

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

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Dwight D. Keen

In the matter of the application of Norstar ) Docket No: 17-CONS-3403-CVAC  
Petroleum Inc., for authorization to impose a )  
vacuum on its Hume Bros Lease located in the ) CONSERVATION DIVISION  
NW/4 of Section 34, Township 29 South, )  
Range 41 West, Stanton County, Kansas. ) License No: 31652

**ORDER ON NORSTAR'S PETITION FOR RECONSIDERATION**

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:

**Background:**

1. On December 12, 2016, Norstar Petroleum, Inc. (Norstar) filed an Application seeking approval to impose a vacuum on three of its wells in Stanton County, Kansas.<sup>1</sup> Norstar stated that "all three wells on the Subject Lease produce out of the Lower Morrow Keyes Sand formation."<sup>2</sup> Norstar further stated that the Subject Lease is not involved in any secondary recovery operations,<sup>3</sup> but the three wells at issue "have declined to the point where they will become uneconomic in the near future."<sup>4</sup> Moreover, Norstar claimed that compression is necessary on the wells at issue to protect correlative rights, prevent waste, extend the life of the wells at issue, and stay competitive with offset operators.<sup>5</sup>

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<sup>1</sup> Application, p. 1 (Dec. 12, 2016).

<sup>2</sup> Application, p. 1.

<sup>3</sup> Application, p. 1.

<sup>4</sup> Application, p. 2.

<sup>5</sup> Application, p. 2.

2. On December 20, 2016, White Exploration, Inc. (White) filed a protest, noting that it “owns and operates producing wells on oil and gas leases located on lands that are adjacent to the Hume Bros. Lease.”<sup>6</sup>

3. On April 18, 2017, Norstar witness, Brady Pfeiffer, pre-filed his direct testimony. (Pfeiffer Direct).

4. On May 12, 2017, Norstar published notice of its Second Amended Notice of Application, Procedural Schedule and Hearing in the Wichita Eagle newspaper.<sup>7</sup>

5. On September 22, 2017, White witnesses, Kenneth White and Lanny O. Butner, pre-filed their direct testimony. (White Direct and Butner Direct, respectively).

6. On September 28, 2017, Commission Conservation Staff (Staff) witness, Jim Hemmen, pre-filed his direct testimony. (Hemmen Direct).

7. On September 29, 2017, Kenneth White filed Exhibit A to his pre-filed direct testimony.

8. On November 16, 2017, Brady Pfeiffer filed rebuttal testimony.

9. On December 1, 2017, Kenneth White filed rebuttal testimony.

10. On December 8, 2017, Jim Hemmen filed surrebuttal testimony.

11. Pursuant to the Kansas Administrative Procedure Act (KAPA), an evidentiary hearing was held on December 14, 2017, at the Commission’s Wichita office.<sup>8</sup>

12. On January 4, 2018, the Commission directed the parties to file briefs on the interpretation of K.A.R. 82-3-131(a) and its application to the facts of this case.<sup>9</sup>

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<sup>6</sup> Protest of White Exploration, Inc., ¶ 2 (Dec. 20, 2016) (Protest).

<sup>7</sup> Affidavit of Publication, the Wichita Eagle, Second Amended Notice of Application (May 19, 2017).

<sup>8</sup> See Hearing Transcript, p. 1, lines 12-19 (Dec. 22, 2017) (Tr.).

<sup>9</sup> *Order Directing Parties to File Briefs on the Interpretation of K.A.R. 82-3-131(a) and its Application to the Facts of this Case*, Ordering Clause A (Jan. 4, 2018).

13. On January 18, 2018, Norstar filed its post-hearing brief, in which Norstar relied in part on what it cited as “Exhibit 3, KGS [Kansas Geological Survey] production reports on White’s wells and Norstar’s wells.”<sup>10</sup> On January 19, 2018, Norstar filed Exhibits 1-5 to its post-hearing brief.

