

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

In the matter of the failure of Prairie Gas)	Docket No. 19-CONS-3396-CPEN
Operating, LLC ("Operator") to comply with)	
K.A.R. 82-3-104 at the Boltz #1 well in)	CONSERVATION DIVISION
Hamilton County, Kansas.)	
)	License No. 35442

In the matter of the failure of Prairie Gas)	Docket No. 20-CONS-3007-CPEN
Operating, LLC ("Operator") to comply with)	
K.A.R. 82-3-603 at the Bounds lease in)	CONSERVATION DIVISION
Greeley County, Kansas.)	
)	License No. 35442

In the matter of the failure of Prairie Gas)	Docket No. 20-CONS-3018-CPEN
Operating, LLC ("Operator") to comply with)	
K.A.R. 82-3-104 at the Beard #1 well in)	CONSERVATION DIVISION
Greeley County, Kansas.)	
)	License No. 35442

**COMMISSION STAFF'S EMERGENCY MOTION TO STRIKE THE PRE-FILED
REBUTTAL TESTIMONY OF NEAL HENSLEY, OR ALTERNATIVELY, TO FILE
SURREBUTTAL TESTIMONY**

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) hereby files this Emergency Motion to Strike the Pre-filed "Rebuttal Testimony" of Neal Hensley that was filed by Operator on November 18, 2019. As discussed in greater detail below, the procedural schedule in this matter did not contemplate the filing of rebuttal testimony by Operator, and in fact the nature of the "Rebuttal Testimony" filed by Operator on November 18, 2019 amounts to additional Direct Testimony that Operator should have filed on or before November 4, 2019, as set forth in the procedural schedule in this matter. As such Staff respectfully requests the Commission strike the testimony of Mr. Hensley as untimely Direct Testimony. Granting Staff's motion will prevent Staff from being unfairly prejudiced by the filing of additional testimony by Operator to which Staff is not afforded the opportunity to respond.

Alternatively, if the Commission does not strike the testimony of Mr. Hensley, then Staff respectfully requests the opportunity to file testimony responsive to that of Mr. Hensley. Staff is requesting expedited treatment of this motion due to the impending evidentiary hearing that is already scheduled in this matter for December 19, 2019. In support of its Motion, Staff states as follows:

I. BACKGROUND

1. In June and July 2019, the Commission issued penalty orders in the above captioned dockets, to which Prairie Gas Operating, LLC filed requests for hearings.¹ On August 20, 2019, the Commission issued an order consolidating these matters for hearing on a common record and setting a September 5, 2019, prehearing conference.²

2. On September 11, 2019, the Prehearing Officer issued an order setting a procedural schedule.³

3. On October 7, 2019, pursuant to the then-current procedural schedule, Staff filed the pre-filed testimony of Ken Jehlik and Eric MacLaren.

4. On October 18, 2019, Operator filed an unopposed Motion to Amend Procedural Schedule.⁴ As part of its motion, Operator stated that the proposed continuance was “to allow time to continue efforts to settle the three dockets consolidated in this matter. In the event the matter is not settled, the procedural order entered will be in effect subject to the change in dates requested.”⁵ Staff was amenable to the procedural amendment but made clear it would not support further amendments.⁶ The proposed modification moved Operator’s Pre-Filed Direct

¹ See Order Consolidating Dockets, Designating Prehearing Officer, and Setting Prehearing Conference, ¶¶ 1-3 (Aug. 20, 2019).

² *Id.* At Ordering Clause A.

³ See Prehearing Officer Order Setting Procedural Schedule ¶ 2, Ordering Clause A (Sept. 11, 2019).

⁴ See Motion to Amend Procedural Schedule ¶¶ 1-2 (Oct. 18, 2019).

⁵ See Motion to Amend, ¶3.

⁶ See Motion to Amend Procedural Schedule ¶ 2.

Testimony date from October 21, 2019 to November 4, 2019. It also requested modification to the date for Staff's responsive testimony (Rebuttal Testimony).

5. On October 23, 2019, the Prehearing Officer issued an order granting Operator's motion.⁷ The order adjusted the procedural schedule as follows:⁸

Commission Staff Pre-Filed Direct Testimony	Due: N/A (Already Submitted)
Discovery Cut-Off	Due: N/A (Deadline Passed)
Operator Pre-Filed Direct Testimony	Due: November 4, 2019
Rebuttal Testimony	Due: November 18, 2019
<u>Evidentiary Hearing before the Commission</u>	December 19, 2019, 10:00 a.m.

