

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

In the Matter of the failure of Benjamin M.	)	Docket No.: 20-CONS-3082-CPEN
Giles ("Operator") to comply with K.A.R.	)	
82-3-120.	)	CONSERVATION DIVISION
	)	
	)	License No.: 5446

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**RESPONSE TO REQUEST FOR HEARING, MOTION TO LIFT SHUT-IN ORDER,  
AND REQUEST TO RENEW LICENSE**

Commission Staff (Staff) of the State Corporation Commission of the state of Kansas (Commission) files this Response, wherein Staff opposes the Request to Lift Shut-In Order and Request to Renew License filed by Charlene Giles ("Executor") in this docket because Operator's license is expired and suspended and the request to renew license does not comply with the Commission's regulations. In support of its Response, Staff states the following:

**PROCEDURAL BACKGROUND**

1. Operator's license expired on July 30, 2019.
2. On August 2, 2019, Commission Staff sent a Notice of Violation letter to Operator, requiring Operator to renew the license, transfer the wells on Operator's license to another operator, or plug the wells, by August 16, 2019.
3. On August 20, 2019, the Commission issued a penalty order in Docket No. 20-CONS-3052-CPEN wherein Operator was penalized for two (2) violations of K.A.R. 82-3-111. Operator had until September 23, 2019 to comply with that order or seek a hearing. Operator failed to request a hearing or achieve compliance with the penalty order in Docket No. 20-CONS-3052-CPEN by the deadline so, its license was suspended on October 8, 2019.

Therefore, in addition to Operator's license being expired, the license, even if filed for renewal, is suspended as of October 8, 2019.<sup>1</sup>

4. On October 17, 2019, the Commission issued a Penalty Order in this docket against Operator finding that Operator committed one violation of K.A.R. 82-3-120(a) because an unplugged well or unplugged wells, for which Operator is responsible, remain on Operator's expired license and wells listed on Operator's expired license continued to operate.<sup>2</sup> Specifically, the Penalty Order required, *inter alia*, Operator to pay a \$500 penalty, and immediately shut-in all unplugged wells on its license and cease oil and gas operations until Operator is in compliance with this Order. The Commission further ordered that Staff may seal the wells until Operator is in compliance with the Order.

5. Operator was given 60 days from the date of the Order to (a) renew its license or obtain a new license and transfer the well(s) to that license, (b) transfer the well(s) to another operator by filing the appropriate form(s) with the Commission, or (c) plug the well(s).

6. Operator was also given thirty (30) days in which to request a hearing.

7. On October 25, 2019, Charlene A. Giles, Executor of the Estate of Operator, Benjamin M. Giles, filed a Petition for Intervention, Request for Hearing, and Emergency Motion to Lift Shut-In Order.<sup>3</sup>

## ARGUMENT

### *Response to Motion to Lift Shut-In Order*

8. The order to shut-in made within the Penalty Order in this docket should not be lifted. K.A.R. 82-3-120(a) states that no operator or contractor shall drill, complete, service,

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<sup>1</sup> Commission records also indicate Operator's License has been suspended in Docket No. 19-CONS-3399-CPEN since July 31, 2019.

<sup>2</sup> *Penalty Order*, ¶¶ 10 (Oct. 17, 2019).

<sup>3</sup> Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License (Oct. 25, 2019).

plug, or operate any oil, gas, injection or monitoring well without first obtaining or renewing a current license. Here, the wells remain on Operator's expired license. Allowing the wells to be placed back into operation while the license is still inactive would violate Commission regulations. As long as Operator's license remains suspended and expired, the authority to operate any wells pursuant to K.A.R. 82-3-120 is lacking and the wells on Operator's license should remain shut-in until such time as compliance is achieved.

9. In addition to being expired, Commission records indicate that Operator's license is currently suspended in two other dockets, 19-CONS-3399-CPEN and 20-CONS-3052-CPEN.<sup>4</sup> In both dockets, the Operator is beyond the 30-day deadline to appeal or achieve compliance. As a result of this noncompliance, suspension letters were sent to Operator on July 31, 2019 and October 8, 2019.<sup>5</sup> These outstanding suspensions are further evidence why the wells listed on Operator's license should not be placed back into operation.

