

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

Before Commissioners:                   Dwight D. Keen, Chair  
  Shari Feist Albrecht  
  Susan K. Duffy

In the matter of the failure of Bill and/or Penny ) Docket No: 19-CONS-3035-CPEN  
M. McPherson dba McPherson Drilling Co. )  
("Operator") to comply with K.A.R. 82-3-120. ) CONSERVATION DIVISION  
  )  
\_\_\_\_\_ ) License No: 5495

**ORDER DENYING MOTION TO REOPEN DOCKET**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

**I. Procedural Background**

1. On August 2, 2018, the Commission issued a *Penalty Order* against Bill and Penny M. McPherson (Operator) for one violation of K.A.R. 82-3-120(a) because three unplugged wells, for which Operator is responsible, remained on Operator's expired license.<sup>1</sup> The *Penalty Order* assessed a \$500 fine.<sup>2</sup> In addition, Operator was given sixty days to renew its license, transfer the unplugged wells remaining on its license, or to plug the wells.<sup>3</sup> If Operator failed to do so, Operator was to be assessed an additional \$5,000 penalty.<sup>4</sup>

2. Operator did not request a hearing.<sup>5</sup> Commission records indicate Operator did not timely renew its license, transfer the wells, or plug the wells as directed under the *Penalty Order*.<sup>6</sup>

<sup>1</sup> See *Penalty Order*, ¶¶ 6, 10, Exhibit A (Aug. 2, 2018).

<sup>2</sup> See *id.* at Ordering Clause A.

<sup>3</sup> See *id.* at Ordering Clause C.

<sup>4</sup> See *id.* at Ordering Clause D.

<sup>5</sup> See *Motion to Approve Settlement*, at attached Settlement Agreement, ¶ 7 (Sept. 12, 2019).

<sup>6</sup> See *id.*; *Penalty Order* at Ordering Clause C; see also K.A.R. 82-1-230(h).

3. On September 12, 2019, Commission Staff filed a *Motion to Approve Settlement Agreement*, stating the parties had reached a settlement in this matter, purportedly to avoid potential litigation costs and to foster administrative efficiency.<sup>7</sup> The settlement agreement attached to Staff's motion would have, among other things, waived all fines if Operator plugged the three wells remaining on its license by November 30, 2019.<sup>8</sup>

4. On September 24, 2019, the Commission issued an order scheduling a prehearing conference regarding Staff's *Motion to Approve Settlement Agreement*, which was held October 9, 2019.<sup>9</sup> Another prehearing conference was held October 17, 2019.<sup>10</sup>

5. On October 17, 2019, Staff withdrew its *Motion to Approve Settlement Agreement* and submitted a motion to "reopen the docket."<sup>11</sup> In support, Staff offered that:

The Kansas Administrative Procedure Act provides "[n]othing in the Kansas Administrative Procedure Act shall preclude parties from settling a matter at any time. In addition, nothing in the Kansas Administrative Procedure Act shall preclude use of alternative dispute resolution, with the consent of the agency and all parties. It is Staff's position that this docket is appropriate for settlement. Operator in this matter is ready, willing, and able to plug the wells currently on its expired license. Allowing Operator to plug the wells fosters administrative efficiency because it prevents the State from expending its resources to plug the wells and pursue any legally responsible parties. Furthermore, Operator is retiring from the oil and gas business. Operator expressed a desire to avoid any potential penalties in light of its overall compliance record. Staff agrees that it is appropriate to waive the monetary penalty if Operator does not apply for a new license in the future."<sup>12</sup>

## **II. Findings of Fact / Analysis of Staff's Motion to Reopen Docket**

6. Staff appears to want the Commission, in essence, to reverse the final nature of its August 2, 2018, *Penalty Order* against Operator, so that the parties can then file a settlement

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<sup>7</sup> See *Motion to Approve Settlement*, at attached Settlement Agreement, ¶ 13.

<sup>8</sup> *Id.* at ¶ 18.

<sup>9</sup> See *Order Designating Prehearing Officer and Setting Prehearing Conference* (Sept. 24, 2019).

<sup>10</sup> See *Prehearing Officer Order Setting Prehearing Conference* (Oct. 11, 2019).

<sup>11</sup> *Motion Withdrawing Motion to Approve Settlement Agreement and to Reopen Docket* (Oct. 17, 2019).

<sup>12</sup> *Id.* at ¶¶ 5-6.

agreement modifying the findings and conclusions in the *Penalty Order*. The Commission, however, finds it appropriate to deny Staff's motion to reopen this docket.

7. As a policy matter, the Commission finds it would be inappropriate to modify a final order, to waive a penalty, where for over a year Operator has disregarded Commission direction to remedy a regulatory violation. Regarding Staff's contention that the KAPA allows settlement at any time, the Commission finds the KAPA does not allow parties, on their own volition, to overrule a duly-issued final order. As for Operator's overall compliance record, the Commission notes that in the last five years, in addition to the present docket, Operator was suspended for non-compliance with Commission orders in Dockets 15-CONS-871-CPEN and 17-CONS-3695-CPEN.<sup>13</sup>

8. The Commission's *Penalty Order* clearly laid out the consequences if Operator failed to bring itself in compliance with Commission regulations. If Operator, as Staff posits, is "ready, willing, and able to plug the wells currently on its expired license," then Operator should cause the wells to be plugged, since Operator was already directed to bring its wells in compliance with Commission regulations in excess of fourteen months ago. The Commission notes that as Operator's license is expired, it would have to hire a licensed contractor to plug the wells.<sup>14</sup> Further, a settlement waiving the assessed monetary penalty if Operator did not apply for a new license would not alter the need for a licensed contractor, as under such terms, Operator still would not have a valid license.

9. The Commission has pursued the legally responsible party for the unplugged wells on Operator's license. The Commission finds reopening this docket will not foster administrative efficiency by avoiding such pursuit; rather, it would unnecessarily prolong such pursuit and send a message that Commission orders may be disregarded without consequence.

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<sup>13</sup> To reach this finding, the Commission takes administrative notice of its records. *See* K.A.R. 82-1-230(h).

<sup>14</sup> *See* K.A.R. 82-3-120(a).

**III. Conclusions of Law**

For the reasons stated above, Staff's motion to reopen this docket should be denied.

**THEREFORE, THE COMMISSION ORDERS:**

A. Staff's motion to reopen this docket is denied.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>15</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 11/05/2019



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Lynn M. Retz  
Executive Director

Mailed Date: 11/05/2019

JRM

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<sup>15</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 55-1314; K.S.A. 77-503(c); K.S.A. 77-531(b).

**CERTIFICATE OF SERVICE**

19-CONS-3035-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/05/2019.

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