

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

In the matter of resolving K.A.R. 82-3-111)	Docket No.: 20-CONS-3129-CPEN
issues associated with Prairie Gas Operating,)	20-CONS-3144-CPEN
LLC (Operator) in four consolidated dockets,)	20-CONS-3220-CPEN
regarding wells in Greeley and Hamilton)	21-CONS-3199-CPEN
Counties, Kansas.)	
)	CONSERVATION DIVISION
)	
)	License No.: 35442

**STAFF’S REPLY TO PRAIRIE GAS OPERATING, LLC’S RESPONSE TO
STAFF’S MOTION FOR SUMMARY JUDGMENT IN PART**

1. On July 16, 2021, Prairie Gas Operating, LLC (Operator) filed its response to Commission Staff’s Motion for Summary Judgment in Part. In its response, Operator argues that Staff’s motion should be denied because it raises issues previously reviewed and considered in Operator’s Petition to Lift Suspension, and is therefore barred under the doctrine of collateral estoppel.¹

2. Collateral estoppel (also called issue preclusion) has no application at this time in these dockets. As the Kansas Supreme Court has written, “[t]he requirements of collateral estoppel are (1) a prior judgment on the merits which determined the rights and liabilities of the parties on the issue based upon ultimate facts as disclosed by the pleadings and judgment, (2) the parties must be the same or in privity, and (3) the issue litigated must have been determined and necessary to support the judgment.”²

3. To support its argument that collateral estoppel applies, Operator alleges that Staff invoking its right of denial based on administrative conclusions is repetitive of the arguments

¹ Prairie Gas Operating, LLC’s Response to Staff’s Motion for Summary Judgment in Part, p. 1 (July 16, 2021).

² *Waterview Resolution Corp. v. Allen*, 274 Kan. 1016, 1023, 58 P.3d 1284 (2002); *See also, In re City of Wichita*, 277 Kan. 487, 506, 86 P.3d 513 (2004).

made regarding Operator’s Petition to Lift the Suspension.³ “The doctrine of collateral estoppel is different from the doctrine of *res judicata*. Instead of preventing a second assertion of the same *claim* or cause of action, the doctrine of collateral estoppel prevents a second litigation of the same *issues* between the same parties or their privies even in connection with a different claim or cause of action.”⁴ (Emphasis added) The previous issue addressed by the Commission in these dockets was whether the suspension of Operator’s license should be lifted or not. There, Staff argued that Operator should remain suspended until it could show that the Subject Wells were not a threat to fresh and usable water. Operator argued that its license should no longer be suspended because it had complied with the Penalty Orders issued by the Commission.

4. The present issues, as both parties have agreed, are (1) whether the Earl #1, Fecht D #1, and Watson #1 wells (Subject Wells) need to have casing integrity tests conducted upon them and/or be repaired or plugged, and (2) all matters related to the Penalty Order in Docket 21-3199.⁵ The present issue in contention is entirely different than the issue determined by the Commission in its Order on Petitions for Lifting of Suspension and Setting Prehearing Conference, and has not yet been litigated. Previously, the issues in these dockets included whether the Operator committed a violation of the Commission’s rules and regulations at the Subject Wells. Ultimately, Operator withdrew its request for hearing regarding the violations indicating it did not contest the penalties or Staff’s information regarding high fluid levels within the Subject Wells. Later, the issue became whether Operator should continue to have its license suspended or not. On April 20, 2021, the Commission issued an Order on Petitions for Lifting of Suspension and Setting Prehearing Conference which resolved that issue. Now, as previously

³ Prairie Gas Operating, LLC’s Response, ¶ 13.

⁴ *Williams v. Evans*, 220 Kan. 394, Syl. ¶ 1, 552 P.2d 876 (1976).

⁵ Presiding Officer Order Consolidating Dockets, Clarifying Remaining Issues, and Setting Procedural Schedule, p. 2 (May 28, 2021).

discussed, the issue has changed to whether the Subject Wells need to have casing integrity tests conducted upon them. Therefore, the doctrine of collateral estoppel has no application in the present docket and Staff should not be barred from making its argument.

5. Additionally, if Staff's Motion is granted, it will not improperly truncate the ability to develop a record regarding potential casing leaks at the Subject Wells. Staff believes that the record has been fully developed as necessary for the Commission to issue an order based upon the uncontested facts of this docket and the Commission's rules and regulations. Under K.A.R. 82-3-111(c), "[a]fter an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water resources. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the conservation division and in accordance with its regulations."

6. Operator does not contest nor deny that its temporary abandonment (TA) applications for the Subject Wells were denied or revoked by Commission Staff. Staff testimony clearly shows that Operator's TA applications were denied or revoked due to high fluid levels within the wellbores of the Subject Wells. The Commission has previously ruled that high fluid levels constitute grounds for denial of temporary abandonment applications.⁶ Therefore, Staff does not believe that Operator should be granted a second bite at the apple when the record has been fully developed according to the Commission's rules and regulations. If K.A.R. 82-3-111(c) is applied, then issues such as fluid level tapes, whether production at the Subject Wells is causing migration of water, whether the fluid levels indicate a violation of K.A.R. 82-3-104, or

⁶ See, e.g., Docket 19-CONS-3271-CPEN, Final Order, ¶¶ 12, 14 (Mar. 23, 2021).

whether a notice of violation letter regarding K.A.R. 82-3-104 was sent to Operator is superfluous information that will only further muddy the water and is unnecessary.

7. Operator's response appears to lean upon the Subject Wells already being returned to service and its compliance with the Penalty Order. However, even though the Subject Wells may now be returned to compliance with the Penalty Order, they are not removed from the reach of K.A.R. 82-3-111(c). When considering the issue of whether the Subject Wells need to be tested for casing integrity, the following facts still remain. Operator submitted TA applications at each of the Subject Wells, those applications were denied or revoked due to a high fluid level within the wellbores of the Subject Wells, and Operator has done nothing to address potential integrity issues causing high fluid levels within the wellbores. This results in the threat to fresh and usable water which Operator is responsible for ensuring there are no issues within the wells by performing casing integrity tests pursuant to K.A.R. 82-3-111(c).

8. Ultimately, the Commission's regulations grant the legal authority for Staff to require casing integrity tests at the Subject Wells. Operator filed an application for temporary abandonment at each of the Subject Wells. Staff inspected the wells to determine whether its temporary abandonment could cause pollution of fresh and usable water resources. Staff determined it to be necessary to deny the application at the Fecht D #1 and revoke temporary abandonment once accurate fluid levels had been gathered at the Earl #1 and Watson #1. If Operator had issues with its TA applications at the Subject Wells being denied or revoked due to high fluid levels, then it could have and should have expressed its issues when it originally requested hearings in these dockets well over a year ago. Instead, Operator chose to withdraw its requests for hearings. Operator's response to Staff's Motion for Summary Judgement in Part fails to dispute any of the material facts pertaining to K.A.R. 82-3-111(c). Therefore, Operator should

be required to plug or repair the Subject Wells according to the direction of the conservation division and in accordance with its regulations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

20-CONS-3129-CPEN, 20-CONS-3144-CPEN, 20-CONS-3220-CPEN, 21-CONS-3199-CPEN

I, the undersigned, certify that a true and correct copy of the attached Staff's Reply to Prairie Gas Operating, LLC's Response to Staff's Motion for Summary Judgment in Part has been served to the following by means of electronic service on July 28, 2021.

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