10. Further, Executor has filed for bankruptcy and as such does not have the funds or means to resolve the issues that Staff has with continued operations under this license. Many of these wells and leases with existing environmental problems will not be sold at auction and will ultimately be placed on the state plugging list. Issuing this order in its entirety allows the wells that present high environmental risk to be placed on the state plugging list as soon as possible and allows District Staff to address the environmental concerns quickly and efficiently. If the subject wells are allowed to be placed back into operation on the suspended and expired license then there will continue to be no operator capable of addressing any further spills or other environmental hazards concerning the subject wells. Therefore, in Staff's opinion it is in the best

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<sup>4</sup> Commission databases indicate the Operator's license has been suspended and unsuspended twice before being suspended for a third time since Operator's death.

<sup>5</sup> See Attachment #1.

interest of the state for these wells to remain shut-in until they are plugged, transferred, or the license is renewed after all Commission regulatory requirements are met.

*Response to Executor's Request to Renew License*

11. Staff objects to this request because Kansas statutes and regulations outline the process required for the Executor to apply to renew Operator's license. K.S.A. 55-155 and K.A.R. 82-3-120 lay out the requirements to be submitted to the Conservation Division in order to renew a license. In this instance, the Executor would be ineligible to qualify for a license due to the outstanding issues in Docket No. 20-CONS-3052-CPEN and other outstanding regulatory violations.

12. To be clear, it is Staff's opinion that Executor formally go through the process of renewing Operator's license according to the rules and the regulations of the State of Kansas. This allows Staff to ensure that all of the requirements for properly renewing Operator's license are met by Executor. Executor has had ample time and opportunity to transfer the wells to another validly licensed operator, or request the license to be renewed, but has failed and shown zero interest in doing either until now.

13. Commission regulation K.A.R. 82-3-120(b) requires the applicant to be in compliance with all requirements of K.S.A. 55-101 et seq. and amendments thereto, all implementing regulations, and all commission orders and enforcement agreements. Therefore, the license cannot be renewed until these compliance issues are resolved.

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission to deny Executor's Motion to Lift Shut-In Order and Request to Renew License and for any further relief as the Commission deems just and proper.

Respectfully submitted,



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Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

July 31, 2019

Benjamin M. Giles  
821 High Street  
Towanda, KS 67144-9047

**NOTICE OF LICENSE SUSPENSION**

**License No. 5446**

**Docket No. 19-CONS-3399-CPEN**

Operator:

Our records indicate that you are in violation of a Commission Order in the above Docket.

**Your license is hereby suspended.**

Until your license is reinstated, it is illegal for you to conduct oil and gas operations in Kansas.

If, after 10 days from the date of this letter, Commission Staff discover you performing oil and gas operations, Staff will recommend a Shut-In Order, including an additional \$10,000 penalty. If you are already shut-in, you must remain shut-in.

Any outstanding monetary penalty may be sent to collections.

You may review the Commission Order, which was mailed to you, at the Commission's website. If you have questions, you may contact us at the phone number listed at the top of this page.

Sincerely,

Legal Department Staff

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

October 8, 2019

Benjamin M. Giles  
821 High Street  
Towanda, KS 67144-9047

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**Docket No. 20-CONS-3052-CPEN**

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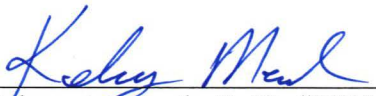
Sincerely,

Legal Department Staff

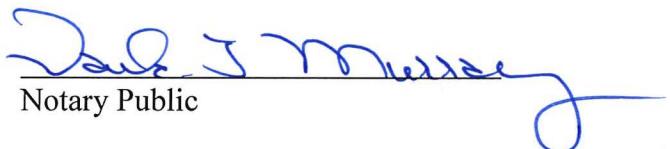
**VERIFICATION**

STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF SEDGWICK            )

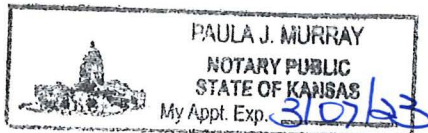
Kelcey A. Marsh, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Response*, and attests that the statements therein are true to the best of his knowledge, information and belief.

  
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Kelcey A. Marsh, S. Ct. #28300  
Litigation Counsel  
State Corporation Commission  
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 4 day of Nov, 2019.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires: 3/07/23





## CERTIFICATE OF SERVICE

20-CONS-3082-CPEN

I, the undersigned, certify that a true copy of the attached Response to Request for Hearing, Motion to Lift Shut-In Order, and Request to Renew License has been served to the following by means of first class mail and electronic service on November 4, 2019.

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