

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

In the matter of the petition of Daylight )	Docket Nos.: 25-CONS-3040-CMSC
Petroleum, LLC (Operator) to open a docket )	
pursuant to K.S.A. 55-605(a) regarding a fluid )	CONSERVATION DIVISION
leak in Section 16, Township 30 South, Range )	
<u>16 East, Wilson County, Kansas.</u> )	License No.: 35639

**POST-HEARING BRIEF OF COMMISSION STAFF**

Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) submits its *Post-Hearing Brief of Commission Staff* (Brief) pursuant to the Presiding Officer Order Setting Post-Hearing Briefing Schedule issued on March 10, 2025. In support of its Brief, Staff states as follows:

**I. BACKGROUND**

1. On July 29, 2024, Operator filed a Petition Opening Docket Pursuant to K.S.A. 55-605(a) (Petition) in this matter to determine whether removing portions of a building to plug an abandoned well constitutes waste as provided under K.S.A. 55-601 and K.S.A. 55-602.

2. The Commission held an evidentiary hearing regarding the above-captioned matter on February 20, 2025. At the end of the hearing, the Commission directed the parties to provide the presiding officer with a proposed briefing schedule before close of business on February 21, 2025.<sup>1</sup> The parties agreed to file a post-hearing brief 30 days after the transcript for the hearing was received, and a responsive brief 14 days later.

**II. ARGUMENT**

3. This Brief will provide legal arguments and information that will be helpful to the Commission in deciding the outcome of this docket. The topics addressed will include: (a) that Operator's Petition fails to raise a sufficient legal basis that economic waste applies to the matter

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<sup>1</sup> Evidentiary Hearing Transcript, p. 324:22-325:4 (Mar. 6, 2025).

before the Commission, (b) the docket initiated by Operator was brought in a manner that misrepresented Staff's position; and (c) that Operator is responsible for locating and plugging the abandoned well beneath the building pursuant to K.S.A. 55-179.

**A. Operator's Petition Fails to Raise a Sufficient Legal Basis for Claiming Economic Waste**

4. In its Petition and at hearing, Operator attempted to argue that it would be economic waste to locate and plug an abandoned well located beneath the building on the Johnson lease. Operator's Petition cites K.S.A. 55-601 and 55-602, which are two statutes that discuss waste. However, the waste described in these statutes does not apply to locating and plugging abandoned wells. To this end, it is important to zoom out to understand the purpose of these statutes. Both are located under Chapter 55 of the Kansas Statutes Annotated which is titled Oil and Gas. Further, both statutes are located under Article 6 which is titled "Crude Oil or Petroleum; Production and Sale." Looking at the statutes themselves, K.S.A. 55-601 provides that the production of crude oil or petroleum in the state of Kansas in such manner and under such conditions as to constitute waste is hereby prohibited and shall be unlawful. K.S.A. 55-602 provides that waste, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, waste of reservoir energy, and the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. Additionally, K.S.A. 55-602 provides that the State Corporation Commission shall have authority to make rules and regulations for the prevention of such waste and for the protection of all fresh-water strata, and oil- and gas-bearing strata encountered in any well drilled for, or producing, oil.

5. There is additional context important for the Commission to consider. K.S.A. 55-701 and 55-702 also refer to and define "waste." Both statutes are located under Chapter 55

of the Kansas Statutes Annotated Article 7 which is titled, “Production and Conservation of Natural Gas.” Looking at these statutes, K.S.A. 55-701 has similar language to K.S.A. 55-601. K.S.A. 55-701 provides that the production of natural gas in the State of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited. K.S.A. 55-702 is likewise similar to K.S.A. 55-602, but this statute also defines “economic waste.” K.S.A. 55-702 provides that waste, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. The statute provides that economic waste shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term waste shall not include the use or flaring of natural gas if permitted pursuant to an order issued or rule and regulation adopted under the provisions of subsection (b) of K.S.A. 55-102, and amendments thereto.

