

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

In the matter of non-compliance by Prairie Gas) Docket No.: 22-CONS-3349-CMSC
Operating, LLC (Operator) with the)
Commission's Final Order in four consolidated) CONSERVATION DIVISION
dockets, regarding the Earl #1, Fecht D #1, and)
Watson #1 wells.) License No.: 33640

RESPONSE TO MOTION TO CLOSE DOCKET

Comes now the Staff of the Kansas Corporation Commission (Staff and Commission, respectively) in response to the *Motion to Close Docket* filed on behalf of Operator. In support of Staff's response, Staff states as follows:

A. BACKGROUND

1. On December 16, 2021, the Commission held an evidentiary hearing regarding Dockets 20-3129, 20-3144, 20-3220, and 21-3199, which had previously been consolidated together by Commission Order (Consolidated Dockets).¹ As previously agreed by the Parties, the remaining issues to be decided by the Commission were "(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 and Operator's request for hearing thereon."²

2. On February 17, 2022, the Commission issued a Final Order regarding the Consolidated Dockets. In Ordering Clause A, the Commission directed Operator to either plug or conduct a Staff-witnessed casing-integrity test upon the Subject Wells within 30 days.³ If Operator chose to conduct a casing-integrity test, and in the opinion of Staff the test did not demonstrate the

¹ Presiding Officer Order Consolidating Dockets, Clarifying Remaining Issues, and Setting Procedural Schedule, p. 1-2 (May 28, 2021).

² *Id.* at p. 2.

³ Final Order, Ordering Clause A (Feb. 17, 2022).

effectiveness of the casing, then within 30 days of the test, Operator was ordered to either demonstrate the effectiveness of the casing to the satisfaction of Staff, or plug the well.⁴ Further, the Commission directed Staff to file a report in a separate docket if Operator failed to comply with Ordering Clause A, describing the nature of non-compliance, so that the Commission could contemplate the need for remedies, including monetary penalties.⁵

3. On April 11, 2022, Staff filed a *Report of Operator Non-Compliance* in Docket 22-CONS-3349-CMSC (Docket 22-3349). The *Report of Operator Non-Compliance* stated that as of April 4, 2022, Operator had neither plugged nor conducted a staff-witnessed casing integrity test at the Subject Wells. Further, Operator had not contacted the KCC District #1 Office to schedule a time to plug or conduct a staff-witnessed casing integrity test on the Subject Wells.

4. On May 10, 2022, the Commission issued an *Order Designating Presiding Officer and Setting Prehearing Conference*, wherein a prehearing conference was scheduled for June 2, 2022. At the July 21, 2022, follow-up prehearing conference, a procedural schedule was set.

5. On July 7, 2022, Staff processed the Transfer of Operator forms transferring the Subject Wells from Operator to American Star Energy Services, LLC (American Star). The transfer was processed after Staff reached a compliance agreement with American Star, which included the Subject Wells.

6. On July 29, 2022, Operator filed a *Motion to Close Docket with Exhibits* wherein Operator stated that Docket 22-3349 should be closed because (a) Operator no longer operates the wells, (b) the Commission recognized the transfer of the Subject Wells from Operator to American Star, (c) Operator has no right, power or authority to conduct casing integrity tests on the Subject wells, (d) the procedural schedule entered into this docket would be a needless and superfluous

⁴ *Id.*

⁵ *Id.* at Ordering Clause B.

process inasmuch as no contested issues remain, (e) Operator has offered to pay the penalty recommended in Staff's report, (f) proceeding with the docket would compel Operator "to submit substantial evidence in mitigation or a penalty greater than \$1,000", and (g) further proceedings would be wasteful and unnecessarily impinge on the time and resources of Operator, Staff, and the Commission.⁶

