

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

In the matter of the failure of Utah Oil, LLC)	Docket No.: 24-CONS-3315-CPEN
(Operator) to report activity that occurred)	
during the 2023 calendar year in compliance)	CONSERVATION DIVISION
with K.A.R. 82-3-409.)	
_____)	License No.: 34223

PRE-FILED REBUTTAL TESTIMONY

OF

RYAN A. HOFFMAN

ON BEHALF OF COMMISSION STAFF

AUGUST 23, 2024

1 **Q. Are you the same Ryan A. Hoffman who pre-filed direct testimony in this docket on July**
2 **19, 2024?**

3 A. Yes.

4 **Q. What is the purpose of your rebuttal testimony in this matter?**

5 A. The purpose of my testimony is to discuss the assertions contained in the Pre-Filed Testimony
6 of Brad Leach, and the Pre-Filed Testimony of Dee Roehl, given on behalf of Utah Oil, LLC
7 (Operator) in Docket 24-CONS-3315-CPEN (Docket 24-3315).

8 **Q. On page 2, line 6 of Mr. Leach's testimony, he states that if the Commission affirms the**
9 **Penalty Order in this docket, Operator will have to pay \$5,400 in financial assurance**
10 **over the next three years. Is this correct?**

11 A. Not entirely. If the Commission affirms the Penalty Order, then Operator is correct that it will
12 need to provide financial assurance. Under K.S.A. 55-155(d), though, operators have several
13 options for providing financial assurance. The most common options are: 1) a performance
14 bond or letter of credit in an amount equal to \$0.75 times the total aggregate depth of all the
15 operator's wells; 2) a performance bond or letter of credit in an amount that depends on the
16 depth and total number of the operator's wells; or 3) a nonrefundable fee equal to 6% of the
17 amount of the bond or letter of credit in option 2.

18 If Operator chose the third option, it would need to provide financial assurance in the
19 amount of \$1,800 per year for the next three years. That is how Mr. Leach comes up with
20 \$5,400. Under the second option, however, Operator could provide financial assurance in the
21 form of a performance bond or letter of credit. Given the depth and number of wells Operator
22 has on its well inventory, if Operator chose a letter of credit, the letter of credit would need to
23 be for \$30,000. My understanding is that banks typically charge 0.5% to 1.5% of the letter of

1 credit's value, along with a processing fee. Thus, a letter of credit for \$30,000 would likely
2 cost Operator only a few hundred dollars. It is quite possible that Operator would be able to
3 provide financial assurance at a cost much lower than \$5,400.

4 **Q. On page 2, lines 17-18 of Mr. Leach's testimony, he argues that the Commission's**
5 **objective has been to achieve compliance with regulations, rather than penalization. Do**
6 **you agree with this statement?**

7 A. I certainly do—Conservation Division Staff want operators to comply with Commission
8 regulations, and view penalty orders as a last resort. Nevertheless, the threat of a penalty order
9 being issued by the Commission is an essential tool in persuading operators to comply with
10 Commission regulations. Penalty orders only work as a form of deterrence, though, if they are
11 issued in a consistent and uniform manner across all operators in the State of Kansas.

12 **Q. On page 5, lines 6-9 of Mr. Leach's testimony, he asks the Commission to impose a**
13 **penalty on Operator in line with the nature of the mistake, "as opposed to treating Utah**
14 **Oil the same as an operator who completely ignored the KCC's requirements and**
15 **notices would be treated." Do you agree that the Commission should treat this Operator**
16 **differently from other operators?**

17 A. No, I do not. First, given the facts of this docket, Operator did indeed ignore the KCC's
18 requirements and notices—otherwise Operator's U3Cs would have been submitted prior to
19 the March 1 deadline in K.A.R. 82-3-409. More importantly, I absolutely disagree with
20 Operator's contention that it should be treated differently than other operators. As I have
21 already suggested, I believe the Commission should apply its regulations uniformly across all
22 operators in the State of Kansas, and not give special favor to certain operators.

