As a matter of law, the interests have been conveyed from Daylight to Bluejacket.

46. Bluejacket is a duly registered operator in good standing. They are fully bonded and registered.

47. Bluejacket has otherwise complied with all applicable laws, rules and regulations.

48. Bluejacket has a present possessory interest in the wells, and the T-1s have been approved.

49. Staff has provided no salient basis for rescinding the approved forms.

50. They have otherwise provided no evidence outside of a stated desire to reach a resolution in a wholly separate matter concerning interests that Bluejacket did not purchase and have not been transferred by Daylight.

WHEREFORE Bluejacket respectfully requests that this Commission Dismiss Staff's application, orders the T-1s approved, and transfer the operatorship of the Subject Leases and Subject Wells to their rightful legal owner.

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CERTIFICATE OF SERVICE: 25-CONS-3235-CMSC

I, the undersigned, certify that a true and correct copy of the attached Motion has been served to the following by means of first-class mail and electronic service on March 28, 2025.

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