

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

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Failure of MEM Partnership ) Docket No. 17-CONS-3398-CPEN  
LP, a General Partnership (Operator) to Comply )  
with K.A.R. 82-3-111 at the Cooley #1 in Graham ) CONSERVATION DIVISION  
County, Kansas. ) License No. 3809

**ORDER ON REPRESENTATION AND PROCEDURAL SCHEDULE**

1. On December 15, 2016, the State Corporation Commission of the State of Kansas (Commission) issued a Penalty Order against Operator alleging one violation of K.A.R. 82-3-111 because the subject well is inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for temporary abandonment (TA) status.<sup>1</sup> The Order proposes to assess a \$100 penalty against Operator pursuant to K.S.A. 55-162 and K.S.A. 2016 Supp. 55-164.<sup>2</sup>

2. On January 9, 2017, Operator filed a Request for Hearing challenging Commission Staff's (Staff) allegations that the Operator was responsible for care and control of the subject well.<sup>3</sup>

3. On January 24, 2017, the Commission issued the Order Designating Prehearing Officer and Setting Prehearing Conference. At the prehearing conference, held March 21, 2017 pursuant to continuance, the Parties discussed whether the Operator should be represented by counsel. Pending resolution of that issue, the Parties agreed to schedule a hearing for June 15, 2017.

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<sup>1</sup> Penalty Order at 3 (Dec. 15, 2016).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> See generally To The Honorable Commissioners (Jan. 9, 2017).

4. On March 22, 2017, the Prehearing Officer filed a notice of Ex Parte Communication notifying the Parties that the Prehearing Officer had received a pleading from the Operator that had not been filed or served on Staff.<sup>4</sup>

5. On March 27, 2017, the Operator petitioned the Commission for a finding that the Operator should not be required to have representation by a Kansas licensed attorney at the hearing.<sup>5</sup> The Operator, a partnership, represented by and through Mr. William Story, partner, argued that because a partnership is less complicated than a corporation and because Mr. Story has appeared on behalf of the partnership in past dockets, the Commission should grant the Operator relief from having to acquire Kansas counsel.<sup>6</sup>

6. On April 6, 2017, Staff responded to the Operator's Petition. Staff requested that the Commission order the Operator to obtain Kansas counsel because Mr. Story cannot represent the partnership without being a licensed attorney and thus would be committing the unauthorized practice of law.<sup>7</sup>

7. On April 13, 2017, the Operator filed a request to reschedule the hearing.

8. On April 17, 2017, the Operator filed a reply to Staff's response.

9. The Commission finds and concludes that the Commission has the clear authority and so requires the Operator to obtain counsel for any portion of the proceedings involving the practice of law.

10. The authority to issue the Penalty Order, K.S.A. 55-162 and K.S.A. 2016 Supp. 55-164, provide that the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.* governs the proceeding. K.S.A. 77-515(c) grants discretion to the Commission as to whether a

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<sup>4</sup> Notice of Ex Parte Communication at 1 (Mar. 22, 2017).

<sup>5</sup> Addendum: A Petition to Determine Legal Representation for MEM Partnership, LP at 3 (Mar. 27, 2017).

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> Staff's Response to Managing Partner's Motion at 3-5 (Apr. 6, 2017).

corporation or other artificial person should be required to participate by counsel. Although Commission regulation K.A.R. 82-1-228 requires corporations to appear through counsel, it is silent as to other artificial persons, such as MEM Partnership, LP.

11. In determining whether the Operator shall have attorney representation, the Commission is guided by Attorney General Opinion No. 93-100. The Opinion analyzes K.S.A. 77-515 in the context of a Kansas County appearing by a non-attorney representative in an administrative proceeding. The Opinion states that representatives of artificial persons may participate in hearings conducted under KAPA but they cannot practice law.<sup>8</sup> “While a duly authorized representative may participate in the proceedings, a non-attorney representative may not engage in the unauthorized practice of law and therefore may not examine witnesses, file pleadings, make legal arguments, or perform other functions deemed to be the practice of law.”<sup>9</sup>

12. Here, it is understood that Mr. Story may represent himself to any degree in proceedings to which Commission action is directed at Mr. Story as an individual. However, Mr. Story anticipates participating in the proceedings on behalf of the Operator, a partnership. There is no evidence presented to support whether Mr. Story is authorized to appear on behalf of MEM Partnership, LP, which is the business entity that holds the Operator license in Kansas and to whom the Penalty Order is directed. Although Mr. Story’s motion asserts that his partner is deceased, he has presented no evidence in support.

