

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

In the Matter of the failure of Prairie Gas)	Docket No.: 20-CONS-3220-CPEN
Operating, LLC (Operator) to comply with)	
K.A.R. 82-3-111 at the Watson Farms #1,)	CONSERVATION DIVISION
Monroe #2-4H, and Fecht D #1 in Greeley)	
County, Kansas.)	License No.: 35442

RESPONSE TO PETITION BY PRAIRIE GAS OPERATING, LLC

Comes now the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) in response to the Petition by Prairie Gas Operating LLC (Operator) for Order Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing. In support of Staff's response, Staff states the following:

I. BACKGROUND

1. On November 7, 2019, the Commission issued a Penalty Order in Docket 20-CONS-3129-CPEN (Docket 20-3129) for two violations of K.A.R. 82-3-111 finding Operator's Earl #1, API #15-075-20745 and Watson #1, API #15-071-20656, had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for temporary abandonment (TA) status. The Penalty Order assessed a \$200 penalty, and directed Operator to plug the wells, return the wells to service, or obtain TA status for the wells if eligible. The Order also states the Commission may impose further sanctions, including additional monetary penalties and any other remedies available to the Commission by law, without further notice.¹

2. On February 13, 2020, the Commission issued a Penalty Order in Docket 20-CONS-3220-CPEN (Docket 20-3220) for three violations of K.A.R. 82-3-111 finding

¹ Docket 20-CONS-3129-CPEN, Ordering Clause C (Nov. 7, 2019).

Operator's Fecht D #1, API #15-071-20109, Monroe #2-4H, API #15-071-20706, and Watson Farms #1, API #15-071-20358, had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for temporary abandonment (TA) status. The Penalty Order assessed a \$300 penalty, and directed Operator to plug the wells, return the wells to service, or obtain TA status for the wells if eligible. The Order also states the Commission may impose further sanctions, including additional monetary penalties and any other remedies available to the Commission by law, without further notice.²

3. On December 12, 2019 and March 13, 2020, Operator timely requested a hearing in Docket 20-3129 and Docket 20-3220 respectively.

4. Operator had not filed an application for TA status at the Earl #1 and Watson #1 wells at the time the Penalty Order in Docket 20-3129 was issued by the Commission in November 2019. However, Operator did file for TA status at these wells after the Penalty Order in Docket 20-3129 was issued. While TA status was initially approved at both wells, the approval for both wells was revoked due to a high fluid level within the well bore. The revocations occurred after Staff learned that Operator had provided an incorrect fluid level on both TA applications due to a misinterpretation of their fluid level tapes. The high fluid levels in the Earl #1 and Watson #1 wells are corroborated in Mr. Ken Jehlik's Direct and Rebuttal Testimonies filed in Docket 20-3129.³ Additionally, Operator failed to dispute these findings of fact when it later filed its testimony on March 9, 2020.⁴ Ultimately, Operator withdrew its request for hearing within a week prior to when the evidentiary hearing was scheduled to take place.

² Docket 20-CONS-3220-CPEN, Ordering Clause D (Feb. 13, 2020).

³ Prefiled Testimony of Ken Jehlik, p. 4:15-5:2 (Feb. 7, 2020); *see also* Rebuttal Testimony of Ken Jehlik, p. 6:14-18 (June 19, 2020).

⁴ Pre-filed and Direct Testimony of Patrick Bass on Behalf of Prairie Gas Operating, LLC (Mar. 9, 2020).

5. In Docket 20-3220, Operator had filed an application for TA status at the Fecht D #1 well prior to the Penalty Order in the docket being issued by the Commission. However, that TA application was denied due to a high fluid level. This evidence is attached to the Penalty Order in Docket 20-3220 as Exhibit C. While Operator also requested a hearing in this docket, it also ultimately withdrew its request for hearing prior to an evidentiary hearing taking place.

