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November 14, 2017

Kansas Corporation Commission,
Conservation Division
266 N Main Street, Suite 220
Wichita, KS 67202-1513

**Re: Request for Hearing – 18-CONS-3167-CPEN, Benjamin M. Giles, License No. 5446,
In re: Compliance with K.A.R. 82-3-104 and -111 at the Wright #1 OWWO**

To whom it may concern:

We respectfully request a hearing in the above-captioned docket on behalf of Benjamin M. Giles ("Operator"). For the reasons set forth below, we believe the penalty order was issued in error or under circumstances that are unreasonable, arbitrary, and capricious towards Operator, and that imposing the penalty order and abnormally large fine will result in economic waste.

Background

The Wright #1 OWWO¹ ("Subject Well") is an oil well located in the NE/4 NE/4 SW/4 of Section 32-T25S-R4E, Butler County, Kansas. The Subject Well is located on a valid and subsisting oil and gas lease known as the Wright lease. The Subject Well was originally drilled in 1949 and was operated until 1965 when it was supposedly plugged and abandoned. Both the Well Plugging Record and Conservation Division Agent's Report (hereinafter, "Commission Reports") filed in 1965 reported that cement plugs were set in the old well at 30', 45', and 2,600'.² The Commission Reports also stated there was 130' of 8-5/8" casing cemented in the old well.³

Operator relied upon the Commission Reports when making his decision to attempt to washdown the cement plugs in the old well and work it over as a producer of oil from the Viola

¹ OWWO stands for "old well workover."

² Penalty Order, Ex. A, pp. 7-8 (Well Plugging Record dated 10-27-1965, and Conservation Division Agent's Report 10-26-1965).

³ *Id.*

formation. In fact, Operator sought a casing exception that would utilize the existing 130' of 8-5/8" casing that was supposedly cemented in the old well per the Commission Reports, which surface casing exception was approved by the Director.⁴

Unbeknownst to Operator and Commission Staff, the Commission Reports were not accurate and functioned to conceal a potentially dangerous situation in the old well for a period of nearly five decades. This situation was discovered in July of 2014 when Operator began preparing the pad site to washdown the old well. As part of that prep Operator excavated the location of the old well. Upon uncovering the wellhead Operator discovered that the old well was not plugged at all. The old well had not been capped, and did not have a cement plugs at 30' or 145', as indicated in the Commission Reports. The 8-5/8" casing was apparently never cemented in place and was just hanging by oak timbers in the old well.⁵ Later, Operator discovered there was no plug at 2,600' or if a plug had been set it had long since failed. In essence, the old well had been sitting open borehole for a period of almost 50 years. These facts were confirmed during Staff's July 8, 2014 inspection⁶, and in a July 14, 2017 email from the District 2 supervisor.⁷ Notably, in that July 14, 2017 email the District 2 supervisor expressly stated that Operator "may continue to recompleat the well to the depth indicated on his approved notice of intent to drill . . ."⁸

It is alleged in the Penalty Order that Operator spudded the Subject Well on July 14, 2014.⁹ Staff seemingly suggests that preparing a pad site and excavating the location of the old well, only to discover it had never been properly plugged, constituted "spudding" the Subject Well. That allegation is not correct, is not supported on the face of the Penalty Order, and is entirely inconsistent with the Commission's regulations that define "spud date" to mean "the date of first actual penetration of the earth **with a drilling bit**."¹⁰ Operator did not spud the Subject Well until August 29, 2016, as reported on his Well Completion Form, which Staff approved on January 19, 2017¹¹, and is acknowledged as the true spud date in paragraph 20 of the Penalty Order.¹²

Staff knows that Operator did not spud the Subject Well on July 14, 2014, and to Operator's knowledge never once asserted the Subject Well was spud on that date until the issuance of the Penalty Order. Indeed, the documents attached to the Penalty Order belie such an assertion.¹³ Upon excavating the old well Operator discovered—contrary to the Commission Reports—that it was not plugged at 30' and 145', did not have 8-5/8" casing cemented in place, and did not even have the 15" conductor pipe reported on the 1949 driller's log. Basically, the public records were

⁴ See Penalty Order, Ex. C.

