

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

In the matter of the failure of Nacogdoches ) Docket No. 24-CONS-3177-CPEN  
Oil & Gas, LLC (Operator) to comply with )  
K.A.R. 82-3-120. ) CONSERVATION DIVISION  
)  
\_\_\_\_\_ ) License No. 32042

**MOTION FOR TEMPORARY STAY OF PROCEEDINGS**

Nacogdoches Oil & Gas, LLC (“Operator”) respectfully requests a temporary stay of proceedings in this docket. In support of its request, Operator alleges and states:

**BACKGROUND AND LEGAL AUTHORITY**

On November 7, 2023, the Commission entered a final order in Docket No. 22-CONS-3407-CMSC (“Final Order”)<sup>1</sup>. The Final Order denied Operator’s license renewal application, and lifted a previously granted stay of effectiveness.<sup>2</sup>

On December 7, 2023, pursuant to K.S.A. 77-607, et seq., Operator timely filed for judicial review of the Final Order, which action is pending in the District Court, Labette County, Kansas, as Case No. LBP-2023-CV-3000014 (“Judicial Review Action”).

On December 19, 2023, the Penalty Order in the instant docket was entered. The Penalty Order is entirely based upon Operator’s alleged non-compliance with the Final Order.<sup>3</sup> Notwithstanding that the Final Order is currently subject to judicial review, the Penalty Order orders Operator to:

“Transfer the Subject Wells to another operator by filing the appropriate forms with the Commission; or Plug the Subject Wells” within 30 days from the date of the Penalty Order.<sup>4</sup>

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<sup>1</sup> Order on Reconsideration, Denying Operator’s Proposed Amendment to Compliance Agreement, and Lifting Stay of Final Order, Docket 22-CONS-3407 (Nov. 7, 2023).

<sup>2</sup> *Id.*, at Ordering Clause ¶¶ A-D.

<sup>3</sup> Penalty Order, ¶¶ 6-8.

<sup>4</sup> Penalty Order, Ordering Clause ¶ C.

The Penalty Order is silent as the source of the legal authority relied upon by the Commission to command Operator to transfer its property to a third party, and Operator is unaware of any such authority.

The Kansas Administrative Procedure Act (KAPA) permits a petition for stay of effectiveness of an initial or final order, such as the Penalty Order and Final Order:

“Until the time at which a petition for judicial review would no longer be timely, a party may submit to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head may take action on the petition for stay, either before or after the effective date of the initial or final order.”<sup>5</sup>

The Kansas Judicial Review Act (KJRA) also permits the Commission to grant a stay on appropriate terms or other temporary remedies during judicial review.<sup>6</sup> A stay should be granted if the applicant will suffer irreparable injury without it, and granting the stay will not substantially harm other parties to the proceeding or threaten the public health, safety and welfare.<sup>7</sup>

## ARGUMENT

The Penalty Order requires Operator to transfer or plug all of its wells. The result of this action would be irreparable harm to the Operator through the complete loss of all of its assets in the State of Kansas. The value of Operator’s assets are estimated to be in the tens of millions of dollars, as demonstrated by an independent third-party engineering analysis.<sup>8</sup> The irreparable harm that will be suffered by Operator if it is forced to transfer or plug all of its wells is tremendous. Moreover, hundreds of thousands of barrels of oil worth tens of millions of dollars would be wasted if Operator were forced to plug all of its wells. Plugging out these wells would likewise violate

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<sup>5</sup> K.S.A. 77-528.

<sup>6</sup> K.S.A. 77-616(a).

<sup>7</sup> See, K.S.A. 77-616(c).

<sup>8</sup> See, Combined Pre-Filed Direct and Rebuttal Testimony of Brent Ivy, Exhibit N-14, 22-CONS-3407-CMSC (Sep. 9, 2022).

Operator and its mineral owners' valuable correlative rights. Such an outcome runs directly contrary to the Commission's mandate to prevent waste and protect correlative rights.

Conversely, granting a stay of enforcement will not harm any other party to this proceeding nor threaten the public health, safety and welfare. The wells at issue have been shut-in for an extended period of time, and present no threat to fresh water. Operator has been conducting the minimum maintenance required to assure the Commission of that fact, and has recently conducted casing integrity tests consistent with the requirements of Commission requirements to periodically demonstrate mechanical integrity at injection wells.

As noted above, the issue of the validity of the Final Order is currently under judicial review. As also noted above, the Penalty Order is born entirely out of the Commission's rulings in the docket that is the subject of the Judicial Review Action. It is improbable, however, that the Judicial Review Action will be completed in advance of the Penalty Order docket based upon the current procedural schedule set in the Penalty Order docket. If the Penalty Order were sustained before the Judicial Review Action is decided, Operator could be forced to plug or transfer all of its wells, destroying all of Operator's remedies available on judicial review. That would cause a massive condemnation of Operator's property rights to occur while it is lawfully exercising its legal right to judicial review. Such an outcome is legally and equitably abhorrent.

The Commission has the power and authority to avoid this outcome through the granting of a stay. Operator requests a limited stay of the enforcement action sought through the Penalty Order, specifically the order to plug or transfer of its wells. Operator requests the stay remain in effect during the pendency of the Judicial Review Action. Logically, the proceedings in the Penalty Order docket would cease as the entire aim of that docket is to have Operator plug or transfer all of its wells. During the stay, Operator would remain obligated to comply with all other

Commission regulations aimed at protecting fresh water and correlative rights, and preventing waste. Such obligations would include conducting the required periodic mechanical integrity tests at its injection wells, and to clean up and remediate any spills in the unlikely event one occurs.

WHEREFORE, for the foregoing reasons Operator requests Commission temporarily stay this Penalty Order proceeding pending the disposition of the Judicial Review Action as stated above, and for such further relief as the Commission deems necessary and proper.

Respectfully submitted,

MORRIS LAING LAW FIRM

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**CERTIFICATE OF SERVICE**

I, Jonathan A. Schlatter, hereby certify that on this 15th day of May, 2024, I caused the original of the foregoing MOTION FOR TEMPORARY STAY OF PROCEEDINGS to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and emailed true and correct copies of the same to the following individuals:

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