

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

In the matter of the failure of Tailwater Inc.)	Docket No.: 21-CONS-3032-CPEN
(Operator) to comply with K.S.A. 55-172 and)	
K.A.R. 82-3-603 at the South Kempnich Lease)	CONSERVATION DIVISION
in Anderson County, Kansas.)	
_____)	License No.: 32461

RESPONSE TO MOTION FOR ADDITIONAL TIME AND CONTINUANCE

Comes now the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) in response to Operator's Motion for Additional Time and Continuance. In support of Staff's response, Staff states as follows:

I. BACKGROUND

1. On August 27, 2020, the Commission issued a Penalty Order against Operator in the referenced docket for multiple violations of K.S.A. 55-172 and K.A.R. 82-3-603(e).¹ The penalty Order assessed a total of \$108,500 in penalties.²

2. On October 23, 2020, the Commission issued a Presiding Officer Order Setting Procedural Schedule, wherein the deadlines for Commission Staff and Operator to file their respective testimony was set.³

3. On November 23, 2020, the Commission issued a Presiding Officer Order Setting Evidentiary Hearing where the hearing in this matter was scheduled for Thursday, February 18, 2021.⁴

4. On December 31, 2020, Operator filed a Motion for Additional Time and Continuance, wherein Operator requested an additional 30 days to complete discovery and prepare its pre-filed testimony and a continuance of at least 30 days of the hearing.⁵ The basis for Operator's request is the onset of new health problems that have impaired Operator's counsel's

¹ Penalty Order – Tailwater Inc. at ¶20 (Aug. 27, 2020).

² *Id.* at Ordering Clause A.

³ Presiding Officer Order Setting Procedural Schedule (Oct. 23, 2020).

⁴ Presiding Officer Order Setting Evidentiary Hearing (Nov. 23, 2020).

⁵ Operator's Motion for Additional Time and Continuance (Dec. 31, 2020).

ability to work effectively during the past six weeks.⁶ Additionally, Operator cited COVID-19 restrictions and concerns of witnesses about exposure have prevented counsel from meeting with and interviewing them in order to prepare written testimony for filing in this matter.⁷ Operator also states that it has been unable to utilize remote conferencing technology with its witnesses.⁸

II. RESPONSE

5. Staff does not object to a one-time extension of 30 days due to the health issues mentioned by Operator's counsel. However, Staff will be opposed to any continuance beyond 30 days due to the environmental concerns present on the South Kempnich Lease. Staff does not give credibility to the allegation that Operator has been unable to utilize the appropriate means to meet with its witnesses as a reason for an extension. Staff would note that the Procedural Schedule was set on October 23, 2020, which means that Operator's counsel has already had over two months to figure out the means to meet with its client and potential witnesses. Especially since Staff does not see the status quo in regards to COVID-19 changing over the next 30 days.

WHEREFORE, Staff requests the Commission rule upon Operator's Motion as it deems proper, but if the Motion is granted state that no further continuances from Operator will be granted.

Respectfully submitted,

/s/ Kelcey Marsh

Kelcey A. Marsh, #28300

Litigation Counsel

Kansas Corporation Commission

266 N. Main, Suite 220

Wichita, Kansas 67202-1513

Phone: 316-337-6200

Fax: 316-337-6211

⁶ *Id.* at ¶2.

⁷ *Id.* at ¶2.

⁸ *Id.* at ¶2.

CERTIFICATE OF SERVICE

21-CONS-3032-CPEN

I, the undersigned, certify that a true copy of the attached Response to Motion for Additional Time and Continuance has been served to the following by means of electronic service on January 8, 2021.

JOHN ALMOND
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 3
137 E. 21ST STREET
CHANUTE, KS 66720
Fax: 785-271-3354
j.almond@kcc.ks.gov

JOHN C. CHAPPELL, ATTORNEY AT LAW
JOHN CHAPPELL
PO BOX 602
LAWRENCE, KS 66044
jchappell@jchap.com

RICHARD HESTERMANN
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
Fax: 785-271-3354
r.hestermann@kcc.ks.gov

KELCEY MARSH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
CENTRAL OFFICE
266 N. MAIN ST, STE 220
WICHITA, KS 67202-1513
Fax: 785-271-3354
k.marsh@kcc.ks.gov

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
266 N. Main St., Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
j.myers@kcc.ks.gov

/S/ Paula J. Murray

Paula J. Murray