⁵ See Penalty Order, Ex. C and Ex. D.

⁶ Penalty Order, Ex. C.

⁷ Penalty Order, Ex. L.

⁸ *Id.*

⁹ Penalty Order, ¶ 8.

¹⁰ K.A.R. 82-3-101(a)(70) (emphasis added); *see also* Penalty Order, Ex. L, "The Wright #1 OWWO has been out of compliance with K.A.R. 82-3-104 since 2014, when Mr. Giles 'dug it out'".

¹¹ Penalty Order, Ex. H (8/29/2016 spud date; approved by Staff 1/19/2017).

¹² Penalty Order, ¶ 20 ("Operator spud the well on August 29, 2017").

¹³ *See* n. 10, *supra*; *see also* Penalty Order Ex. F (letter dated 8/31/2015, "Notify the KCC District #2 office prior to spudding the well . . ."), Ex. H (8/29/2016 spud date, approved by KCC staff 1/19/2017), Ex. I ("Operator reported a spud date of 8/29/2016"), and L (The Wright #1 OWWO has been out of compliance . . . since 2014, when Mr. Giles dug it out").

100% incorrect with respect to the actual engineering of the old well at surface. In light of these findings, Operator had to file a new notice of intent to drill and seek a new surface casing exception.¹⁴ Staff approved the notice of intent to drill and the Director approved the casing exception on August 31, 2015.¹⁵

As noted above, Operator actually spudded the Subject Well on August 29, 2016, notably while the drilling permit was still in effect.¹⁶ Operator immediately encountered problems when drilling down on the Subject Well. One thing that was actually accurate in the Commission Reports is that approximately 2,300' of production casing was pulled from the old well when it was originally abandoned in 1965.¹⁷ Unfortunately, during the near 50-year period since the old well was abandoned the formation walls began to collapse inside the old wellbore, with shale sloughing off into the hole and sediment and fluid accumulating inside of it. This condition was almost certainly compounded by the fact the old well was not previously capped and surface plugs not previously set, meaning the old well was subjected to the elements of nature during this almost 50 year period.

Operator quickly realized a larger more powerful rig would be required to workover the well and moved the smaller rig off the Subject Well.¹⁸ Prior to rigging down, Operator set 205' feet of 10-3/4" surface pipe in order to protect fresh water.¹⁹ Operator submitted an initial well completion report showing the surface casing was set and cemented in, which Staff approved on January 19, 2017.²⁰

Thereafter, in late January or early February of 2017, Operator rigged up over the Subject Well with a larger drilling rig and commenced diligently drilling the Subject Well. Drilling was unusually slow because of the numerous shale bridges that developed within the old well, and due to the large amount of sediment, fluid and other debris that had been accumulating inside the old well—all because it was not properly plugged 50 years prior. As Operator continued to drill the Subject Well it became apparent that the cement plug supposedly set at 2,600' had either failed or was not properly set as large amounts of oil and fluid were circulating out of the wellbore.

The drilling of the well was snake bitten from day 1. Drilling was delayed in May when the mud pump on the rig broke, in July when the drill pipe became stuck in the Subject Well, and infrequently throughout the Spring and Summer due to rain and extreme heat. In August the swivel on the drilling rig broke. The swivel could not be repaired, and at the time it was cost prohibitive to rent a replacement swivel. Operator searched for and finally found a replacement swivel in Oklahoma, which was installed on the rig or about October 10, 2017. All repairs to the drilling rig were promptly and prudently made. The larger drilling rig was over the Subject Well at all times,

¹⁴ Penalty Order, Ex. D and Ex. F, p. 6.

¹⁵ Penalty Order, Ex. F, pp. 1 and 6.

¹⁶ Penalty Order, Ex. F, p. 1 (drilling authorization expires August 31, 2016).

¹⁷ Penalty Order, Ex. A, pp. 7-8.

¹⁸ Penalty Order, Ex. D.

¹⁹ Penalty Order, Ex. F, p.2; Ex. L (Email from District 2 supervisor stating the surface casing was set and cemented in place in September of 2016).

