

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Petition of Daylight Petroleum,)
LLC to Open a Docket Pursuant to K.S.A. 55-605(a).) Docket No. 25-CONS-3040-CMSC

POST HEARING REPLY BRIEF OF DAYLIGHT PETROLEUM, LLC

Daylight Petroleum, LLC ("Daylight") submits this post hearing reply brief in Support of its Application filed in this docket. An evidentiary hearing in this docket was held on February 20, 2025.

I. MOST RECENT GROUND WATER SAMPLING CONFIRMS THAT THE BREAKOUT WHICH IS THE SUBJECT OF THIS DOCKET IS NOT CAUSING POLLUTION OR LOSS OF USABLE WATER.

After the hearing held in this Docket another quarterly sampling was taken from the monitoring wells installed by Daylight. This sampling revealed that three of the four monitoring wells showed a **decease** in chloride concentrations. Notably the PMW-2 well (the well with the highest chloride concentrations) had a significant decrease in chloride concentrations. PMW-1 was the only well which did not show a decrease in chloride concentrations, and this is also the only well which did not have a water level difference of more than one foot from the previous sampling. Thus, the chloride concentrations are what one would expect given the lack of fluctuation in ground water levels. *See*, Kelsee Wheeler Prefiled Direct Testimony, 18:9-21:11.

Well	Date	Depth to Groundwater (ft. btoc)	Sampling Method	Chloride Concentration (mg/L)
PMW-1	12/07/23	53.43	Hydrasleeve (139')	848
	04/29/24	41.65	Bailer	916
	06/17/24	35.85	Hydrasleeve (139')	492
	09/12/24	42.24	Hydrasleeve (139')	1630
	12/10/24	45.60	Hydrasleeve (139')	821
	03/27/25	45.03	Hydrasleeve (139')	981
PMW-2	12/07/23	129.34	Hydrasleeve (139')	416
	04/29/24	46.60	Bailer	1720
	06/17/24	63.73	Hydrasleeve (139')	2060
	09/12/24	72.35	Hydrasleeve (139')	2370
	12/10/24	74.50	Hydrasleeve (139')	2440
	03/27/25	61.85	Hydrasleeve (139')	2010

PMW-3	12/07/23	35.45	Hydrasleeve (139')	262
	04/29/24	27.05	Bailer	130
	06/17/24	31.18	Hydrasleeve (139')	59.9
	09/12/24	32.97	Hydrasleeve (139')	61.9
	12/10/24	42.20	Hydrasleeve (139')	69.5
	03/27/25	45.33	Hydrasleeve (139')	60.0
PMW-4	12/18/23	19.35	Hydrasleeve (139')	546
	04/29/24	18.90	Bailer	615
	06/17/24	21.48	Hydrasleeve (139')	745
	09/12/24	22.28	Hydrasleeve (139')	617
	12/10/24	32.95	Hydrasleeve (139')	598
	03/27/25	26.06	Hydrasleeve (139')	512

The table above shows all quarterly sampling results from the 139' depth interval for all four monitoring wells. The sampling reports show a decrease in chloride concentrations for three of the four monitoring wells. Concerning the PMW-1 monitoring well, there is still no noticeable trend indicating chloride levels in this well are either systematically increasing or decreasing. Thus, the samples taken from this well do not provide any indication that groundwater is being, or has been impacted by the breakout beneath the commercial building. These reports certainly do not support a finding that Daylight is causing pollution or loss of usable water at the breakout beneath the commercial building.

As the Commission balances its statutory mandates to protect fresh and usable water and also its duty to prevent waste, this direct evidence that fresh and usable water is not being impacted is of critical importance. This is true because the Commission will have to decide how far it will go to locate a potential abandoned well and to hopefully plug the same, and whether the facts of the situation justify the harm to the owner of the commercial building. Daylight has already spent over \$100,000.00 searching for a potential abandoned well beneath the building and all efforts have failed to locate a well. Ordinarily the Commission would be left to simply speculate or accept the risk of potential underground contamination, but in this case the monitoring wells installed by Daylight provide direct evidence as to what is occurring (or more accurately, what is not occurring) beneath the

surface.

Thus, the Commission's decision in this Docket must be made in the context of the following facts, 1) there is an extremely small amount of ground water at this site, which is too small to support residential or commercial use; 2) the chloride concentrations at the site are very low, so low in fact that the water is still safe for livestock purposes; 3) water monitoring demonstrates that fresh and usable water is not continuing to be impacted by whatever is beneath the commercial building; 4) Daylight has already spent \$100,000.00 searching for a potential well, and all tests failed to locate a well. This information is important, as the Commission will need to decide how much time and money spent searching for a possible abandoned well is enough, before the Commission would consider monitoring wells as a permanent solution? In other words, if fresh and usable water can be protected without causing any waste doesn't that make balancing the Commission's statutory duties very easy?

