UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20724

In the Matter of

PETROLIA ENERGY CORPORATION,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division"), by undersigned counsel, pursuant to Rules 154 and 250 of the Commission's Rules of Practice, files its reply in support of its Motion for Summary Disposition against Petrolia Energy Corporation ("BBLS").[1]

I. BBLS's Response Fails to Offer Any Legal or Factual Reason for Denying the Division's Motion.

BBLS is more than a year delinquent in its filings. There is no factual dispute on that dispositive issue. *See Resp.* at 6 ("a violation is not disputed"). While Petrolia suggests that

[1] BBLS claims that the Division's opening Motion and Declaration ("Motion") does not comply with the Rules of Practice based on the mistaken claim that SEC Rule of Practice 250(c) limits dispositive motions inclusive of exhibits to 35 pages. Resp. at 1. The limit for dispositive motions is found in Rule 250(e), not (c), and provides:

> Dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words. **** A double-spaced motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) in the dispositive motion, is presumptively considered to contain no more than 9,800 words.

17 CFR 201.250. The Division's Motion was 13 pages and falls within the 9800 word presumption. A Microsoft Word Count of the Motion shows that it includes 3933 words.

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inferences can be drawn in its favor on the issue of the appropriate remedy, it fails to identify those inferences or explain how they would alter the outcome of the *Gateway* analysis. A review of the *Gateway* factors supports revocation in this case and any argument to the contrary should be rejected.[2]

A. BBLS's Violations Are Serious And Recurrent, Giving Rise To A Presumption Of Revocation.

1. BBLS's Violations Are Serious.

BBLS first argues that its violations are not serious because it has only missed five reports, which is less than some issuers, and has only been delinquent for a year and a month, which is less than some issuers. The seriousness of an issuer's Section 13 violations are not "assessed by comparing [the issuer's] missed filings with the number of missed filings in other Exchange Act Section 12(j) proceedings." *China-Biotics, Inc.,* Exchange Act Release 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013). All violations of Section 13(a)'s reporting requirements are serious because timely and accurate reporting is statutorily required and the reporting requirements are one of the primary statutory tools for protecting the integrity of the securities marketplace. *Id.*

2. BBLS's Violations Are Recurrent.

BBLS's claim that the length of its delinquency and the number of missing reports is dissimilar to other 12(j) respondents cannot overcome the recurrent nature prong of the *Gateway* analysis. In making this claim, BBLS cherry picks cases with longer delinquency periods in an attempt to frame BBLS's delinquency period as brief. The Commission has repeatedly found

[2] BBLS argues that the Division's statement that BBLS securities are quoted on OTC Link is false or misleading because no shares of BBLS securities have traded since September 28, 2021. The term "quoted" in this context is a term of art to describe securities that are quoted on an unsolicited basis in the Expert Market tier of OTC Markets as distinguished from securities that are traded or "listed" on a securities exchange.

delinquencies of similar duration and failures to file a similar amount of reports to be recurrent and to warrant revocation. *See, e.g., WSF Corp.*, Initial Decision Rel. No. 204, 2002 WL 917293, at *14 (May 8, 2002) (one Form 10-K and three Forms 10-Q); *Freedom Golf Corp*., Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (one Form 10-K and one Form 10-Q); *iBIZ Technology Corp.*, Initial Decision Rel. No. 312 at 1, 2006 WL 1675913 (June 16, 2006) (one Form 10-K and two Forms 10-Q); *Ironclad Encryption Corp.,* Release No. 9426, 2022 WL 488507, at *3 (Feb. 15, 2022) (failure to file for "more than year"); *Triton Emission Sols. Inc.*, Release No. 94255, 2022 WL 488504, at *3 (Feb. 15, 2022) (same).

BBLS also appears to argue that the delinquency was caused by the extraordinary circumstances surrounding its former CEO and thus isolated. The Commission has repeatedly held that third-party conduct does not excuse a company's failure to comply with its periodic filing obligations. *Eagletech Communications, Inc.,* Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534 *at* *6 (July 5, 2006) (third-party criminal activity); *Cobalis Corporation,* Exchange Act Rel. No. 64813, 2011 SEC LEXIS 2313 *at* *20 (July 6, 2011) (actions of shareholder in forcing involuntary bankruptcy proceeding and forcing issuance of stock did not excuse Exchange Act violations).

BBLS makes multiple references to its record of past filings as evidence that its delinquencies are isolated, but the Commission has repeatedly held this evidence to be unavailing. *See, e.g., Citizens Capital*, Release No. 34-70800, 2012 WL 2499350 at *2, *4 (June 29, 2012) (violations were recurrent even though company had timely filed reports for almost three years and only stopped filing because its key management resigned where company's failure to file continued for years); *China-Biotics, Inc.*, 2013 WL 11270156, at *2, *7 (evidence that company had timely filed reports for four-and-a-half years and only stopped filing because

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of newly-discovered accounting irregularities was insufficient to overcome evidence that company failed to file reports for a year and a half); *American Stellar Energy, Inc. a/k/a Tara Gold*, Exchange Act Release No. 64897, 2011 WL 12905129, at *2, *4 (Jul. 18, 2011) (evidence that company had timely filed reports for almost two years and only stopped filing because it replaced its existing line of business was insufficient to overcome evidence that company repeatedly failed to file reports).

B. BBLS Has Not Made A Compelling Showing On The Remaining *Gateway* Factors Sufficient To Rebut The Presumption Of Revocation.

1. BBLS's Violations Were Knowingly Committed.

BBLS claims that its violations were committed with a low degree of culpability because its new management is attempting to rectify the violations. That evidence does not relate to culpability, which turns on whether the failure to file was "inadvertent or accidental" as distinguished from knowing. *China-Biotics, Inc.,* 2013 WL 5883342 at *n.60. As BBLS itself points out, BBLS knew of its reporting obligations because, prior to the current delinquencies, BBLS filed reports for 12 years (albeit several days, and in some cases, years late). *See* Resp. at 3.