6. On August 28, 2020, and September 25, 2020, the Commission issued a Prehearing Officer Order Closing Docket in Docket 20-3220 and Docket 20-3129, respectively. Since Operator was out of compliance with the Penalty Orders in both dockets when they were closed, Staff suspended Operator's license. Additionally, the Prehearing Officer Order Closing Docket stated that further proceedings are unnecessary, and that closing the dockets will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the Penalty Orders.⁵

7. On March 12, 2021, Operator filed its Petition by Prairie Gas Operating LC Lifting a Notice of License Suspension Dated October 9, 2020 and Request for Expedited Hearing (Petition) in Docket 20-3220, arguing its continued license suspension is legally improper because Staff has denied due process and Staff is acting beyond the scope of the penalty orders. It is unclear why Operator elected to only file its Petition in Docket 20-3220. However, Staff's response addresses both dockets because Operator's license suspension is related to its failure to bring the Docket 20-3129 and Docket 20-3220 wells into compliance.

II. ARGUMENT

8. K.A.R. 82-3-111(c) states that after an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether

⁵ Docket 20-CONS-3129-CPEN, Prehearing Officer Order Closing Docket, ¶2 (Sept. 25, 2020); *see also* Docket 20-CONS-3220-CPEN, Prehearing Officer Order Closing Docket, ¶3 (Aug. 28, 2020).

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.

9. There is evidence in the respective dockets that Operator submitted an application for TA status at the Earl #1, Fecht D #1, and Watson #1 wells (Subject Wells). There is also evidence in the respective dockets that each of these wells were denied TA status due to a high fluid level at each well. Pursuant to K.A.R. 82-3-111(c), Staff has the right to require Operator to plug or repair the wells to prevent the pollution of fresh and usable water. In its March 8, 2021 letter, Staff stated it would gladly take into consideration any invoices or other documentation that Operator could provide indicating Operator has conducted down-hole work in any of these wells showing there was no threat to fresh and usable water. To date, Operator has failed to provide any such documentation.

10. In its Petition, Operator makes a vague reference to a January 6 fluid level test of the Earl #1.⁶ First, there is no indication of the year this fluid level measurement was taken. Second, there is no evidence this fluid level measurement was witnessed by Staff. Third, there is no indication that it is a measurement of the static fluid level within the well. Lastly, there is no indication that Operator actually interpreted the fluid level tape correctly. It has been documented that Operator has issues interpreting the fluid levels within their wells and has previously provided incorrect data on their temporary abandonment application forms.

11. Additionally, Operator has relayed to Staff that it will take several months for these wells to de-water to the point that the wells actually produce gas. It is much more difficult to de-

⁶ Docket 20-CONS-3220-CPEN, Petition by Prairie Gas Operating LC Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing, ¶8 (March 12, 2021).

water a well when casing leaks allow more water to flow into the wellbore. Attached as Exhibit KCC-1 are staff-witnessed static fluid level measurements from the Subject Wells compared to other wells in the Bradshaw field. The comparisons show a considerable difference in the fluid levels. The difference seen in the Subject Wells is a strong indication that water from a foreign source is flowing into the casings of the Subject Wells in the form of a casing leak. The concern here is the areas surrounding these wells are known to be sensitive groundwater areas and there are documented fluid levels in the Subject Wells above usable water.

12. Additionally, the Orders Closing these dockets state closing the dockets will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the Penalty Order. In its Petition, Operator infers that the term “relating to” is an omnibus phrase that has been held as improperly vague in the context of discovery requests.⁷ However, Operator’s argument is without merit since this is not a discovery request. This is an administrative action based upon orders issued by the Commission. There is no question that K.A.R. 82-3-111(c) relates to K.A.R. 82-3-111. It is the same regulation. Staff’s position is that requiring Operator to demonstrate that there is no threat to fresh and usable water by conducting a successful casing integrity test or plugging the Subject Wells is both an appropriate and necessary action due to the threat to fresh and usable water. Staff also believes that K.A.R. 82-3-111(c) is not some vague doctrine that is being invoked, as suggested by Operator. This regulation clearly allows Staff to require an Operator to repair or plug wells that have been denied TA status.