II. STAFF HAS FAILED TO PRESENT ANY EVIDENCE THAT THE BREAKOUT BENEATH THE COMMERCIAL BUILDING IS A WELL OF THE SPECIFIC TYPE DEFINED IN K.S.A. 55-150(j)

Staff contends in its brief that "both the Commission Staff and Operator's witnesses agreed that the anomaly beneath the building is likely a wellbore." *See*, Staff's Brief p. 3. However, the testimony cited describes several types of wellbores that may have caused the breakout, most of which do not fall within the definition of "well" as set forth in K.S.A. 55-150(j). Staff is attempting to shift the burden of proof to Daylight to disprove that the cause of the breakout is an abandoned well of the type described in K.S.A. 55-150(j), rather than Staff having to meet its burden to prove that the cause of the breakout is in fact an abandoned well of the specific type described in this statute.

This is simply not the law. Daylight's injection did cause the breakout to occur, but Daylight addressed the situation and the breakout has been stopped. Therefore, the only way Daylight could be held responsible to take further action, i.e., to locate and plug an abandoned well in order to prevent

future breakouts by other parties, is if Daylight is responsible for doing so under K.S.A. 55-179. However, in order for K.S.A. 55-179 to have any application to this situation at all, Staff must prove that an abandoned well of the specific type governed by K.S.A. 55-179 exists beneath the commercial building; but Staff has wholly failed to meet this burden. Staff offered testimony from its witnesses that an abandoned wellbore likely exists beneath the commercial building, but none of its witnesses even tried to speculate as to the type of wellbore they believe exists. Since, K.S.A. 55-150(j) does not include many of the types of wellbores that were discussed as possibly existing beneath the commercial building, Staff has failed to meet its burden of proof on this threshold issue.

III. THE QUESTION OF WHO IS LEGALLY RESPONSIBLE FOR THE SUSPECTED WELLBORE BENEATH THE COMMERCIAL BUILDING IS NOT BEFORE THE COMMISSION

Staff asserts that Daylight is legally responsible for a possible abandoned well beneath the commercial building pursuant to K.S.A. 55-179. This question is outside the scope of this Docket as it currently exists. The Order Designating Presiding Officer and Setting Prehearing Conference entered herein on August 22, 2024 expressly defines the scope of this docket as follows, "[a]ccordingly, the Commission finds it appropriate to grant Operator's petition; this docket is opened to determine what should be done concerning the fluid leak described in Operator's and Staff's filings." Thus, if the situation can be satisfactorily resolved, or if a well cannot be found there will be no need to determine legal responsibility under K.S.A. 55-179. But if the situation cannot be resolved, a separate docket will need to be opened pursuant to K.S.A. 55-179.

Moreover, as discussed above, Staff has not met its burden of proof to show that there is an abandoned well that falls under K.S.A. 55-179 beneath the commercial building. Second, Staff has not met its burden of proof to show that Daylight is causing pollution or loss of usable water at the breakout beneath the commercial building. In fact, the water sample reports clearly show that Daylight

is not causing pollution or loss of usable water at the breakout beneath the commercial building. Therefore, Daylight would not be legally responsible for an abandoned well beneath the commercial building even if one were located thereunder.

CONCLUSION

The breakout beneath the commercial building has been contained, and groundwater monitoring has been put into place to ensure that the breakout remains contained. In addition, all attempts to locate an abandoned well beneath the building have failed and any contention that an abandoned well even exists beneath the commercial building is nothing more than speculation.

Thus, Daylight is requesting the following of the Commission:

1. Daylight will permanently cease injection into Olnhausen Farms #6 either voluntarily or by order of the Commission. Since this is the well which ultimately channeled to the breakout, permanently shutting in this well is a necessary first step (which has already been done). The Olnhausen Farms #6 could either be plugged or converted to a producer. However, converting this well to a producer would actually reduce reservoir pressure in a portion of the reservoir that has channeled to the breakout, thus converting this well to a producer may greatly reduce the likelihood of future breakouts;
2. Daylight will continue to engage GSI to perform groundwater monitoring from all four monitoring wells into the foreseeable future on a quarterly basis. GSI has some specific protocols it believes should be followed in order to realize higher quality data from the groundwater monitoring program, and Daylight is in agreement with the protocols being proposed by GSI;
3. If the Commission feels something beyond the two items discussed above is needed, Daylight is willing to voluntarily move the site into the VCPRP program administered by KDHE BER. This would allow an Environmental Use Control ("EUC") to be placed on the Site, where injecting activities could be limited, restricted, or banned completely, with the input of the Commission and would bring continuing oversight of this site under the purview of the KDHE;

If the Commission is unwilling to grant the relief requested above, Daylight requests the Commission include the general guidance/dicta set forth in Daylight's initial Brief in its Final Order

to assist the parties in resolving this situation and to prevent this matter from simply returning to the Commission in its current state a few months from now.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 21st day of April, 2025, addressed to:

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