

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

In the matter of an order to show cause issued) Docket No.: 23-CONS-3176-CSHO
to Great Plains Petroleum, Inc. (Operator) for)
a plugging order at the Stumps #4 well in) CONSERVATION DIVISION
Barton County, Kansas.)
_____) License No.: 30163

RESPONSE TO OPERATOR'S PETITION FOR RECONSIDERATION

Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby files this response to Operator's *Petition for Reconsideration Pursuant to K.S.A. §§ 55-606 and 77-529* (Petition) filed November 21, 2023. In support of its response, Staff states as follows:

I. BACKGROUND

1. On August 31, 2023, the Commission held an evidentiary hearing regarding the above-captioned docket. The Commission issued its Final Order in the proceeding on November 7, 2023.¹ In the Final Order, the Commission ordered Operator to plug the Stumps #4 well (Subject Well), return the well to service, or obtain temporary abandonment (TA) status for the well by December 31, 2023.²

2. Operator timely filed its Petition on November 21, 2023.³ In the Petition, Operator argues that the Commission's Final Order was not supported by the evidence.⁴ Specifically, Operator asserts that the Commission improperly based its decision on concerns that the Subject Well poses a threat to fresh water and correlative rights,⁵ and that the

¹ Docket 23-CONS-3176-CSHO, *Final Order* (Nov. 7, 2023).

² *Id.* at Ordering Clause A.

³ Docket 23-CONS-3176-CSHO, *Petition for Reconsideration Pursuant to K.S.A. §§ 55-606 and 77-529* (Nov. 21, 2023).

⁴ *Id.* at ¶ 9.

⁵ *Id.* at ¶ 2.

Commission did not properly consider that the lease containing the Subject Well is in the middle of a partition action that may take a considerable amount of time to resolve.⁶

II. ARGUMENT

3. The Commission should deny Operator's Petition. Operator's arguments do not show that the Commission failed to properly consider all the evidence before it at the evidentiary hearing. Moreover, the evidence Operator claims the Commission did not consider was indeed considered by the Commission, and deemed non-compelling in its Final Order.

4. Operator's first argument is that the Commission based its Final Order on concerns that the Subject Well presents a threat to fresh water and correlative rights.⁷ Operator asserts that the Subject Well is not currently causing any damage to fresh water as evidenced by the well successfully passing a mechanical integrity test (MIT).⁸ As Staff pointed out in its testimony, though, a successful MIT has not been performed for the region of the Subject Well below the production perforations.⁹ Consequently, the mechanical status of the Subject Well's casing below the production perforations is completely unknown. The Commission was aware of the Subject Well's MIT status when it issued its Final Order, and Operator has presented no new evidence in its Petition regarding that status. As the Commission stated in its Final Order, "Commission regulations and policy are rightfully built upon preventing pollution, not upon waiting for pollution to occur and only then taking action."¹⁰

5. In arguing that the Subject Well does not present a threat to usable waters, Operator also asserts that the depth of the well's surface casing may meet current Commission

⁶ *Id.* at ¶¶ 5-8.

⁷ *Id.* at ¶ 2.

⁸ *Id.*

⁹ See e.g., Docket 23-CONS-3176-CSHO, *Pre-Filed Rebuttal Testimony of Todd Bryant on Behalf of Commission Staff July 26, 2023*, p. 3 (Jul. 26, 2023).

¹⁰ Final Order at ¶ 7.

requirements.¹¹ Operator did not make this argument at the evidentiary hearing, and it is therefore not properly before the Commission. Nevertheless, Operator's arguments are irrelevant. Operator assumes that the Subject Well's surface casing meets current requirements based on the log for the Stumps #3 well half a mile away.¹² This is merely a guess, however, as the geology a half-mile away may be significantly different from the geology at the Subject Well. More importantly, the Commission was aware of the uncertainty surrounding the surface casing at the Subject Well during the evidentiary hearing. In its Final Order, the Commission stated that if Operator intended to return the Subject Well to service or to seek TA status, Operator would need to collaborate with Staff to determine what work needed to be completed to bring the well into compliance with the Commission's surface casing requirements.¹³ Thus, Operator has presented no new evidence that would necessitate a change in the Commission's Final Order requiring Operator to work with Staff to determine how to bring the surface casing of the Subject Well into compliance with current regulations.

6. The final issue raised by Operator is the timing of the partition action for the lease that includes the Subject Well.¹⁴ Operator argues that partition actions can be slow, and if the Commission does not grant Operator additional time and the Subject Well is plugged, then that would constitute waste.¹⁵ The Commission was apprised of the partition action at the evidentiary hearing, and specifically discussed the partition action and the possibility of waste in its Final Order. The Commission held that Operator's arguments regarding the partition action and waste "contains too many contingencies to support such argument."¹⁶ The Commission added that,

¹¹ Petition at ¶¶ 3-4.

¹² *Id.* at ¶ 4.

¹³ Final Order at Ordering Clause B.

¹⁴ Petition at ¶ 5.

¹⁵ *Id.* at ¶ 8.

¹⁶ Final Order at ¶ 8.

“waste’ is not an incantation that waives away regulatory obligations.”¹⁷ Thus, the Commission has already considered Operator’s arguments regarding the partition action and the possibility of waste, and did not find them convincing. Operator has presented no new evidence in its Petition that should cause the Commission to reconsider its decision.

III. CONCLUSION

7. The Commission held in its Final Order that it “sees no reason why Operator’s obligations should be any different than those of any other operator within this State. Operator has had abundant time to comply with Commission regulations, and has not provided a convincing statutory, regulatory, or policy rationale for providing it any more time.”¹⁸ Operator’s Petition should not alter the Commission’s analysis. Operator’s Petition has not provided any new relevant evidence, nor has Operator’s Petition shown that the Commission failed to consider all the evidence before it at the evidentiary hearing. For that reason, Operator’s Petition should be denied.

WHEREFORE, Staff respectfully requests the Commission deny Operator’s *Petition for Reconsideration Pursuant to K.S.A. §§ 55-606 and 77-529*, and for such other and further relief as the Commission deems just and equitable.

Respectfully Submitted,

/s/Tristan Kimbrell
Tristan Kimbrell, #27720
Litigation Counsel
Kansas Corporation Commission
266 N. Main St., Ste. 220
Wichita, KS 67202
t.kimbrell@kcc.ks.gov

¹⁷ *Id.*

¹⁸ *Id.*

CERTIFICATE OF SERVICE

23-CONS-3176-CSHO

I, the undersigned, certify that a true and correct copy of the attached Response to Operator's Petition for Reconsideration has been served to the following by means of electronic service on December 4, 2023.

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

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

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

DIANA E. STANLEY
DEPEW GILLEN RATHBUN & MCINTEER. LC
8301 EAST 21ST ST. NORTH, SUITE 450
WICHITA, KS 67206-2936
dstanley@depewgillen.com

CHARLES C STEINCAMP
DEPEW GILLEN RATHBUN & MCINTEER. LC
8301 EAST 21ST ST. NORTH, SUITE 450
WICHITA, KS 67206-2936
chris@depewgillen.com

RICHARD WILLIAMS
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 4
2301 E. 13TH STREET
HAYS, KS 67601-2654
r.williams@kcc.ks.gov

/s/ Paula J. Murray

Paula J. Murray
