

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

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

In the matter of a Compliance Agreement) Docket No: 20-CONS-3102-CMSC
between Carolyn Koehn ("Operator") and)
Commission Staff regarding bringing 9 wells in) CONSERVATION DIVISION
McPherson County, Kansas into compliance)
with K.A.R. 82-3-111.) License No: 3822

ORDER DENYING MOTION

The Commission finds and concludes as follows:

I. Findings of Fact

1. On October 8, 2019, the Commission issued an Order Approving Compliance Agreement. The Compliance Agreement stated that Operator had nine wells out of compliance with K.A.R. 82-3-111.¹ Under the Compliance Agreement, Operator was to plug one well by November 1, 2019, and one additional well each three calendar months thereafter, resulting in annual quarterly deadlines of February 1, May 1, August 1, and November 1, with all wells being returned to compliance by November 1, 2021.² In addition, the consequence of failure to meet a deadline is suspension of Operator's license until the deadline is met.³

2. Commission records indicate Operator has brought two of the nine wells into compliance with K.A.R. 82-3-111. The Lovett B #1 was plugged October 28, 2019, and the

¹ Order Approving Compliance Agreement, at Compliance Agreement ¶ 1 (Oct. 8, 2019).

² *Id.* at Compliance Agreement ¶ 2. The Agreement states the deadlines would result in all wells being returned to compliance by October 31, 2021. Under the described terms, however, Operator would actually have until November 1, 2021.

³ *Id.* at Compliance Agreement ¶ 3.

Nightingale #1 was returned to service no later than February 6, 2020.⁴ Accordingly, Operator's next deadline, pursuant to the compliance agreement, was to be May 1, 2020.

3. On April 23, 2020, in Docket 20-GIMX-393-MIS, the Commission issued a Special Order Regarding Conservation Matters, which stated that, regarding compliance agreements, "Operators shall have 45 days from the date this special order is issued to become current in their obligations under the agreements."⁵ As applied to the present matter, this resulted in Operator's May 1, 2020, deadline being extended to June 7, 2020.

4. On July 29, 2020, Operator filed a motion "for an Order granting an extension to December 31, 2020 deadline [*sic*]," also stating "the compliance deadline I am requesting is for a six month extension," and "the reason for the request is due to low oil prices caused by COVID 19. There is no money to plug wells at this time."⁶ The Commission shall interpret this as a request to extend the May 1, 2020, deadline, already extended to June 7, 2020, to December 31, 2020.

5. On August 10, 2020, Commission Staff filed a response in opposition to Operator's motion, stating that "Operator is behind in their Agreement, and Staff does not believe that Operator has presented any information in their motion that would require such extension."⁷

6. Under the Compliance Agreement, upon good cause shown Operator may receive an extension of time of up to 30 days.⁸ The Compliance Agreement also provides that Operator shall request such extension at least seven days prior to the applicable deadline, and upon such request, that Staff shall file a status update recommending approval or denial of the request.⁹

⁴ See K.A.R. 82-1-230(h).

⁵ Docket 20-GIMX-393-MIS, Special Order Regarding Conservation Matters, ¶ 11 (Apr. 23, 2020).

⁶ Motion Requesting Extension (Jul. 29, 2020).

⁷ Response to Motion Requesting Extension, ¶ 7 (Aug. 10, 2020).

⁸ Order Approving Compliance Agreement, at Compliance Agreement ¶ 3.

⁹ *Id.*

7. Further, Commission records indicate Operator has not complied with the August 1, 2020, deadline contained within the Compliance Agreement.¹⁰ Thus, the Compliance Agreement calls for suspension of Operator's license for failure to meet the August 1, 2020 deadline. The Commission takes administrative notice of its records, which indicate Staff suspended Operator's license for this non-compliance on August 6, 2020.¹¹

8. The Commission finds Operator's request is outside the bounds of the 30-day extension allowed by the compliance agreement and is also nearly two months untimely. The Commission additionally finds no appropriately developed rationale to grant Operator's motion to extend the May 1, 2020, deadline to December 31, 2020. Additionally, under the Compliance Agreement, the only consequence of non-compliance with the May 1, 2020, deadline is suspension of Operator's license, which remains suspended anyway, for non-compliance with the August 1, 2020, deadline. Nor is the Commission willing to extend other deadlines, or all deadlines, within the Compliance Agreement, as the record before the Commission is insufficient to support such extensions.

II. Conclusions of Law

9. The Commission concludes it should issue an order in accordance with its findings.

THEREFORE, THE COMMISSION ORDERS:

Operator's motion is denied.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

¹⁰ See K.A.R. 82-1-230(h).

¹¹ *Id.*

CONCURRING OPINION OF COMMISSIONER KEEN


I support the ultimate outcome of the Commission's order in this docket. However, I believe that the following paragraph should have been added to the Findings of Fact:

Under the current circumstances created by the COVID-19 pandemic, the Commission is cognizant of the economic difficulties some operators are currently experiencing. If Operator seeks substantial amendment to its Compliance Agreement, then Operator is encouraged to discuss such possibility with Commission Staff. The Commission would be open to considering an amended agreement, but at a minimum would require that the Operator provide reasons and/or evidence showing why such amendments were necessary and would likely result in compliance with Commission regulations, and would be protective of the environment and the public interest.

The Commission's order does not prohibit Operator from making additional attempts to amend her Compliance Agreement. It would be appropriate and useful for the Commission to more clearly signal what standards it would be inclined to utilize when taking up any future motions of this sort.

Docket 20-CONS-3102-CMSC, Order Denying Motion & Concurring Opinion

Dated: 09/01/2020 _____



Lynn M. Retz
Executive Director

Mailed Date: 09/01/2020 _____

JRM

CERTIFICATE OF SERVICE

20-CONS-3102-CMSC

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 09/01/2020.

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