²⁰ Penalty Order, Ex. H.

except for the few days when repairs were being made. The photos attached to the Penalty Order corroborate these facts.²¹

The Subject Well reached its 2,627' total depth in the first week of November. On November 10 the production string was cemented in place from top to bottom of the well. In fact, on October 12, 2017, the date the Penalty Order was issued, the Subject Well was actively being drilled. Staff made occasional visits to the drill site and was informed of the various impediments to drilling and the drilling progress at the Subject Well. There is no reference to many of these visits in the Penalty Order.

Request for Rescission of the Penalty Order or Hearing

Much is made in the Penalty Order of an alleged open borehole situation that occurred while the Subject Well was being drilled. This open borehole situation and alleged threat to fresh water existed for nearly 50 years at no fault of Operator. It is entirely unfair to punish Operator for uncovering and reporting a problem created by other parties in 1965. Particularly considering the enormous amount of time Operator has spent, and the significant cost and expense he has incurred remediating the situation.

Additionally and importantly, all wells are open borehole while they are being drilled. It is alleged that Operator breached K.A.R. 82-3-104 by failing to case and cement production string in the Subject Well while it was being drilled. Wells are not cased and cemented with production string during the drilling process—Staff knows this. If failing to set production casing while drilling were a violation of Commission Regulations, virtually every well ever drilled in the State of Kansas would have been drilled in violation of Commission Regulations—and every well drilled and abandoned would remain non-compliant as it would be highly irregular for production casing to be set in a D&A well. It also alleged that Operator breached K.A.R. 82-3-111 because the Subject Well was inactive for an unspecified period of time. K.A.R. 82-3-111 requires an Operator to file a request for temporary abandonment status within 90 days after operations cease at a well. The Penalty Order is devoid of any factual allegation that the Subject Well set idle for 90 days. This is likely because drilling operations never ceased for more than 90 days. Simply put, the facts do not support a finding that these regulations were violated.

A violation of K.A.R. 82-3-106 is also alleged in paragraph 20 of the Penalty Order. That allegation is wrong on the face of the Penalty Order. In paragraph 20 it is alleged that Operator spud the well on August 29, 2016 (contrary to an earlier unfounded allegation of a July 14, 2014 spud date), and asserts that no approved intent to drill was on file at that time. Exhibit F attached to the Penalty Order plainly shows that a drilling intent was approved August 31, 2015 and in effect until August 31, 2016. On the face of the pleadings, the Subject Well was spudded pursuant to an approved drilling intent.

At present, the Subject Well has been completed and is compliant with all Commission regulations. The Subject Well will prevent waste. Per the Penalty Order, compliance is of more

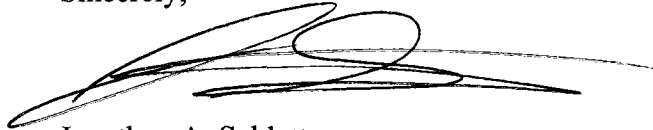
²¹ Penalty Order, Exs. J, M, and N.

interest to the Commission than issuing fines.²² Prior penalty dockets, all of which have been closed as a result of Operator's compliance, and penalty dockets in dispute and pending disposition are relied upon as a foundation for imposing an abnormally large \$10,000 penalty order against the Operator as a deterrent. However, at all times relevant Operator was endeavoring to bring the well into compliance, so it is unclear what exactly is trying to be deterred.

It is also alleged that the drilling of the Subject Well constituted a threat to fresh water, yet it is completely glossed over that this condition persisted for the 52 years prior to the Penalty Order or that at great cost and labor Operator cured this threat.²³

For the reasons set forth above, Operator contends he committed no violations of Commission regulations, and that imposition of the Penalty Order and large fines is unreasonable, arbitrary and capricious towards Operator under these circumstances. Operator respectfully requests that the penalty order in this docket be rescinded, or that this matter be set for hearing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan A. Schlatter', with a long horizontal flourish extending to the right.

Jonathan A. Schlatter
For the Firm

Attorneys for Benjamin M. Giles

JAS/cah

cc: Jon R. Myers, KCC Litigation Counsel

²² Penalty Order, ¶ 30.

²³ Penalty Order, ¶ 19.