

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

In the matter of the failure of Ace Energy, ) **Docket No. 23-CONS-3195-CPEN**  
LLC (Operator) to comply with K.A.R. )  
82-3-407 at the Grundy B #5 SWD well in ) CONSERVATION DIVISION  
Greenwood County, Kansas. )  
\_\_\_\_\_ ) License No. 34998

In the matter of the failure of Ace Energy, ) Docket No. 23-CONS-3268-CPEN  
LLC (Operator) to comply with K.A.R. )  
82-3-407 at the Grundy B #5 SWD well in ) CONSERVATION DIVISION  
Greenwood County, Kansas. )  
\_\_\_\_\_ ) License No. 34998

**REPLY IN SUPPORT OF MOTION TO CONSOLIDATE**

Ace Energy, LLC (“Operator”) submits this Reply in Support of Operator’s Motion to Consolidate (the “Motion”). By its Motion, Operator seeks to consolidate the instant action with Docket No. 23-CONS-3017-CPEN, because Staff has put the alleged violations in this docket directly at issue in Docket 23-3017. In support of its reply, Operator states the following:

Staff’s response offers two reasons why the dockets should not be consolidated: (1) that the allegations of unauthorized injection and a failed MIT contained in both dockets are somehow distinguishable, and (2) that consolidation would somehow delay the hearing in this docket. Both of these reasons lack merit in fact as discussed below. Further, Staff’s opposition constitute waste of judicial resources and is directly contrary to the procedural mandate set forth in K.S.A. 60-102:

“The provisions of [the Code of Civil Procedure] shall be liberally construed, administered and employed by the court and the parties to secure the just, speedy and inexpensive determination of every action and proceeding.” (emphasis added)

By now, it is undoubtedly obvious that Staff is engaged in a crusade to do everything in its power to prevent Operator from having a properly noticed and fair trial before the Commission. Unconstrained by time and cost, Staff continues to engage in frivolous tactics designed to make

Operator's quest for a simple hearing as expensive, cumbersome, and protracted as possible. Staff's opposition to Operator's Motion is yet another example of this behavior, and its behavior should be stopped. There is no legitimate reason to have two trials on this matter, and it is an affront to due process to contend otherwise. Operator's Motion should be granted, because it is the most efficient and pragmatic way to put this matter before the Commission.

***1. The evidentiary hearing will not be delayed, because it is not even scheduled.***

Staff's opposition to Operator's Motion is illusory and unfounded. Staff seems to fixate upon its conclusory allegation that if the proceedings were consolidated then "issues ripe for a hearing would necessarily be delayed several months while the parties conduct discovery and file additional pre-filed testimony."<sup>1</sup> No evidentiary hearing has been scheduled, and Operator fails to comprehend how something that has not been scheduled can be delayed.

The amorphous and mythical threat of delay is not alone a good cause to bar these matters from being consolidated. Staff points to the need for discovery and additional testimony but fails to state what exactly that could be. From Operator's perspective, the facts are already known, the parties have already stated their positions in the 3017 Matter, and Operator fails to understand where the cause of Staff's alleged delay would legitimately come from. Staff has not provided any indication on what further discovery will be needed or what supplemental testimony will be necessary, and accordingly Staff's complaint rings completely hollow.

If there is any needed discovery or supplemental testimony then there is ample time to conduct that, as discovery in Docket 23-3017 is still ongoing. Indeed, Staff has not yet responded to Operator's recent data requests (necessitated by Staff improperly raising new factual issues in its pre-filed rebuttal testimony) issued July 20, 2023. There is a notable difference between the

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<sup>1</sup> Staff's *Response to Motion to Consolidate*, at ¶ 5.

mere potential for delay and the likelihood of actual delay, and Staff fails to grasp that distinction.

It should also be noted that Staff's urgency to conduct a hearing in Docket 23-3017 is disingenuous. The proceedings in Docket 23-3017 were recently delayed at Staff's own request. Staff filed a procedurally improper and unfounded Motion for Summary Judgment in Docket 23-3017, which resulted in a delay in the scheduling of the evidentiary hearing in that matter. To accuse Operator of seeking to delay the hearing is nonsensical, as Operator does not stand to benefit from protracting. Operator is merely trying to avoid what a layman would coin double jeopardy, by having to expend time and resources defending itself twice on the same claims.