14. On January 25, 2018, White filed a Motion to Admit Exhibit, asking the Commission to admit Pfeiffer Cross Exhibit 1 into evidence.<sup>11</sup> White noted that its counsel “inadvertently failed to move for the admission of Pfeiffer Cross Exhibit No. 1” at the hearing.<sup>12</sup>

15. On January 25, 2018, White filed a Motion to Strike, asking the Commission to strike “those portions of the post-hearing brief filed by Norstar Petroleum, Inc.’s [sic] . . . that refers to and relies upon evidence that was not put into the record either through prefiled testimony or at the hearing in this matter,” including Norstar’s post-hearing brief, Exhibit 3.<sup>13</sup>

16. On January 25, 2018, both White and Staff filed post-hearing briefs.

17. On February 1, 2018, Norstar filed a post-hearing reply brief and a Motion to Admit Exhibit 3 by Taking Administrative Notice of White’s Production Statistics and Request that White’s Motion to Strike Be Denied.

18. On February 5, 2018, White filed its Response to Norstar Petroleum, Inc.’s Motion to Admit Exhibit 3 (White Response).

19. On February 27, 2018, the Commission issued its *Order on White Exploration, Inc.’s Motion to Strike and Motion to Admit Exhibit* (Order on Motion to Strike and to Admit Exhibit). The Commission determined it would not take administrative notice of Norstar’s Exhibit

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<sup>10</sup> Post-Hearing Brief of Norstar Petroleum, Inc., pp. 2, 4, 6-7, citing Exhibit 3. (Norstar’s Post-Hearing Brief).

<sup>11</sup> Motion of White Exploration, Inc. to Admit Exhibit, p. 1 (Jan. 25, 2018).

<sup>12</sup> Motion of White Exploration, Inc. to Admit Exhibit, p. 1.

<sup>13</sup> White Exploration, Inc.’s Motion to Strike, p. 1 (Jan. 25, 2018) (Motion to Strike).

3, nor would it give any weight to the information contained in Exhibit 3 or to any explanation or analysis of it.<sup>14</sup> The Commission also admitted Pfeiffer Cross Exhibit No. 1 into evidence.<sup>15</sup>

20. On April 12, 2018, the Commission issued its *Order on Norstar's Application*. The Commission found “that Norstar has not sufficiently delineated the field at issue, nor demonstrated that such field is nearly depleted, as required under K.A.R. 82-3-131(a).”<sup>16</sup> The Commission also found “that Norstar has not demonstrated that denial of its Application will result in waste or violation of its correlative rights. Therefore, the Commission finds and concludes that Norstar has not carried its evidentiary burden, and thus, its Application should be denied.”<sup>17</sup>

21. On April 27, 2018, Norstar filed a Petition for Reconsideration (PFR), asking the Commission to grant its Application “based on the evidence that already exists in this record or, in the alternative, . . . [to] re-open the record to permit Norstar to introduce evidence to show the level of depletion in other areas of the field underlying White’s acreage and the acreage of other operators.”<sup>18</sup>

22. On May 3, 2018, Staff filed its Response in Support of Norstar’s Petition for Reconsideration, essentially agreeing with Norstar’s overall arguments.<sup>19</sup>

23. On May 14, 2018, White responded to Norstar’s PFR (White’s Response to PFR), arguing that “Norstar’s only real argument is that the Commission erred by making Norstar prove that it must satisfy all of the elements of K.A.R. § 82-3-131 to be entitled to the relief sought in its Application,”<sup>20</sup> and asking that Norstar’s PFR be denied.<sup>21</sup>

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<sup>14</sup> *Order on Motion to Strike and to Admit Exhibit*, ¶ 16 and Ordering Clause B.

<sup>15</sup> *Order on Motion to Strike and to Admit Exhibit*, ¶ 17 and Ordering Clause C.

<sup>16</sup> *Order on Norstar's Application*, ¶ 57 (Apr. 12, 2018).

<sup>17</sup> *Order on Norstar's Application*, ¶ 57.

<sup>18</sup> PFR, p. 10 (Apr. 27, 2018).