13. K.S.A. 77-512 states a state agency may not revoke, suspend, modify, annul, withdraw, refuse to renew, or amend a license unless the state agency first gives notice and an opportunity for a hearing in accordance with this act. The notice and opportunity for a hearing

⁷ *Id.* at ¶25.

required by K.S.A. 77-512 is contained in the Ordering Clauses of both Penalty Orders regarding the Subject Wells. Operator was issued penalty orders for violations of K.A.R. 82-3-111 in Docket 20-3129 and Docket 20-3220. Operator then submitted a request for hearing in the respective dockets. However, Operator subsequently withdrew its request for hearing in both dockets. Therefore, it is Staff's position that Operator has already been afforded and utilized its right of Due Process in both dockets. By withdrawing its request for hearing, Operator no longer contested these penalty orders including any other appropriate and necessary administrative actions available to the Commission by law including Staff's right of TA denial under K.A.R. 82-3-111(c). In conclusion, Operator's license should remain suspended until Staff is satisfied that the wells do not pose a threat to fresh and usable water and the wells have been brought into compliance with Commission rules and regulations.

Wherefore, for the above reasons, Staff respectfully requests the Commission deny Operator's Petition for Order Lifting a Notice of License Suspension Dated October 9, 2020; and Request for Expedited Hearing. Operator has already been afforded its due process in both dockets where it ultimately withdrew its request for hearing. Staff is clearly authorized to apply K.A.R. 82-3-111(c) to both dockets, and should be allowed to continue to do so in order to protect fresh and usable water.

Respectfully submitted,

/s/ Kelcey Marsh
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Static fluid levels on TA'd gas wells in the vicinity of the Prairie Gas Fecht D-1, Earl #1 and Watson #1 wells.

3-15-21kj

<u>Operator</u>	<u>Well</u>	<u>Legal</u>	<u>Co</u>	<u>Static FL</u>	<u>Date Shot</u>	<u>Usable water</u>	<u>Calc BHSP(psi)</u>
Prairie Gas	Clift A-1	SE 33-18-40	GL	1890	6/11/2020	1500	434
Prairie Gas	Hoffman G 32-1	SW 32-18-40	GL	2583	12/18/2020	1500	287
Prairie Gas	CliftB-1	NW 34-18-40	GL	1575	10/15/2020	1475	539
Prairie Gas	Fecht D-1	SE 28-18-40	GL	850	1/6/2021	1600	
Scout	HCU 2220C	SE 22-22-40	HM	2112	9/17/2020	1125	266
Scout	HCU 2220B	NW 22-22-40	HM	2300	6/17/2020	1125	194
Prairie Gas	Earl 1	NW 23-22-40	HM	1071	5/12/2020	1125	
Prairie Gas	Watson Farms 2	NW 19-20-39	GL	2015	4/14/2020	1325	363
Prairie Gas	Watson Farms 1	NE 19-20-39	GL	2139	4/14/2020	1325	326
Prairie Gas	Watson Farms 2	SW 19-20-39	GL	1983	11/2/2020	1325	359
Prairie Gas	Watson 1	SW 17-20-39	GL	788	10/16/2020	1325	

This spreadsheet shows the fluid levels and calculated bottom hole static pressure (BHSP) of the Chase formation in the areas shown. The fluid levels of the Fecht D-1, Earl 1 and the Watson 1 are much higher than the surrounding wells. Since there is insufficient BHSP to raise the fluid levels from the producing Chase gas zone to that height in the respective areas, the water has to be coming from a foreign source flowing into the casing creating a "dump flood" effect charging up the Chase formation and thus causing the fluid levels to rise in the casing.

CERTIFICATE OF SERVICE

20-CONS-3220-CPEN

I, the undersigned, certify that a true copy of the attached Response to Petition by Prairie Gas Operating, LLC has been served to the following by means of electronic service on March 24, 2021.

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