

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the matter of the Application of Apollo) Docket No: 20-CONS-3132-CEXC
Energies, Inc. for an exception to the 10-year)
time limitation of K.A.R. 82-3-111 for its Early) CONSERVATION DIVISION
A-1 well located in the SE/2 of the NW/4 of)
Section 4, Township 33 South, Range 11 West,) License No: 30481
Barber County, Kansas.)

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. After service of a proposed default order, the party against whom it was issued has seven days to file a written motion to vacate, which shall state the grounds relied upon.

II. Procedural Background

2. On October 29, 2019, Apollo Energies, Inc. (Operator) filed an Application seeking an exception to the 10-year time limitation of K.A.R. 82-3-111 for its Early A #1 well.

3. On November 14, 2019, Bank of America N.A., Trustee, filed a *Notice of Objection to Application* in this docket.

4. On November 26, 2019, the Commission issued an order designating a prehearing officer and setting a December 18, 2019, prehearing conference. The order stated “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 KAPA.”¹ The order also stated that a corporation shall appear before the Commission by a Kansas-licensed attorney.²

5. On December 18, 2019, Commission Staff and Bank of America appeared at the scheduled prehearing conference, but Operator did not. At the prehearing conference, the prehearing officer found that proper notice had been given of the prehearing conference.

6. On December 19, 2019, Bank of America filed a motion to dismiss Operator’s Application, citing Operator’s non-attendance at the prehearing conference, and the Commission’s language regarding default, as grounds.

7. No party responded to Bank of America’s motion to dismiss, and no attorney has entered an appearance on behalf of Operator.

III. Findings of Fact

8. The Commission finds it appropriate to hold Operator in default, rather than to dismiss Operator’s Application. There are three reasons for this finding. First, as identified in the Commission’s November 26, 2019, order, the possible consequence for non-attendance at the prehearing conference was to be default. In its motion to dismiss, Bank of America presents no rationale for dismissal except for the Commission’s language regarding default. Second, if Operator fails to further pursue this matter, default will have the same result as dismissal, specifically, non-approval of Operator’s Application. Third, if Operator *does* wish to further pursue this matter, then consideration of a motion to vacate this *Default Order* would allow for more rapid consideration of the merits of the Application than would obligating Operator to re-file the Application. And re-filing the Application would remain a possibility, as Bank of America did

¹ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause D (Nov. 26, 2019).

² *Id.* at Ordering Clause E.

not request dismissal with prejudice, and at any rate, the Commission would not be inclined to dismiss with prejudice based only upon non-attendance at a prehearing conference.

III. Conclusions of Law

9. Pursuant to K.S.A. 77-520(a), the Commission concludes that Operator's failure to attend the December 18, 2019, prehearing conference constitutes default.

THEREFORE, THE COMMISSION ORDERS:

A. Operator is found to be in default in this proceeding.

B. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting that this Default Order be vacated and 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.

C. 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).³

D. If no timely motion to vacate or timely petition for reconsideration is filed, then Staff is directed to close this docket, and Operator's Application will be considered dismissed.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 01/23/2020



Lynn M. Retz
Executive Director

Mailed Date: 01/23/2020

JRM

³ 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-3132-CEXC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 01/23/2020.

Josh Rennaker
APOLLO ENERGIES, INC.
10378 N 281 HWY
PRATT, KS 67124-7920
josh@apolloenergies.com

SCOTT ALBERG, DISTRICT #1 SUPERVISOR
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 1
210 E. FRONTVIEW SUITE A
DODGE CITY, KS 67801
Fax: 785-271-3354
s.alberg@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

JOHN G PIKE, ATTORNEY AT LAW
WITHERS GOUGH PIKE PFAFF & PETERSON, LLC
200 WEST DOUGLAS, SUITE 1010
WICHITA, KS 67202
jpikew@withersgough.com

STEVEN D. GOUGH, COUNSEL
WITHERS, GOUGH, PIKE & PETERSON, LLC
O.W. GARVEY BUILDING
200 W DOUGLAS, SUITE 1010
WICHITA, KS 67202
Fax: 316-303-1018
sgough@withersgough.com

/S/ DeeAnn Shupe
DeeAnn Shupe