13. Furthermore, Mr. Story is not proposing to just participate, which he is allowed to do. Mr. Story seeks to represent the Operator at the hearing which involves the presentation of evidence and the cross-examination of witnesses, both of which are recognized as the practice of

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<sup>8</sup> Kansas Office of Attorney General, Attorney General Opinion 93-100 (July 26, 1991).

<sup>9</sup> *Id.*

law. Mr. Story is thus asking to represent the Operator in the practice of law. The Commission cannot grant Mr. Story the authority to practice law on behalf of an artificial person.<sup>10</sup>

14. Whether the Commission has permitted Mr. Story to appear on behalf of MEM Partnership, LP in the past is not relevant to this matter since the facts surrounding that representation are not before the Commission now.

15. Therefore, pursuant to K.S.A. 77-515(c), the Commission finds that as an artificial person, MEM Partnership, LP shall be required to appear by counsel for portions of the proceeding that require the practice of law. However, nothing shall prohibit Mr. Story from participation in other portions of the proceedings that do not involve the practice of law including settlement negotiations which are highly encouraged.

16. Hearing no objection to the Operator's request to reschedule the hearing, the Commission grants such relief. The hearing in this matter shall be held on July 20, 2017, at 10:00 a.m. at the Commission's office at 266 N. Main, Ste. 220, Wichita, Kansas 67202. All other deadlines remain unchanged.

17. The Commission may limit the Parties' direct and rebuttal testimony to the pre-filed testimony. Failure to submit pre-filed testimony may result in the Commission restricting the right to testify and present evidence at the evidentiary hearing.

18. Any person requiring special accommodations under the Americans with Disabilities Act should notify the Commission at least 10 days before the scheduled hearing date.

19. Any Party that fails to attend or participate in the hearing or other stage of this proceeding may be held in default pursuant to KAPA.

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<sup>10</sup> Also of note is the fact that two of the three members of the Commission are attorneys admitted to the practice of law in Kansas. Kansas Rule of Professional Conduct 5.5 forbids licensed attorneys from assisting others in the unauthorized practice of law.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Operator shall be required to appear by Kansas-licensed Counsel at the scheduled hearing in this matter and for all proceedings involving the practice of law.

B. The Operator's request to reschedule the hearing is granted. The hearing in this matter shall be held on July 20, 2017, at 10:00 a.m. at the Commission's office at 266 N. Main, Ste. 220, Wichita, Kansas 67202. All other deadlines remain unchanged.

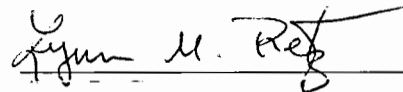
C. Any Party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). The petition shall be filed within 15 days after service of this Order and must state the specific grounds upon which relief is requested.<sup>11</sup> The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

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.**

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAY 11 2017



Lynn M. Retz  
Secretary to the Commission

Mailed Date: May 11, 2017

DLK/sc

<sup>11</sup> K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**CERTIFICATE OF SERVICE**

I certify that on 5/11/17, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

William Story  
MEM Partnership LP, a General Partnership  
PO Box 130832  
Spring, TX 77393-0832

and delivered by e-mail to:

Richard Williams  
KCC District #4

Jonathan R. Myers, Litigation  
Joshua D. Wright, Litigation  
KCC Central Office

Dustin L. Kirk, Deputy General Counsel  
KCC Topeka Office

/s/ Paula J. Murray  
Paula J. Murray  
Legal Assistant  
Kansas Corporation Commission