***2. Staff openly acknowledges that the matters at issue in this docket are at issue in Docket 23-3017.***

Staff attempts to downplay the fact that it put the same allegations in this docket at issue in Docket 23-3017 by stating "[t]he Subject Well was not singled out in the field reports, it was simply one of several hundred wells discussed in the reports."<sup>2</sup> The magnitude of Docket 23-3017 and its inclusion of hundreds of wells does not create good cause to have two trials on the same well and the same factual matters. In fact, the doctrine of *res judicata* prohibits Staff from getting two bites at the apple on this claim. Inclusions of allegations of violations at the Grundy B #5 SWD well amongst hundreds of other wells in the Docket 23-3017 does not diminish the nature of the allegations and enable Staff to evade consolidation. A finding in a proceeding regarding the Grundy B #5 well alone carries the same weight as a finding in a proceeding where that well is at issue alongside hundreds of others.

Further, Staff's assertion that the alleged violations are completely different between the proceedings is complete nonsense. Staff even states "in Docket 23-3268... Staff discovered

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<sup>2</sup> *Id.* at ¶ 8.

Operator injecting fluid into the Subject Well...”<sup>3</sup> Staff then states in the very next paragraph “[t]hese violations are entirely unrelated to the violations involving the Subject Well that are at issue in Docket 23-3017. In that docket... Operator conducted unauthorized injection at the Subject Well...”<sup>4</sup> Operator fails to understand how Staff can legitimately distinguish between, in its own words, the unauthorized injection of fluid in one instance and the conducting of unauthorized injection in another. This proceeding pertains to allegations of injecting fluid without authorization; the Docket 23-3017 pertains to allegations of injecting fluid without authorization.

Staff has nobody to blame other than itself for putting the same factual issues in play in both dockets. Nobody forced Ryan Duling to submit pre-filed testimony containing identical allegations of non-compliance as are lodged in this docket. Staff could have offered to withdraw that testimony to avoid a trial on the same issues twice. Instead, it doubled-down on that position, which is unsurprisingly in-step with its overall disregard for any semblance of justice and fair play in its crusade to run Operator out of the state. Indeed, these proceedings are so similar that if they are not consolidated, genuine issues of *res judicata* will arise following the conclusion of Docket 23-3017. Operator would prefer that the merits be the focus of these dockets and that the inequitable quagmire of *res judicata* issues be avoided. The matters should be consolidated as they comprise the exact same allegations, at the exact same well, by the exact same operator as Staff openly admits.

***3. Staff’s refusal to consolidate these matters is clearly the product of Staff’s bad faith attempt to unfairly prejudice Operator.***

Staff clearly believes it maintains some benefit by its death-by-a-thousand-cuts approach to these dockets. That point is clearly illustrated by Staff’s gamesmanship in initiating KCC

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<sup>3</sup> Id. at ¶ 6.

<sup>4</sup> Id. at ¶ 7.

Docket No. 23-CONS-3326-CPEN and using the newly invented docket number as a basis to improperly withhold notice to Operator's legal counsel. Staff desires to gain an advantage by waging war on Operator on multiple fronts with multiple proceedings as things may fall through the cracks when Operator is juggling multiple balls in the air. All to prevent Operator from having his day in court, or at least to make it as expensive, time consuming and slow as possible to get there. Operator is entitled to a fair proceeding to properly defend itself and Staff's pattern of behavior had indicated that the only way to ensure that Operator receives that opportunity would be to have all of Operator's related matters brought into a single proceeding. Having Operator conduct multiple proceedings, multiple rounds of discovery, multiple bouts of motion practice jousting with Staff, and multiple evidentiary hearings on the same matters at the same well is a unnecessary drain on Operator's resources and the resources of the Commission. In the end the ultimate question is whether or not it is fair to have multiple proceedings and multiple evidentiary hearings on the same accusations at the same well. It is not, and these matters ought to be consolidated.

## **CONCLUSION**

There are numerous ways to handle the unfortunate way in which Staff has conducted itself in these matters. The easiest would be to consolidate this docket with Docket 23-3017. Operator would be willing to waive or expedite pre-filed testimony to avoid delaying the yet-to-be-scheduled hearing in Docket 23-3017, particularly in light of the fact that relevant evidence is already in the record. Alternatively, Staff could agree to strike any reference to the violations at the Subject Well in Docket 23-3017, and allow those claims to be brought in the instant action. That would avoid duplicating efforts and *res judicata* in the present docket. Under no circumstance should Operator be forced to defend itself twice on the same claims.

Respectfully submitted,

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& KENNEDY, CHARTERED

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### **CERTIFICATE OF SERVICE**

I, Jackson C. Ely, hereby certify that on this 30th day of August, 2023, I caused the original of the foregoing **Reply in Support of Motion to Consolidate** 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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