

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

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

In the matter of the Notice of Denial of	)	Docket No.: 17-CONS- 3529- CMSC
License Renewal Application for Agricultural	)	
Energy Service, Kansas Operator License	)	CONSERVATION
Number 34089	)	DIVISION
	)	
	)	License No.: 34089

**PETITION FOR STAY OR, ALTERNATIVELY, FOR ISSUANCE OF AN  
INTERIM EMERGENCY ORDER**

COMES NOW Agricultural Energy Services, LLC (hereinafter “AES”), by and through its attorney, Lee Thompson, Thompson Law Firm, L.L.C., and for its petition for stay or, alternatively, for issuance of an emergency order in the captioned matter, states as follows:

1. Petitioner, AES Petitions for the following relief as allowed by K.S.A.66-118, 77-528 and 77-537.
  - a. A stay of any suspension of or adverse action pertaining to the rights and privileges of AES as an operator by virtue of a Notice of Denial of License Renewal Application dated March 24, 2017 and an email “KCC Notice of Expired License” dated April Notification of Suspension of License dated April 18, 2017.

- b. AES has concurrently filed and served a written request for hearing of the Notice of Denial of License which, as a matter of law, does not take effect until the time for requesting a hearing has expired. K.S.A. 77-537(a)(4).
2. Alternatively, Petition seeks issuance of an interim emergency order as authorized by K.A.R. 82-1-232, which suspends adverse or enforcement action premised on its status as a licensee specifying that such order shall extend until the matter placed in issue by the Notice of Denial of License and requested hearing thereon.
3. The Petition is based on the following factual and legal factors:
  - a. On March 24, 2017, the Commission sent AES a notice of denial of license renewal application pursuant to K.S.A. §55-155 (c)(4) (“Notice of Denial” – Copy Attached) alleging that AES “appears” to be associated with First National Oil, Inc., License #6230, which has a suspended operator’s license in Kansas;
  - b. The notice of denial constitutes a summary order pursuant to K.S.A. §77-537;
  - c. As the Notice of Denial is a summary order it does not, as a matter of law, take effect until after the time for requesting a hearing has expired. K.S.A. §77-537(a)(4). Thus, the notice of hearing stays any such attempted order;
  - d. The putative justification for application of K.S.A. §55-155 (c)(4) in the Notice of Denial is factually incorrect and legally without merit. The referenced statute cannot, as a matter of law, be brought to bear on AES;

- e. AES is a corporate entity. In order for AES to be liable under K.S.A. 55-155, it must be proved that AES or one of the criteria listed in K.S.A. 55-155 are in violation with the KCC. None of the criteria set forth in the statute have been shown or even referenced in the Notice of Denial.
- f. The construction of the referenced statute in the Notice of Denial is erroneous as a matter of law. The Notice of Denial inverts the meaning of the plain language of the statute. AES is in full compliance. Any officer, director, partner or member of AES are in full compliance. Any stockholder of greater than five percent (5%) of AES are in full compliance. There is no spouse, parent, brother or immediate family member of AES. Therefore, based upon the plain language of K.S.A. 55-155, the statute is not applicable to AES. First National Oil is in non-compliance. Again, just like AES, First National Oil is a corporate entity. There is no provision in K.S.A. 55-155 which permits transferring First National Oil's problems through an individual into a completely separate corporate entity;
- g. Moreover, the Notice of Denial, if construed to affect the rights and privileges and status of AES is *ultra vires*, violates due process rights of AES and attempts in a fashion difficult to discern some form of corporate veil piercing unknown at law;
- h. Furthermore, for arguments sake, even if the statute applies to AES, the Notice of Denial is a breach of prior Orders of the Commission and would seem to be taken in bad faith as the Commission has previously held that

Agricultural Energy Services, LLC has no sufficient relationship to First National Oil, Inc. and that the corporate veil could not be pierced. In the Commission's own Motion to Close Docket in Docket No. 13-CONS-299-CMSC, the Commission Staff clearly states,

**The undersigned investigated whether the corporate veil could be pierced with regard to First National and Agricultural Energy Services, LLC ("AES"), and determined there was not a sufficient relationship between the entities to pursue joint liability for the wells.**

The Commission, thereafter, entered an Order granting that motion.

- i. In order for the Commission to now find some relationship between the parties, there must be some change of condition. Applicant's owner contacted the Conservation Division directly and engaged the Division's assigned Litigation Counsel to this matter and was told that the change of condition is that it was determined that AES's owner was an attorney in fact for First National Oil. Such argument lacks merit because it is belied by the record and still would not authorize liability under K.S.A. 55-155;
- j. Argument by the Commission that a change of condition occurred in such a manner is a breach of another prior Order. In that same docket, the commission acknowledged the personal and voluntary efforts of AES' owner to assist the Commission. Specifically, the Commission attached a letter as an exhibit to its Order wherein the Commission acknowledged that AES's owner was given power of attorney to help assist First National Oil; any

argument that this is a new change of condition is belied by the record.<sup>1</sup> Additionally, that in working with the KCC, AES's owner's efforts were voluntary and committed through his own resources (money). Therefore, the Commission cannot today argue that a change of condition occurred when it possessed knowledge in 2012 of AES's owner acting as attorney in fact for First National Oil, and, yet, still held that there was not a sufficient relationship between First National Oil and AES to pursue joint liability for the plugging of wells. The Commission's actions in denying AES's license request are disingenuous and must be rectified immediately.

- k. Nonetheless, AES was instructed by the Conservation Division's Litigation Counsel that the Commission is going to see this matter through and force AES to cover costs that are not theirs to bear.
4. Any action or attempt to take adverse action against AES not only effectively shuts down AES, but, by the nature of natural gas operations, effectively bears negative consequences on the working interest owners and royalty owners who depend upon the revenues from AES's wells. The benefit to all parties involved to allow AES to continue operating until the Commission formally grants its license renewal, far outweighs the burdens that would occur if the Commission wrongly shut-in AES's operations.

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<sup>1</sup> Over four years has passed since the Commission entered its Order acknowledging these facts.

5. Any attempt to take adverse action against AES based on the Summary Order would constitute immediate and irreparable harm to AES without due process, would be violative of the Kansas Administrative Procedures Act and would be based on a demonstrable erroneous interpretation of K.S.A. 55-155.
6. Any action or attempt to take adverse action against AES based on the Summary Order would be ultra vires and without authority, and failure to stay or defer any action would require AES to seek legal remedies by way of Mandamus and Injunction pursuant to K.S.A. 60-801 and 60-901.

**WHEREFORE**, Applicant prays that this matter be stayed or, alternatively, an emergency order issue allowing AES the right to continue operating.

**Respectfully Submitted,**

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By s/ Lee Thompson  
Attorneys for Petitioner

**VERIFICATION/ DECLARATION**

**STATE OF KANSAS                    )**  
**)**  
**COUNTY OF SEDGWICK        )**

I declare and verify, under penalty of perjury and pursuant to K.S.A. 53-601 that the foregoing is true and correct under penalty of perjury.

**/s Lee Thompson**  
Lee Thompson, Ks. # 08361

**CERTIFICATE OF SERVICE**

I hereby certify on this 17<sup>th</sup> day of April 2017, the true and correct original of the above and foregoing Petition for Stay or, Alternatively, For Issuance of an Interim Emergency Order was filed by means of the KCC efilng Express and served on the undersigned as an attachment to an electronic mail.

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**s/ Lee Thompson**  
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