BBLS's acknowledgement that the company was aware of the requirement to file Forms 12b-25 but failed to do so because it "knew it would not meet the extended deadline and could not state that it planned to meet the deadline until it cured the prior delinquent reports" is additional evidence of a high degree of culpability. *See* Resp. at 7. Under Rule 12b-25(a), a company must file a Form 12b-25 for a periodic report that is filed after the due date regardless of whether it anticipates filing the periodic report within the extension period. *See* Compliance and Disclosure Interpretations, Questions and Answers of General Applicability (March 31, 2020), https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm).

BBLS also points to its filing of Forms 8-K as mitigating its culpability. While the failure to file required reports can be aggravating; their filing can never be mitigating. *Cf. China-Biotics* 2013 WL 5883342 at *11 ("while not filing a Form 12b-25 may be an aggravating factor, filing a required Form 12b-25 is not mitigating").

2. BBLS's Efforts To Cure Its Delinquencies Are Minimal And Ineffective. Moreover, BBLS Has Not Pointed To Any Concrete Measures That Would Ensure Future Compliance.

BBLS's filing failures were caused by the departures of its CEO and Controller, lack of finances, and unexplained delays in access to information required to prepare its reports. Answer at 4.

BBLS argues that its engagement of M&K CPAS, PLLC ("M&K") is both compelling evidence of its efforts to remedy past violations and evidence that it has adopted concrete measures to prevent future violations. But the lack of an auditor was not the cause of the delinquencies, nor has the retention of an auditor substantially assisted BBLS in curing its noncompliance. M&K was engaged in October 2020 to audit BBLS's year-end financial statement for the Fiscal Year 2020 Form 10-K, due on March 31, 2021. *See* BBLS Ex. A-1 and Division Ex. 10. M&K's retention in October 2020 did not prevent the violation that occurred on March 31, 2021 when BBLS failed to file its 2020 Form 10-K; nor has the fact that M&K has been retained to prepare the 2020 Form 10-K for over a year cured that filing failure. The 2020 Form 10-K remains outstanding. The timeline for BBLS's retention of M&K for the Form 10-K due for Fiscal Year 2021 is similarly not compelling. The Division of Corporation Finance sent BBLS a delinquency notice on July 8, 2021, this proceeding was filed on January 28, 2022, and the 2021 Form 10-K was due on March 31, 2022. Even knowing that it was already delinquent

and at risk of revocation, BBLS did not engage M&K to assist with the preparation of the 2021 Form 10-K until April 25, 2022, almost a month after it was due. *See* BBLS Ex A-2

As for the financial cause of its filing failures, BBLS states that it expects to make $600,000 in monthly revenue beginning May 25, 2022. The potential of future revenue is not concrete; nor does it ensure sufficient funds to pay for auditors required for reporting compliance. Finally, BBLS points to the installation of new management as of September 2021, but new management has not cured the delinquencies and additional delinquencies have continued under new management. *See* Div. Ex. 10.

3. BBLS's Assurances of Future Compliance Are Not Credible.

BBLS argues that it has made adequate assurances against future violations by (1) meeting self-imposed deadlines and (2) proposing a timeline for filing all required reports and agreeing to voluntarily de-register if it misses the deadlines. The Division takes particular issue with BBLS's assertion that it has met self-imposed deadlines. In its Answer filed on February 8, 2022, BBLS acknowledged its previous failed commitment to file its 2020 Form 10-K by December 31, 2021 and promised the Commission that it would be filed by a second, self-imposed deadline of February 28, 2022. *See* Answer at 5. BBLS missed the second deadline too. In its Answer, BBLS also stated that it anticipated becoming current on all outstanding filings "on or around June 30, 2022." *Id.* The proposal in BBLS's Response makes clear that BBLS will miss this self-imposed deadline because its new proposal is to become current by October 30, 2022. Resp. at 13. BBLS's failure to meet two self-imposed deadlines and acknowledgment that it will be unable to meet a third makes its assurances against future violations incredible. *Advanced Life Sciences Holdings, Inc*., Exchange Act Rel. No. 81253, 2017 WL 3214455 at *4 (July 28, 2017).

Even if BBLS were to become current in its periodic filings in accordance with its latest timeline, a lesser sanction than revocation would not be appropriate. See *Law Enforcement Associates Corp., et al.* [as to Sonnen Corp.], Initial Decision Rel. No. 487, 2013 SEC LEXIS 1436, at *12-13 (May 15, 2013) ("dismissal or a lesser sanction [than revocation] would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors"); *Nature's Sunshine Products, Inc.*, Securities Exchange Act of 1934 Rel. No. 59268, 2009 SEC LEXIS 81, at *34 (January 21, 2009) ("Dismissal [in this case]would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12(j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely 3 the period during which public investors would be without accurate, complete, and timely reports"); *Tamir Biotechnology, Inc.*, Initial Decision Rel. No. 488, 2013 SEC LEXIS 1489, at *3-4 (May 22, 2013) (Elliot, ALJ) (issuer's registration revoked where it was less than two year's delinquent and brought itself current after institution).

II. Conclusion

For the reasons set forward above the Division requests that the Division's Motion for Summary Disposition be granted and that the Commission revoke the registrations of each class of BBLS's Exchange Act Section 12 registered securities.

Dated: May 5, 2022

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OS Received 05/05/2022

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Reply In Support Of Its Motion For Summary Disposition to be served on the following on this 5th day of May, 2022, in the manner indicated below:

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