B. RESPONSE

7. Operator's *Motion to Close Docket* conveniently elides Operator's complete disregard for the Commission's Final Order in the Consolidated Dockets. First, there is the fact that over 950 days have passed since a temporary abandonment (TA) application for the Fecht D #1 was denied due to a high fluid level and TA applications for the Earl #1 and Watson #1 were revoked due to a high fluid level. Additionally, around 475 days have passed since the Commission issued an order setting a prehearing conference on the issue of whether the Subject Wells need to have casing integrity tests conducted. Further, almost 175 days have passed since the Commission's Final Order requiring Operator to conduct a satisfactory casing integrity test or plug the Subject Wells. Throughout the past several years the Subject Wells have posed a serious environmental threat to fresh and usable water, and Operator's lack of willingness to take any remedial action regarding its wells suggest that the public interest would best be served with the assessment of a much larger penalty.

8. Second, transferring the Subject Wells does not absolve Operator of its failure to follow the Commission's Final Order. The Commission's Final Order issued on February 17, 2022, directed Operator to either plug or conduct a Staff-witnessed casing-integrity test upon the Subject Wells within 30 days. Operator failed to take or even schedule either action. Operator

⁶ *Motion to Close Docket with Exhibits*, ¶5 (July 29, 2022).

claims that there were a variety of factors preventing its compliance with the Commission's Final Order, but as stated above, Operator has had several years where the Subject Wells could have been addressed. As the Commission has previously held, the public interest is served by wells not in compliance with K.A.R. 82-3-111 being brought into compliance.⁷ The Commission also appears to disfavor operators avoiding their already-accrued obligations.⁸ While the new operator may be able to bring the wells into compliance, Operator is not excused from a penalty for its failure to address the wells as directed by the Commission.

9. Third, Staff would like to note that while the transfer of the Subject Wells from Operator to American Star has been approved, Operator still remains a potentially responsible party for the wells if they become abandoned. Under K.S.A. 55-179(b)(2) a person that is legally responsible for the proper care and control of an abandoned well shall be the most recent operator to produce from or inject or dispose into the well, but if no production or injection has occurred, the person that caused the well to be drilled.

10. There is an exception that prevents responsibility under K.S.A. 55-179(b)(2). That exception applies if (a) such person can demonstrate that the well was physically operating or was in compliance with temporary abandonment regulations immediately before such person transferred or assigned the well to an operator with an active operator's license, and (b) a completed report of transfer was filed pursuant to Commission regulations if transferred or assigned after August 28, 1997. To date, American Star has not taken any action to address the Subject Wells. Additionally, the Subject Wells were neither operating nor in compliance with temporary abandonment regulations immediately before being transferred to American Star. Therefore, Operator remains as a potentially responsible party for the wells if American Star does

⁷ KCC Docket 21-CONS-3020-CPEN, *Order Denying Motion to Approve Settlement Agreement*, ¶6 (Nov. 3, 2020).

⁸ *Id.*

not bring them into compliance pursuant to its compliance agreement with Staff and the wells become abandoned. Therefore, while Operator claims that the docket should be closed because Operator no longer operates the wells, it is still potentially responsible for the wells because it failed to return the wells to compliance.

11. Staff believes Operator should receive a penalty greater than \$1,000 for its complete disregard for the Commission's Final Order in the Consolidated Dockets, as well as for Operator's willingness to put the fresh and usable waters of the State of Kansas under the constant threat of pollution over the course of several years. However, in the interests of administrative efficiency, Staff does not object to the Commission closing this docket and assessing Operator a penalty of \$1,000 if the Commission deems it appropriate.

In Conclusion, for the reasons described above, Staff respectfully reiterates that it is amenable to the Commission granting Operator's *Motion to Close Docket* if the Commission believes that closing the docket and assessing a \$1,000 penalty is appropriate.

Respectfully submitted,

/s/ Kelcey Marsh

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CERTIFICATE OF SERVICE

22-CONS-3349-CMSC

I, the undersigned, certify that a true and correct copy of the attached Response to Motion to Close Docket has been served to the following by means of electronic service on August 10, 2022.

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