

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 Failure of Butler Petroleum) Docket No: 17-CONS-3633-CPEN
LLC ("Operator") to comply with K.A.R. 82-)
3-120.) CONSERVATION DIVISION
)
) License No: 34869

**ORDER ON MOTION TO REOPEN DOCKET, AMEND PENALTY ORDER AND
REINSTATE INJECTION AUTHORITY**

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 April 27, 2017, the Commission issued a *Penalty Order*, finding that Butler Petroleum LLC (Butler) committed one violation of K.A.R. 82-3-120 because an unplugged well, or unplugged wells, remained on Butler's expired license.¹ The *Penalty Order* required Butler to: (1) pay a \$500 penalty;² (2) shut-in all unplugged wells on its license and cease oil and gas operations until it came into compliance with the Order;³ and (3) within 60 days of the issuance of the Order, either renew its license or obtain a new license and transfer the well(s) to the new license, transfer the well(s) to another operator, or plug the well(s).⁴

2. On September 26, 2018, ST Petroleum, Inc. (ST) filed in this docket a Motion to Reopen Docket, Amend Penalty Order and Reinstate Injection Authorization (Motion). ST stated

¹ *Penalty Order*, ¶ 9 (Apr. 27, 2017).

² *Penalty Order*, Ordering Clause A.

³ *Penalty Order*, Ordering Clause B.

⁴ *Penalty Order*, Ordering Clause C.

it has an agreement with Butler to acquire the rights to, and assume full responsibility for the care and control of, all wells, including the Anderberg-Skaggs 1-W and 2-W injection wells (subject wells), located on the Anderberg-Skaggs leases covering certain lands in Johnson County, Kansas.⁵ According to ST, the subject wells, plus numerous other wells, were at issue in a 2017 *Penalty Order* (Docket No. 17-CONS-3442-CPEN) finding the wells had not undergone a successful mechanical integrity test (MIT).⁶ ST claimed that the injection wells passed an MIT on January 12, 2017,⁷ in support of which ST provided Casing Mechanical Integrity Test forms as Exhibit A to its Motion. ST further claimed that “the Injection Wells are now in compliance with the mechanical integrity testing requirements of K.A.R. 82-3-407.”⁸

3. ST further stated that “Butler apparently failed to satisfy the requirements of the Penalty Order in this docket, and on July 31, 2018 the Commission Staff issued its notice that permits for the Injection Wells and others had been revoked.”⁹ ST requested reinstatement of injection authority for the subject wells “so that it can take possession of those wells and resume their operation under the permits previously granted.”¹⁰ ST grounded its request on: (1) ST’s alleged standing and interest as the intended transferee of the subject wells, the producing wells, and the leases served by the injection wells; (2) ST’s desire and ability to handle compliance, care, custody and control issues with respect to the injection wells; (3) the injection wells’ mechanical soundness, fitness for use as originally permitted and necessity for beneficial operation of the leases; (4) avoidance of the waste that would occur if the injection wells are plugged; (5) the asserted non-objection by the affected surface and mineral rights owners to the transfer of

⁵ Motion, ¶ 2.

⁶ Motion, ¶ 3.

⁷ Motion, ¶ 3.

⁸ Motion, ¶ 3.

⁹ Motion, ¶ 4.

¹⁰ Motion, ¶ 5.

operating authority to ST; and (6) the transfer of the injection wells to a licensed operator, the alleviation of any state burden to plug the injection wells, and the ostensible consistency with Commission orders “which have not revoked injection well authority but instead denied operators in violation of Commission regulations the right to operate injection wells pursuant to such authority.”¹¹

4. On October 8, 2018, Staff filed a Response to ST Petroleum, Inc’s Motion to Reopen Docket[,], Amend Penalty Order and Reinstate Injection Authorization (Staff Response). Staff asserted that “docket 17-CONS-3633-CPEN remains a closed docket” and “[t]herefore, Staff reserves the right to file a response to [ST’s] motion should the Commission open the docket.”¹²

Findings and Conclusions:

5. At the outset, regardless of any substantive rationale proffered by ST for reinstating injection authority, the Commission finds the public interest would be harmed by reinstating such authority in a penalty docket. The public has an interest in finding documentation of past Commission actions, which would be significantly hindered by the public having to search for a Commission order on reinstatement of injection authority hidden in a docket with a “CPEN” designation. This by itself militates strongly against granting ST’s request.

