

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

In the matter of the failure of Ace Energy,) Docket Nos.: **23-CONS-3195-CPEN**
LLC (Operator) to comply with K.A.R. 82-3-)
407 at the Grundy B #5 SWD well in) CONSERVATION DIVISION
Greenwood County, Kansas.)
_____) License No.: 34998

In the matter of the failure of Ace Energy,) Docket No.: 23-CONS-3268-CPEN
LLC (Operator) to comply with K.A.R. 82-3-)
407 at the Grundy B #5 SWD well in) CONSERVATION DIVISION
Greenwood County, Kansas.)
_____) License No.: 34998

RESPONSE TO MOTION TO CONSOLIDATE

Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files this response to Operator's *Motion to Consolidate* (Motion) filed August 7, 2023. In support of its response, Staff states as follows:

I. BACKGROUND

1. On February 14, 2023, the Commission issued a *Penalty Order* against Operator in Docket 23-CONS-3195-CPEN (Docket 23-3195) for one violation of K.A.R. 82-3-407.¹ The Commission found that Operator had not performed a current and successful mechanical integrity test (MIT) on the Grundy B #5 SWD well (Subject Well).² Operator timely requested a hearing in the docket.³

2. On April 13, 2023, the Commission issued a *Penalty Order* against Operator in Docket 23-CONS-3268-CPEN (Docket 23-3268) for one violation of K.A.R. 82-3-407.⁴ The Commission found that Operator had not shut-in the Subject Well after it failed an MIT, and that

¹ Docket 23-CONS-3195, *Penalty Order*, ¶ 11 (Feb. 14, 2023).

² *Id.*

³ Docket 23-CONS-3195, *Request for Hearing, Docket No. 23-CONS-3195-CPEN Ace Energy, LLC (#34998)* (Mar. 15, 2023).

⁴ Docket 23-CONS-3268-CPEN, *Penalty Order*, ¶ 13 (Apr. 13, 2023).

Operator had continued to operate the Subject Well as an injection well without the well having passed a current and successful MIT.⁵ Operator timely requested a hearing in the docket.⁶

3. On May 25, 2023, the Commission issued an order consolidating Docket 23-3195 with Docket 23-3268.⁷

4. On August 7, 2023, Operator filed its Motion.⁸ Operator argues that the above-captioned consolidated dockets should be further consolidated with a different set of consolidated dockets currently in front of the Commission, namely Docket 23-CONS-3017-CPEN (Docket 23-3017).⁹ Operator argues that as the Subject Well at issue in this docket is also at issue in Docket 23-3017, it is therefore proper to consolidate the dockets.¹⁰

II. ARGUMENT

5. Operator's Motion should be denied. Despite Operator's contention, the facts and alleged violations at issue in this docket are completely different from those at issue in Docket 23-3017. Furthermore, Docket 23-3017 is at the point in the procedural schedule when an evidentiary hearing date should be set. If the present docket is consolidated with Docket 23-3017, then the issues ripe for a hearing would necessarily be delayed several months while the parties conduct discovery and file additional pre-filed testimony. Administrative efficiency requires a hearing be set in Docket 23-3017 as soon as possible.

6. The facts and violations at issue in this docket are different from the facts and violations at issue in Docket 23-3017. The present docket concerns the failure of Operator to conduct a successful MIT at the Subject Well. The Subject Well failed an MIT on September 19,

⁵ *Id.*

⁶ Docket 23-CONS-3268-CPEN, *Request for Hearing* (May 12, 2023).

⁷ Docket 23-CONS-3195-CPEN, *Order Consolidating Dockets* (May 25, 2023).

⁸ Docket 23-CONS-3195-CPEN, *Motion to Consolidate* (Aug. 7, 2023).

⁹ *Id.* at ¶ 11.

¹⁰ *Id.*

2022,¹¹ and under K.A.R. 82-3-407(c), Operator had 90 days to repair and retest the well or plug the well. Operator did not perform a successful MIT or plug the well before the deadline, therefore the Commission issued the *Penalty Order* in Docket 23-3195. The Commission then issued a second *Penalty Order* in Docket 23-3268 after Staff discovered Operator injecting fluid into the Subject Well on March 22, 2023, even though the well had not yet passed an MIT.¹²

7. These violations are entirely unrelated to the violations involving the Subject Well that are at issue in Docket 23-3017. In that docket, the Commission issued a *Penalty Order* against Operator for one violation of K.A.R. 82-3-400 because Operator conducted unauthorized injection at the Subject Well in 2021, or one violation of K.A.R. 82-3-409 because Operator submitted an inaccurate Annual Fluid Injection Report for the Subject Well in 2022.¹³ Other than the fact that all the violations involve the Subject Well, there is no connection between the violations alleged in this docket and the violations alleged in Docket 23-3017. Just because Operator committed several violations at the same well does not mean that the Commission needs to consider all those violations in the same hearing.

