

THE STATE CORPORATION COMMISSION

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the matter of the failure of Millennium Oil) Docket No: 20-CONS-3224-CPEN
& Gas, Inc. (“Operator”) to comply with)
K.A.R. 82-3-120.) CONSERVATION DIVISION
)
_____) License No: 32563

DEFAULT ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

I. Jurisdiction

1. K.S.A. 77-520 provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. Within seven days after service of a proposed default order, the party against whom it was issued can file a written motion to vacate, stating the grounds relied upon.

II. Findings of Fact

2. On February 13, 2020, the Commission issued a Penalty Order against Millennium Oil & Gas, Inc. (Operator) for one violation of K.A.R. 82-3-120 because unplugged wells, for which Operator was responsible, remained on Operator’s expired license.¹ The Penalty Order stated that “A corporation shall appear before the Commission by a Kansas-licensed attorney.”²

3. On March 12, 2020, Operator submitted a Letter on Penalty Order via a non-attorney and did not indicate that it desired a hearing. On March 13, 2020, Commission Staff sent

¹ See Penalty Order, ¶¶ 6, 10 (Feb. 13, 2020).

² *Id.* at Ordering Clause H.

a letter inquiring whether Operator was requesting a hearing, giving a March 27, 2020, deadline to request a hearing.³ Pursuant to K.S.A. 55-164 and K.S.A. 77-501 *et seq.*, however, Operator's statutory deadline for submitting a request for hearing would have been March 19, 2020.⁴

4. On March 19, 2020, the Commission issued an Emergency Order Staying All Dockets (Emergency Order) staying all open dockets and suspending all deadlines in all open Commission dockets, effective immediately.⁵ The Emergency Order applied to Commission conservation division matters until April 23, 2020.⁶

5. On April 6, 2020, Operator, via a non-attorney, submitted a request for hearing by returning Staff's March 13, 2020, letter, signing it, and checking a box that said, in part, "I request an evidentiary hearing before the Commission. I understand that Commission rules require that corporations and similar entities be represented by an attorney at hearing."⁷

6. On May 7, 2020, the Commission issued an Order Designating Prehearing Officer and Setting Prehearing Conference. The Commission found Operator's request for hearing to be timely and set a prehearing conference for May 21, 2020.⁸ The Commission's order stated "A corporation shall appear before the Commission by a Kansas-licensed attorney," and "Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the [Kansas Administrative Procedure Act]."⁹

7. On May 21, 2020, Operator attended the prehearing conference via a non-attorney.¹⁰ On May 28, 2020, the Prehearing Officer issued an order reporting that parties had

³ See Correspondence from Staff (Mar. 13, 2020).

⁴ See K.S.A. 55-164, K.S.A. 77-503, K.S.A. 77-531(b).

⁵ See Docket 20-GIMX-393-MIS, *Emergency Order Staying All Dockets*, ¶¶ 4, Ordering Clause A (Mar. 19, 2020).

⁶ See Docket 20-GIMX-393-MIS, *Special Order Regarding Conservation Matters*, ¶ 7 (Apr. 23, 2020).

⁷ Request for Hearing (Apr. 6, 2020).

⁸ Order Designating Prehearing Officer and Setting Prehearing Conference, ¶ 4, Ordering Clause B (May 7, 2020).

⁹ *Id.* at Ordering Clauses D, E.

¹⁰ See Prehearing Officer Order Setting Status Conference, ¶ 3.

agreed to set a status conference for June 11, 2020, “to allow for discussion of the possibility of resolution of this matter absent the need for a procedural schedule, and to provide Operator an opportunity to obtain counsel if necessary.”¹¹

8. On June 11, 2020, Operator attended the status conference via a non-attorney.¹² On June 18, 2020, the Prehearing Officer issued an order reporting that the parties had agreed to set a status conference for July 2, 2020, “to provide Operator an opportunity to obtain counsel if it desires to further pursue its appeal.”¹³

9. On July 2, 2020, Operator attended the status conference via a non-attorney.¹⁴

10. On July 13, 2020, Staff filed a motion for a default order, on the grounds that a corporation must appear before the Commission by a Kansas-licensed attorney, Operator was a corporation, Operator did not appear at the July 2, 2020, status conference via an attorney, and thus Operator was in default.¹⁵ Operator did not file a response.

11. The Commission finds granting Staff’s motion for default to be appropriate. K.A.R. 82-3-228(d)(3) states that “a corporation shall not be permitted to enter an appearance, except by its attorney.” Commission records indicate Operator is a corporation.¹⁶ Since Operator is not represented by counsel, it has failed to enter an appropriate appearance in this matter over the course of Operator’s statutory timeframe for requesting a hearing, a prehearing conference, and two status conferences, with ample warning in the record that counsel was necessary. Operator was also given warning that failure to attend or participate in any stage of the proceeding may

¹¹ *Id.*

¹² See Prehearing Officer Order Setting Status Conference, ¶ 2 (Jun. 18, 2020).

¹³ *Id.*

¹⁴ See Motion for Default Order, ¶¶ 7-10 (Jul. 13, 2020).

¹⁵ See *id.*

¹⁶ See K.A.R. 82-1-230(h).

result in default; Operator, having failed to appear through counsel, has failed to legally attend or participate. Operator has also not contested Staff's motion for default.

III. Conclusions of Law

12. Pursuant to K.S.A. 77-520(a), the Commission concludes Operator's failure to attend or participate in these proceedings through legally-required counsel constitutes default, and that the Commission should issue an order in accordance with its findings.


THEREFORE, THE COMMISSION ORDERS:

- A. Staff's motion for a default order is granted.
- B. Operator is in default in this proceeding.
- C. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting this Default Order be vacated, stating the grounds relied upon, within seven calendar days after service of this Order, with three additional days added to account for service by mail.
- D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁷

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 08/06/2020



Lynn M. Retz
Executive Director

Mailed Date: 08/06/2020

JRM

¹⁷ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-CONS-3224-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
first class mail and electronic service on 08/06/2020.

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