<sup>19</sup> See Staff’s Response in Support of Norstar’s Petition for Reconsideration, pp. 2, 4, 6 (May 3, 2018).

<sup>20</sup> White Exploration, Inc.’s Response to the Petition for Reconsideration of Norstar Petroleum, Inc., p. 3 (May 14, 2018) (White’s Response to PFR).

<sup>21</sup> White’s Response to PFR, p. 3.

### **Legal Standards:**

24. A petition for reconsideration must state the specific grounds upon which relief is requested.<sup>22</sup> The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission “where mistakes of law and fact were made in the order.”<sup>23</sup> An order is lawful if it is within the statutory authority of the Commission and if the statutory rules are followed.<sup>24</sup> An order is reasonable if it is based on substantial competent evidence.<sup>25</sup> All actions of an administrative agency have a rebuttable presumption of validity.<sup>26</sup> As the party challenging the legality of the Commission’s Order, Norstar bears the burden of proving the Commission’s action was invalid.<sup>27</sup>

### **Discussion:**

25. Norstar’s PFR did not charge the Commission with any mistakes of fact in its *Order on Norstar’s Application*, and therefore, relied entirely on its contention that the Commission either misinterpreted or failed to interpret the law. Moreover, nowhere in its PFR did Norstar attempt to demonstrate that the Commission erred in its interpretation of the plain meaning of K.A.R. 82-3-131(a), as found in the language of the regulation itself.

26. Norstar argued that the Commission’s determination pertaining to the Hugoton and Panoma Gas Fields in Docket Nos. 07-CONS-144-CBPO (07-144) and 07-CONS-145-CBPO (07-145) allowed the use of vacuum operations in those fields without evidence of near depletion.<sup>28</sup> However, the Commission agrees with White that “when the Commission allowed vacuum

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<sup>22</sup> K.S.A. 77-529(a).

<sup>23</sup> *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 525 (1982)).

<sup>24</sup> *Kan. Gas & Elec. Co v. State Corp. Comm’n*, 239 Kan. 483, 496 (1986).

<sup>25</sup> *Id.*

<sup>26</sup> *Trees Oil Co. v. State Corp. Comm’n*, 279 Kan. 209, 226, 105 P.3d 1269 (2005).

<sup>27</sup> K.S.A. 77-621(a)(1). See *Trees Oil Co.*, 279 Kan. at 226.

<sup>28</sup> PFR, pp. 2-3.

compression in those proceedings, it was done as part of a modification to the field rules for those fields and was not done pursuant to an Application filed under K.A.R. § 82-3-131(a).”<sup>29</sup> Norstar’s argument above does nothing to alter the plain meaning of K.A.R. 82-3-131(a), which Norstar has not challenged. Just as with a statute, a regulation must be interpreted according to its plain meaning, as expressed through the language of the regulation.<sup>30</sup> Thus, the Commission cannot simply change K.A.R. 82-3-131(a)’s clause, “the installation and use of vacuum pumps in fields that are nearly depleted . . . may be permitted by the commission” to “in *portions of the* fields that are nearly depleted”,<sup>31</sup> “in *wells in the* fields that are nearly depleted,”<sup>32</sup> or in *leased acreage* that is nearly depleted.”<sup>33</sup> Absent evidence from Norstar that the Commission erred in its plain meaning interpretation of K.A.R. 82-3-131(a), the Commission affirms its interpretation in paragraphs 26-32 of its *Order on Norstar’s Application*. Finally, the 07-144 and 07-145 orders do not establish a “precedent” which the Commission is bound to follow,<sup>34</sup> particularly where those orders provide no Commission interpretation of K.A.R. 82-3-131(a).

27. Norstar asked the Commission to define the phrase “nearly depleted” because it alleged that the failure to do so results in a lack of clarity and “somewhat unfair” or inconsistent results on vacuum applications.<sup>35</sup> The Commission found that a determination of near depletion must “necessarily be fact-specific.”<sup>36</sup> Moreover, the Commission found that Norstar did not provide sufficient evidence that the field in which its Hume Bros wells are located is nearly

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<sup>29</sup> White’s Response to PFR, p. 2.