8. In its Motion, Operator argues that the violations at issue in this docket have been put into dispute in Docket 23-3017 by the inclusion of a field report that mentions the Subject Well.¹⁴ District #3 Staff performed field inspections for all of Operator's wells, and Ryan Duling included those field reports in his pre-filed direct testimony in Docket 23-3017.¹⁵ The Subject Well was not singled out in the field reports, it was simply one of several hundred wells discussed in the reports. More importantly, the field report regarding the Subject Well simply

¹¹ See Docket 23-CONS-3195-CPEN, *Penalty Order*, Exhibit A (Feb. 14, 2023).

¹² Docket 23-CONS-3268-CPEN, *Penalty Order*, ¶¶ 9-11 (Apr. 13, 2023).

¹³ Docket 23-CONS-3135-CPEN, *Penalty Order*, ¶ 9 (Dec. 1, 2022).

¹⁴ Motion at ¶ 5.

¹⁵ Docket 23-CONS-3017-CPEN, *Pre-Filed Direct Testimony of Ryan Duling on Behalf of Commission Staff April 17, 2023*, p. 9 (Apr. 17, 2023).

notes that the well “failed a Mechanical Integrity Test (MIT) on 9/18/2022.”¹⁶ The fact that the Subject Well failed an MIT in September 2022 is not in dispute. In the request for hearing Operator filed in Docket 23-3195, Operator stated, “As a background, on September 19, 2022, operator conducted a staff-witnessed mechanical integrity test on the Subject Well. Unfortunately, the Subject Well did not pass mechanical integrity at that time, and Operator was given until December 18, 2022 to retest the well and establish mechanical integrity therein.”¹⁷ The Subject Well failing an MIT in September 2022 has thus been admitted by Operator in this docket. A field report filed in Docket 23-3017 stating that the Subject Well exists and failed an MIT in September 2022 in no way prejudices Operator in the present docket.

9. Consolidating this docket with Docket 23-3017 would unnecessarily delay an evidentiary hearing in Docket 23-3017. Operator and Staff have already filed pre-filed testimony in Docket 23-3017, and the next step in the procedural schedule is an evidentiary hearing.¹⁸ If this docket were consolidated with Docket 23-3017, the parties would need to be given time to conduct discovery and file additional testimony, delaying a hearing by several months. Moreover, the Commission consolidated the two above-captioned dockets on May 25, 2023.¹⁹ The fact that Operator waited more than two months to file the present Motion suggests that Operator filed the Motion simply as a means of delaying an evidentiary hearing in Docket 23-3017. The Commission opened Docket 23-3017 more than a year ago;²⁰ administrative efficiency compels the setting of an evidentiary hearing in Docket 23-3017 as soon as possible.

¹⁶ Docket 23-CONS-3017-CPEN, Exhibit RD-1, p. 257 (Apr. 17, 2023). The date in the field report is wrong by one day, as the Subject Well failed the MIT on September 19, 2022.

¹⁷ Docket 23-CONS-3195, *Request for Hearing, Docket No. 23-CONS-3195-CPEN Ace Energy, LLC (#34998)* (Mar. 15, 2023).

¹⁸ Docket 23-CONS-3017-CPEN, *Presiding Officer Order on Motion to Compel and to Amend Procedural Schedule*, ¶ 9 (Jun. 6, 2023).

¹⁹ Docket 23-CONS-3195-CPEN, *Order Consolidating Dockets* (May 25, 2023).

²⁰ Docket 23-CONS-3017-CPEN, *Penalty Order* (Jul. 28, 2022).

To allow a timely hearing to take place, this docket should not be consolidated with Docket 23-3017.

III. CONCLUSION

10. The Commission should deny Operator's Motion to consolidate this docket with Docket 23-3017. The Subject Well may be the same in the two dockets, but the violations and facts at issue are completely different. Simply because the violations occurred at the same well is no reason to consolidate the dockets. Additionally, denying Operator's Motion will not prejudice Operator in the present docket. Just as importantly, consolidating the dockets would inappropriately delay an evidentiary hearing in Docket 23-3017.

WHEREFORE, Staff respectfully requests the Commission deny Operator's *Motion to Consolidate*, and for such other and further relief as the Commission deems just and equitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

23-CONS-3195-CPEN, 23-CONS-3268-CPEN

I, the undersigned, certify that a true and correct copy of the attached Response to Motion to Consolidate has been served to the following by means of electronic service on August 18, 2023.

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