

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

In the matter of resolving various regulatory) Docket Nos.: **23-CONS-3017-CPEN**
violations associated with Ace Energy, LLC) 23-CONS-3029-CPEN
(Operator).) 23-CONS-3087-CPEN
) 23-CONS-3135-CPEN
)
) CONSERVATION DIVISION
)
_____) License No.: 34998

In the matter of the application of Ace) Docket No.: 23-CONS-3143-CMSC
Energy, LLC (Operator) for an Operator's)
License Renewal.) CONSERVATION DIVISION
)
_____) License No.: 34998

OPERATOR'S REPLY IN SUPPORT OF MOTION IN LIMINE

Ace Energy, LLC ("Operator") submits this Reply in Support of its Motion in Limine (this "Motion"). In further support of its Motion in Limine and in response to Staff's Response to Operator's Motion in Limine (Staff's "Response"), Operator states the following.

First, despite Staff's contentions to the contrary, it still has not provided any meaningful evidence that Operator or Mr. Freiden has any ownership or management role with SX54. Staff has not produced any direct evidence of Mr. Freiden having an ownership or managerial role in SX54. Staff has not produced any operating agreement, any assignment of membership interest, any certificated membership interest, any log or record of the membership interest of SX54, any relevant management contracts, or any affidavit from anyone with knowledge of SX54's management and ownership structure. Staff's allegations that Mr. Freiden has an ownership or management role with SX54 are based entirely upon Staff's conclusory and unsupported speculation to that end.

Staff instead bases its unfounded conclusions upon: (1) Mr. Freiden filed the license renewal application for SX54; and (2) Mr. Freiden submitted T-1 forms wherein Staff claims that Mr. Freiden held himself out to be a “Member” of SX54. A license renewal form and T-1 forms are not sufficient evidence that Mr. Freiden has an ownership or managerial role in SX54 – that is not even circumstantial evidence of an ownership or managerial role.

Further, those forms do not show what Staff purports those forms show. A close inspection of the T-1 forms Staff attached to its Response reveal that the title of “Member” for SX54 is tied to an entirely different individual altogether: Casey Mensue. The form clearly calls for the name of the “Contact Person” for SX54 and the name provided is “Casey Mensue”. In the place on the form for Casey Mensue’s title, that is listed as “Member”. Mr. Freiden’s name only appears in the signature line for Casey Mensue – a clear indication that Mr. Freiden was signing the form on Casey Mensue’s behalf and that the information contained in the form (including the title “Member”) was in reference to Casey Mensue. This form indicates that Mr. Freiden was acting as an agent for Casey Mensue and signing the form on Casey Mensue’s behalf, nothing more.

There is no portion of the documents Staff has provided that indicate anything other than that Casey Mensue was the one with an ownership/managerial role in SX54 and that Mr. Freiden was simply the individual tasked with paperwork and filing forms. One document, the “Management Services Agreement”, appears completely unrelated and does not reference Operator, Mr. Frieden, SX54, or any individual or entity related to this proceeding. Mr. Freiden’s role of a form-filer and mail recipient does not make him an owner or manager of a company and Staff’s purported evidence is woefully insufficient to establish that Mr. Freiden had an ownership or managerial role with SX54.

Staff has previously attempted to premise its allegations on the fact that Mr. Freiden's spouse was the resident agent of SX54. Being a resident agent of a company and filing forms on behalf of a company does not give rise to evidence of ownership or management. Staff's evidence that Mr. Freiden is an owner or manager of SX54 is equivalent to the evidence that CT Corporation merely by being resident agent, is an owner or manager of Wal-Mart. No reasonable person would believe that CT Corporation owns or manages Wal-Mart and Staff's purported evidence against Mr. Freiden is equally unconvincing. Everything that Staff attached to its Response, and other similar evidence, is improper and needs to be barred from this proceeding.

Next, the matter with J and B Oil is not relevant and it is improper character evidence, which is expressly prohibited under the Kansas Rules of Evidence:

“[W]hen a trait of a person's character is relevant as tending to prove conduct on a specified occasion, such trait may be proved... except that (a) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible, and (b) in a criminal action evidence of a trait of an accused's character as tending to prove guilt or innocence of the offense charged, (i) may not be excluded by the judge under K.S.A. 60-445 if offered by the accused to prove innocence, and (ii) if offered by the prosecution to prove guilt, may be admitted only after the accused has introduced evidence of his or her good character”¹

The matter between J and B Oil and Operator and Mr. Freiden was not a criminal proceeding, nor the conviction of a crime, and findings of Mr. Freiden's specific instances of conduct related to the matter with J and B Oil is expressly inadmissible under K.S.A. 60-447 because it is evidence of specific instances of conduct other than evidence of a conviction of a crime. Staff's reliance upon K.S.A. 60-421 is also entirely misplaced, as that statute only applies to evidence of the conviction of a crime. The very title of K.S.A. 60-421 is “Limitations on

¹ K.S.A. 60-447 (emphasis added).

evidence of conviction of crime as affecting credibility” and the language of the statute only applies to criminal convictions.²

The proceeding between J and B Oil and Operator and Mr. Freiden was a civil action, not a criminal one. Neither Operator nor Mr. Freiden was ever convicted of a crime so Staff’s reliance of K.S.A. 60-421 is misplaced. Staff’s use of evidence arising from the dealings between J and B Oil and Operator and Mr. Freiden is an attempt to circumvent rules expressly barring the use of improper character evidence and it is prejudicial to Operator in this proceeding.

Further, Staff’s use of this evidence is an attempt to pre-emptively attack Mr. Freiden’s credibility when his credibility is not at issue in this proceeding. Mr. Freiden’s truthfulness is not relevant to the question of whether water was actually being injected into a well or whether Operator was operating on a suspended license. Staff’s attempted use of this improper character evidence is solely to find facts Staff believes is most damaging to Mr. Freiden and Operator and improperly using such evidences e in this unrelated matter to unfairly depict Mr. Freiden and Operator as bad actors. Staff is attempting to put on improper character evidence, which is expressly barred under K.S.A. 60-447, and it is highly prejudicial to Operator and offers no probative value whatsoever. As such it must be barred from this proceeding.

Finally, Staff’s argument that the timing alone of Operator’s motion means said motion must be denied is improper. Staff provides no authority to support that position and there is no basis in law to permit inadmissible evidence simply because of the timing of the filing. These matters are properly raised before the hearing at this time. These matters would also be properly raised even if done on an ad hoc basis at the hearing. To deny Operator’s Motion in Limine on the grounds Staff suggests is to invite error.

² See, K.S.A. 60-421.

CONCLUSION

For the foregoing reasons, Operator respectfully requests that Operator's Motion in Limine be granted.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

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CERTIFICATE OF SERVICE

I, Jackson C. Ely, hereby certify that on this 6th day of November, 2023, I caused the original of the foregoing **OPERATOR’S REPLY IN SUPPORT OF MOTION IN LIMINE** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and served to the following by means of electronic service:

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