<sup>30</sup> See *Bates v. State*, 31 Kan. App. 2d 513, 515, 67 P.3d 168, 171 (2003). See also *Williamson v. City of Hays*, 275 Kan. 300, 305, 64 P.3d 364, 368 (2003).

<sup>31</sup> See PFR, p. 4.

<sup>32</sup> See PFR, p. 5.

<sup>33</sup> See *Order on Norstar’s Application*, ¶ 51.

<sup>34</sup> See *John M. Denman Oil Co. v. State Corp. Comm’n of State*, 51 Kan. App. 2d 98, 105, 342 P.3d 958, 962 (2015).

<sup>35</sup> PFR, p. 6.

<sup>36</sup> *Order on Norstar’s Application*, ¶¶ 25, 37.

depleted,<sup>37</sup> as K.A.R. 82-3-131(a) requires. Therefore, the Commission finds that further articulation of the meaning of “nearly depleted” is unnecessary.<sup>38</sup>

28. Norstar disputed the Commission’s findings on waste and correlative rights.<sup>39</sup> The fact remains that Norstar did not meet the threshold requirement of satisfying the elements of K.A.R. 82-3-131(a).<sup>40</sup> The Commission has no authority to rewrite the plain meaning of K.A.R. 82-3-131(a) such that Norstar may use vacuum compression on its Hume Bros lease. Hence, the Commission has not contravened its duty to prevent waste.

29. Likewise, regarding correlative rights, because Norstar did not meet its burden of demonstrating that its request to impose vacuum operations on its Hume Bros lease meets the conditions of K.A.R. 82-3-131(a), it has no basis for the contention that it “has the correlative right to use vacuum operations” on its Hume Bros lease.<sup>41</sup> Thus, the Commission reiterates its finding that Norstar has not demonstrated it requires vacuum operations on its Hume Bros lease wells to protect its correlative rights.<sup>42</sup>

30. Based on the above, the Commission finds that Norstar has failed to show where the Commission’s April 12, 2018 *Order on Norstar’s Application* erred regarding the interpretation and application of K.A.R. 82-3-131(a). Norstar provided insufficient evidentiary documentation that the field was nearly depleted in accordance with K.A.R. 82-3-131(a). Thus, the Commission affirms the findings in its April 12, 2018 Order that Norstar failed to sufficiently delineate the field at issue and to demonstrate that such field is nearly depleted, as required pursuant to K.A.R. 82-3-131(a). Therefore, the Commission finds Norstar’s PFR should be denied

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<sup>37</sup> *Order on Norstar’s Application*, ¶ 51.

<sup>38</sup> See White’s Response to PFR, p. 2.

<sup>39</sup> PFR, pp. 6-10.

<sup>40</sup> See *Order on Norstar’s Application*, ¶ 57.

<sup>41</sup> See PFR, p. 10.

<sup>42</sup> See *Order on Norstar’s Application*, ¶ 56.

in its entirety, as it fails to establish a sufficient basis for the Commission to alter its April 12, 2018 Order.

31. In addition to denying Norstar's PFR, the Commission will not re-open the record in this case. The Commission reiterates its finding that nothing in its April 12, 2018 Order keeps Norstar from any future attempt by application to demonstrate compliance with K.A.R. 82-3-131(a).<sup>43</sup>

**THEREFORE, THE COMMISSION ORDERS:**

A. Norstar's Petition for Reconsideration is denied.

B. This Order constitutes final agency action as defined by K.S.A. 77-607(b)(1). Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review on behalf of the agency.<sup>44</sup>

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/24/2018



Lynn M. Retz  
Secretary to the Commission

MJD

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<sup>43</sup> *Order on Norstar's Application*, ¶ 55.

<sup>44</sup> K.S.A. 77-613(e).



## CERTIFICATE OF SERVICE

17-CONS-3403-CVAC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 05/24/2018.

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