6. On November 4, 2019, Operator filed the Pre-filed Direct Testimony of Ian Acrey, consistent with the procedural schedule.

7. On November 18, 2019, Staff filed the Rebuttal Testimony of Eric MacLaren in response to Operator's Direct Testimony, consistent with the procedural schedule.

8. However, also on November 18, 2019, Operator filed the Rebuttal Testimony of Neal Hensley, which is inconsistent with the intent of the procedural schedule.

II. ARGUMENT

Consistent with the current procedural schedule, and as can be seen by the pleadings, Operator filed the Direct Testimony of Ian Acrey on November 4, 2019. This testimony was responsive to Staff's Direct Testimony filed on October 7, 2019. No other testimony was scheduled to be filed until Staff's Rebuttal Testimony on November 18, 2019. However, on November 18, 2019, Operator filed the testimony of a new witness, Mr. Neal Hensley. Mr. Hensley's testimony appears to be responsive to the Direct Testimony of Staff witnesses, Ken Jehlik and Eric MacLaren, but as previously noted, Operator's testimony responsive to Staff's Direct Testimony was due on November 4, 2019.

⁷ See Prehearing Officer Order Granting Motion to Amend Procedural Schedule ¶ 5.

⁸ *Id.*

Operator's filing of Mr. Hensley's testimony is in direct contravention to the amended procedural schedule in this matter. If Operator intended to have another round of testimony to address Staff's Rebuttal Testimony then Operator could have clearly indicated such in its October 18, 2019 motion to modify the procedural schedule, yet it did not. At that time, Staff would have been afforded an opportunity to respond and object accordingly. As it stands, Operator is attempting to unilaterally modify the procedural schedule despite Staff's position that it is not amenable to additional modifications. Because Mr. Hensley's testimony is late-filed supplemental direct testimony, Staff opposes Mr. Hensley's testimony as untimely.

In summary, the submittal of further testimony by Operator ignores and jeopardizes the procedural schedule in this matter. The procedural schedule has already been amended once with the understanding that Staff would oppose any further extensions. Operator's unilateral attempt to circumvent the procedural schedule should not be rewarded by allowing Mr. Hensley's testimony to stand. As such, Staff respectfully requests the Commission strike the supplemental direct testimony of Mr. Hensley, filed by Operator on November 18, 2019.

Alternatively, if the Commission elects to not strike Mr. Hensley's testimony, Staff should be afforded the opportunity to respond to Mr. Hensley. The hearing in this matter is set for December 19, 2019. In light of the short time frame Staff anticipates that it can have additional Rebuttal Testimony prepared and filed by December 6, 2019.

WHEREFORE, for the foregoing reasons Staff respectfully requests the Commission grant this Motion to Strike the Pre-Filed Rebuttal Testimony of Neal Hensley or, in the alternative, permit Staff to file Rebuttal Testimony responsive to Mr. Hensley, and for any further relief the Commission deems just and equitable.

Respectfully submitted,



Michael Glamann, #28240

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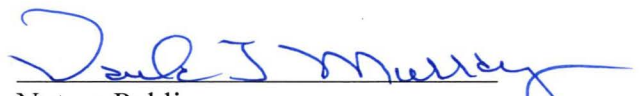
VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

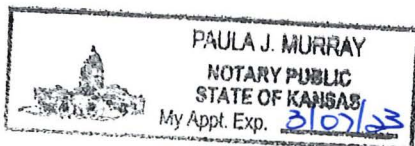
Michael Glamann, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Motion*, and attests that the statements therein are true to the best of his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


Michael Glamann, S. Ct. #28240
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 27 day of Nov, 2019.


Notary Public

My Appointment Expires: 3/07/23



CERTIFICATE OF SERVICE

19-CONS-3396-CPEN, 20-CONS-3007-CPEN, 20-CONS-3018-CPEN

I, the undersigned, certify that a true copy of the attached Motion has been served to the following by means of electronic service on November 27, 2019.

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/S/ Paula J. Murray

Paula J. Murray