1 **Q. On page 4, lines 9-10 of Ms. Roehl’s testimony, she states that the failure to timely submit**
2 **the U3Cs was an honest mistake. Do you think that is a good reason for the Commission**
3 **to rescind the Penalty Order or lower the penalty amount?**

4 A. No, I do not. I certainly believe Ms. Roehl’s testimony when she states that Operator’s failure
5 to timely submit the U3C forms was a mistake. Nothing in the Commission’s regulations,
6 though, imply that it is fine to violate a regulation so long as the violation was done by
7 mistake. For example, if an operator’s injection well fails a mechanical integrity test, but the
8 operator mistakenly continues to inject fluids into the well, that is a violation of the
9 Commission’s regulations and the Commission will almost certainly issue a penalty order. In
10 the oil and gas field, a mistake can lead to pollution of usable waters and environmental
11 damage; or in the present docket, a mistake can lead to the failure to timely submit forms that
12 Staff relies on when permitting injection wells, researching seismic activity, and making sure
13 operators are injecting fluids in conformance with their injection permits. I strongly believe
14 that operators have a duty to take the precautions necessary to make sure that they don’t make
15 mistakes. In the present case, operators can limit their exposure to mistakes by filing their
16 U3C forms in advance of the March 1 deadline. While the forms are due March 1, the data
17 necessary to fill them out is from the prior year, so operators can file the forms as early as
18 January 1. Filling out and submitting U3C forms early can prevent mistakes like this from
19 happening.

20 **Q. On page 4, lines 10-13 of Ms. Roehl’s testimony, she states that Operator requested a**
21 **hearing in this docket to find out whether the Commission “still has an interest in**
22 **working with good operators” or if the Commission prefers “imposing large penalties.”**
23 **Do you agree with Ms. Roehl’s description of the Commission’s choice in this docket?**

1 A. I certainly do not—Ms. Roehl’s testimony presents a false choice. I also take issue with
2 classifying operators as “good” or “bad.” Even though I believe operators have a duty to
3 minimize the possibility of mistakes, I realize that mistakes happen, and I do not believe that
4 an operator receiving a penalty order makes it a “bad” operator. At the same time, just because
5 an operator has never received a penalty order does not necessarily make it a “good” operator,
6 especially if Staff regularly has to send the operator Notice of Violation (NOV) letters to warn
7 them to come into compliance with commission regulations.

8 Staff has been and remains willing to work with operators to achieve compliance with
9 Commission regulations, and Staff would be the first to advise the Commission if such a path
10 were possible. In the present docket, though, Staff already tried to work with Operator to get
11 it to achieve compliance. As I stated in my direct testimony, Operator received email
12 reminders on January 24, 2024, and February 28, 2024, that it needed to submit its U3Cs.
13 Staff also mailed Operator an NOV letter on March 28, 2024, reminding Operator that it
14 needed to submit its U3Cs, and stating that failure to submit them by April 11, 2024, would
15 be punishable by a \$100 per well penalty. Staff tried to work with Operator to keep it in
16 compliance with Commission regulations, and Operator has no one to blame but itself for
17 failing to remain in compliance. Moreover, the penalty amount in the Penalty Order is not
18 harsh or unfair, it is the penalty amount explicitly required by K.A.R. 82-3-409(c) and warned
19 of in the NOV letter.

20 Ultimately, Operator is asking the Commission to treat it differently than it treats all other
21 operators. I believe that would be a mistake. To treat this Operator differently would be
22 inequitable to every other operator in the State of Kansas, and would make it more difficult
23 for Staff and the Commission to enforce Commission regulations in the future.

1 **Q. Has your recommendation changed based upon Mr. Leach's or Ms. Roehl's**
2 **testimony?**

3 A. No, I still believe the Penalty Order should be affirmed. Operator did not timely submit its
4 U3C forms, therefore Operator should be required to pay a \$4,000 penalty.

5 **Q. Does this conclude your testimony?**

6 A. Yes.

CERTIFICATE OF SERVICE

24-CONS-3315-CPEN

I, the undersigned, certify that a true and correct copy of the Pre-Filed Rebuttal Testimony of Ryan A. Hoffman on Behalf of Commission Staff has been served to the following by means of electronic service on August 23, 2024.

CHERYL BOYER
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
cheryl.boyer@ks.gov

KEITH A. BROCK, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
kbrock@andersonbyrd.com

TODD BRYANT, GEOLOGIST SPECIALIST
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
todd.bryant@ks.gov

TRISTAN KIMBRELL, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
tristan.kimbrell@ks.gov

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
jon.myers@ks.gov

/s/ Nancy D. Borst

Nancy D. Borst