6. Further, ST’s Motion founders on its claim that the subject injection wells “are now in compliance with the mechanical integrity testing requirements of K.A.R. 82-3-407.”¹³ The Commission rejects ST’s claim because the Casing Mechanical Integrity Test forms attached to the Motion as Exhibit A show no evidence that “[t]he date for [the MIT] test [was] mutually agreed upon by the operator’s representative *and a representative of the commission*,” as required by

¹¹ Motion, ¶ 5.

¹² Staff Response, ¶ 6 (Oct. 8, 2018).

¹³ Motion, ¶ 3.

K.A.R. 82-3-407(a)(1).¹⁴ Moreover, the bottom portions of the MIT forms, where Staff is supposed to attest to its approval of the MITs, are blank. The forms show no evidence that they were submitted to Staff nor that Staff took any action on them. Compliance with K.A.R. 82-3-407 requires an MIT test form that is approved by the appropriate Conservation District Office. Hence, contrary to ST's assertion, the subject wells are *not* in compliance with the mechanical integrity testing requirements of K.A.R. 82-3-407.

7. With specific regard to reopening a docket, K.A.R. 82-1-230(k) states that a party may apply to the Commission to reopen the record for good cause shown "[a]fter the record of testimony has been closed by the presiding officer." In this docket, there has been no record of testimony because no testimony has been given. Thus, the Commission finds there is no "record of testimony" to reopen. Moreover, the regulation states that "no record shall be reopened for *further hearing* except upon order of the Commission." There has been no hearing in this docket, and thus, there is no "record [to] be reopened for further hearing." The Commission has discretion whether to reopen a record, and based on the above, the Commission finds no proper basis for doing so. Therefore, the Commission denies ST's Motion to reopen the docket and amend the *Penalty Order*.

8. Given ST's claims regarding its newfound responsibility for the subject wells and desire to obtain injection authority for those wells, the Commission finds it would be premature to allow the wells to be plugged at this time.¹⁵ However, if ST does not initiate any action with the Commission regarding the subject wells within 60 days of service of this Order, the wells shall be subject to plugging by Staff according to priority and as funds allow, with the costs of plugging assessed to Butler Petroleum.

¹⁴ Italics added.

¹⁵ See Motion, ¶ 5(d).

9. ST conceded that the permits for the subject wells and others have been revoked,¹⁶ and without an approved MIT, the Commission finds the revoked permits are effectively nonexistent. That is, they cannot be revived or reinstated absent ST filing a new application and providing proper notice of such application. Indeed, the Commission finds no provision in the Kansas oil and gas statutes and regulations for reinstatement of injection authority in the manner requested by ST. Therefore, the Commission finds a new proceeding is required so that ST may properly notice, Staff may properly investigate, and the Commission may properly consider ST's request to assume injection operations on the subject wells.

10. Regarding new proceedings, K.A.R. 82-1-214 states that "[a] proceeding shall be commenced either by the filing of an application, a complaint, or a petition." Where, as here, the Operator is seeking injection authority, the Commission reiterates that commencement of the new proceeding requires the Operator to file an application and provide notice of the application in accordance with K.A.R. 82-3-400(a)(1).

11. Based on the above, the Commission finds that ST's Motion to Reopen Docket, Amend Penalty Order and Reinstate Injection Authorization should be denied. ST is welcome to file an application seeking authorization to conduct injection operations at the subject wells should it wish to do so.

THEREFORE, THE COMMISSION ORDERS:

A. ST Petroleum, Inc.'s Motion to Reopen Docket, Amend Penalty Order and Reinstate Injection Authorization is denied.

¹⁶ Motion, ¶ 4.

B. If ST Petroleum, Inc. does not initiate action on the subject injection wells within 60 days of service of this Order, the wells shall be subject to plugging by Staff according to priority and as funds allow, with the costs of plugging assessed to Butler Petroleum.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁷

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 10/25/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 10/26/2018

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¹⁷ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

17-CONS-3633-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
10/25/2018
first class mail and electronic service on _____.

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