6. At the hearing, two non-attorneys, Mr. Art Benjamin and Ms. Kelsee Wheeler, provided a legal opinion on behalf of Operator by testifying that it would constitute economic waste if Operator was required to destroy a building in order to locate and plug the abandoned well.<sup>2</sup> However, they did not provide any support to their opinion which would indicate K.S.A. 55-601 or 55-602 apply to this matter before the Commission. Both Commission Staff and Operator’s witnesses agreed that the anomaly beneath the building is likely a wellbore.<sup>3</sup> The wellbore beneath the building is an abandoned well because is not currently claimed on an active operator’s license and is unplugged, improperly plugged, or no longer effectively plugged.<sup>4</sup> Since the wellbore beneath the building is abandoned, it is not currently used for producing oil

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<sup>2</sup> Staff objected to such testimony being provided in the objections provided to the Commission prior to the hearing. *See* Transcript at p. 10:24-11:23.

<sup>3</sup> Transcript p. 113:16-115:2 and 116:14-117:3. *See also* Transcript at p. 211:17-19, 244:2-7, and 262:9-24.

<sup>4</sup> *See* K.S.A. 55-179(e).

and/or natural gas. Therefore, the economic waste referenced within K.S.A. 55-601 and 55-602 does not apply to this matter.

7. Even if K.S.A. 55-601 and 55-602 were applicable to abandoned wellbores, locating and plugging the abandoned wellbore is not considered economic waste based on the definition of economic waste in K.S.A. 55-702. Further, K.S.A. 55-601 and 55-602 also provide that the State Corporation Commission shall have authority to make rules and regulations for the protection of all fresh-water strata, and oil and gas bearing strata encountered in any well drilled for, or producing oil.<sup>5</sup> Leaving an unplugged, abandoned well which has already broken out beneath a building does nothing to protect all fresh-water strata, and oil and gas bearing strata encountered by the well. Either way, Operator's Petition and testimony have failed to provide a sufficient legal basis to support the argument that locating and plugging an abandoned well beneath a building is economic waste.

#### **B. Operator's Petition Misrepresented Staff's Position**

8. Even if Operator was correct in its legal interpretation of waste, it has not provided sufficient facts to support granting its petition. There are multiple places in the testimony provided by Mr. Art Benjamin and Ms. Kelsee Wheeler in which they accuse Staff of forcing Operator to tear down the building.<sup>6</sup> In response, Staff testified that it had never communicated to Operator that the building would need to be torn down.<sup>7</sup> Staff felt that it would be possible to plug the well without causing any damage to the building depending on where the

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<sup>5</sup> See K.S.A. 55-602.

<sup>6</sup> See Pre-Filed Testimony of Art Benjamin on Behalf of Daylight Petroleum, p. 3:2-3, 3:20-4:1, and 10:19-20 (Dec. 13, 2024). See also Pre-Filed Testimony of Kelsee Wheeler on Behalf of Daylight Petroleum, p. 3:6-8, 3:16-17, 4:6-9, and 4:14-20 (Dec. 13, 2024).

<sup>7</sup> See Prefiled Rebuttal Testimony of Troy Russell on Behalf of Commission Staff, p. 2:8-16 and 8:21-22 (Jan. 31, 2025). See also Prefiled Rebuttal Testimony of Julie Shaffer on Behalf of Commission Staff, p. 2:8-15 (Jan. 31, 2025).

well is located.<sup>8</sup> During cross examination, neither Mr. Benjamin nor Ms. Wheeler could provide any basis or documentation to indicate that Staff had told them that the building would need to be torn down. In fact, both testified at the hearing that Staff had never actually told them that the building needed to be torn down.<sup>9</sup> Recanting this allegation means that Operator misrepresented Staff's position when bringing this matter before the Commission; especially when considering that Staff has never made such an allegation and believes that it is possible to locate and plug the well without causing any damage, or at most minimal damage, to the building.

9. Based on the misrepresentation of Staff's position in this matter, Operator employed a witness to provide expert testimony on the costs associated with tearing down the building. Mr. Wintjen provided testimony alleging that it would cost more than one million dollars to tear down the building to plug the abandoned well and then rebuild it in its current construction. While Mr. Wintjen explained his estimate was based on his experience in this type of construction in this area of the state, he failed to provide any sort of documentary evidence that could be referenced or investigated.<sup>10</sup> Additionally, Mr. Wintjen did not talk to the person who built the building, the building owner, and did not inspect the building.<sup>11</sup> The only information about the building Mr. Wintjen relied upon was select information provided to him by Operator's counsel.<sup>12</sup> However, Mr. Wintjen did testify that if the well could be plugged without causing any damage, then there would not be any costs to repair the building.<sup>13</sup> Based on the information available, it is possible that this abandoned well can be located and plugged at a cost much less than Operator alleges.

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<sup>8</sup> Troy Russell Rebuttal Testimony at p. 2:19-3:14. *See also* Julie Shaffer Rebuttal Testimony at p. 2:15-19.

<sup>9</sup> Transcript at p. 202:19-204-6 and p. 278:12-279:24.

<sup>10</sup> *Id.* at p. 174:22-176:25.

<sup>11</sup> *Id.* at p. 172:5-173:22.

<sup>12</sup> *Id.* at p. 174:1-13.

<sup>13</sup> *Id.* at p. 181:11-15.

**C. Operator is Responsible for Locating and Plugging the Abandoned Well Beneath the Building Pursuant to K.S.A. 55-179**

10. Operator does not dispute that its injection into its Olnhausen Farms #6 well, API #15-205-28509, is the cause of the breakout beneath the building on the Johnson lease. The parties responsible for the care and control of abandoned wells are defined within K.S.A. 55-179. Specifically, K.S.A. 55-179(b)(1) provides that any person causing pollution or loss of usable water through the well, including any operator of an injection well, disposal well, or pressure maintenance program shall be legally responsible for the proper care and control of an abandoned well.<sup>14</sup> In the captioned matter, a direct correlation has been established between Operator's injection into its Olnhausen Farms #6 well and fluids flowing from the abandoned well beneath the building. Further, Operator's witnesses do not dispute that a connection between their injection operations and the well beneath the building exists.<sup>15</sup> Additionally, evidence presented by Commission Staff clearly indicates pollution is occurring to the usable water beneath the building.<sup>16</sup> The Commission has a statutory duty to prevent pollution to fresh and usable water. The evidence before the Commission shows that Operator is responsible for the care and control of the abandoned well beneath the building. While the circumstances surrounding this matter are not ideal, it is still Staff's position that the Commission should require Operator to locate and plug the abandoned well in order to prevent further pollution and protect fresh and usable water of the State of Kansas.

**III. CONCLUSION**

11. Operator's Petition attempts to raise the legal argument that being required to locate and plug an abandoned well beneath a building should be considered economic waste.

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<sup>14</sup> K.S.A. 55-179(b)(1).

<sup>15</sup> Transcript at p. 263:3-25.

<sup>16</sup> Pre-Filed Direct Testimony of Julie Shaffer on Behalf of Commission Staff, p. 6:20-7:9 (Nov. 1, 2024). *See also* Julie Shaffer Rebuttal at p. 4:10-5:2 and 5:17-11:9.

While the situation at hand may not be ideal for Operator, Operator's argument is not supported by any legal reasoning or by the evidence that has been presented to the Commission. Operator is clearly responsible for the care and control of the well its operations caused to break out. Operator is also responsible for locating and plugging the well to protect fresh and usable water. At the end of the hearing, Operator indicated that it needed help to find a solution that would work and that it was open to considering alternative methods of exploring beneath the building at issue.<sup>17</sup> During the hearing, several alternative options were proposed to Operator that could be taken to locate and plug the well. However, Operator has failed to reach out to Staff from the time of the hearing to the time of filing this brief to explore any alternative options. If Operator's position was genuine, then Operator should have reached out to Staff by now regarding its options to locate and plug the abandoned well.

WHEREFORE, Staff respectfully submits this Brief in support of its position that the Commission should require Operator locate and plug the abandoned well. Additionally, Staff would request the Commission direct Operator to contact the District #3 Office and commence operations for locating and plugging the abandoned well beneath the building within 15 days from the date of the Commission's Final Order, and for such other and further relief as the Commission deems just and equitable

Respectfully Submitted,

/s/ Kelcey Marsh  
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<sup>17</sup> Transcript at p. 323:12-324:5.

## **CERTIFICATE OF SERVICE**

25-CONS-3040-CMSC

I, the undersigned, certify that a true and correct copy of the attached Brief has been served to the following by means of electronic service on April 7, 2025.

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