

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

Before Commissioners:                    Shari Feist Albrecht, Chair  
                                                         Jay Scott Emler  
                                                         Dwight D. Keen

In the Matter the Application of TGT )     Docket No: 19-CONS-3003-CEXC  
Petroleum Corporation for an Exception to )  
10-year time limitation of K.A.R. 82-3-111 for )     CONSERVATION DIVISION  
its Wheeler F#1 well located in the SE/4 NW/4 )  
of Section 34, Township 27 South, Range 19 )     License No. 5118  
West, Kiowa County, Kansas. )

**ORDER ON MOTION TO DISMISS PROTESTS**

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:

**Background**

1.        On July 3, 2018, TGT Petroleum Corporation (Applicant) filed an Application for an exception to the 10-year time limitation of K.A.R. 82-3-111 for its Wheeler F#1 well located in Kiowa County, Kansas.<sup>1</sup>

2.        Two protests were subsequently filed in the docket: one by Alan R. Staab of Voskuhl Staab Family Farms, LLC and one by Roger Stotts of Morning Star Farms, GP.<sup>2</sup>

3.        On July 25, 2018, Jonathan A. Schlatter entered his appearance on behalf of the Applicant.<sup>3</sup>

4.        On July 31, 2018, a Prehearing Conference was scheduled for August 21, 2018.<sup>4</sup>

5.        On August 20, 2018, the Applicant filed a Motion to Dismiss Protests.

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<sup>1</sup> Application, p. 1 (Jul. 3, 2018).

<sup>2</sup> Voskuhl Staab Family Farms, LLC, Alan R. Staab Letter of Protest (July 20, 2018); Morning Star Farms, GP, Roger Stotts Letter of Protest (July 24, 2018).

<sup>3</sup> Entry of Appearance – Jonathan A. Schlatter, p. 1 (July 25, 2018).

<sup>4</sup> *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (July 31, 2018).

6. On August 21, 2018, a Prehearing Conference was held. The parties agreed that in light of the Applicant's Motion to Dismiss Protests, the proceeding should be continued to allow for Commission action on the Motion.

### **Legal Standards**

7. K.A.R. 82-3-135a(e) requires a protestant to file a "valid protest." According to K.A.R. 82-3-135b(a), a valid protest is one that "include[s] a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas." These requirements are akin to the requirements for standing.<sup>5</sup> A protestant can only show a "direct and substantial interest" in the Application where the protestant demonstrates that, "[1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct."<sup>6</sup> "A cognizable injury is established by showing . . . that [an individual] personally suffers some actual or threatened injury as a result of the challenged conduct . . . [and] . . . [t]he injury must be particularized, *i.e.*, it must affect the plaintiff in a personal and individual way."<sup>7</sup> "Mere allegations of possible future injury do not meet the requirements of standing and instead, any threatened injury must be certainly impending."<sup>8</sup> Moreover, "an injury must be more than a generalized grievance common to all members of the public."<sup>9</sup>

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<sup>5</sup> Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 28 (Mar. 29, 2018); *Final Precedential Order*, ¶ 1 (Apr. 5, 2018) (adopting and incorporating the Written Findings and Recommendations made by the Presiding Officer, Shari Feist Albrecht).

<sup>6</sup> See *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33, 49 (2015) (citations and internal quotations omitted). See also Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

<sup>7</sup> See *FV-I, Inc. for Morgan Stanley Mortg. Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248, 1255-56 (2017) (internal citations and quotations omitted). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29 (Mar. 29, 2018).

<sup>8</sup> See also *Labette Cty. Med. Ctr. v. Kansas Dep't of Health & Env't*, 2017 WL 3203383 at \*8 (unpublished), 399 P.3d 292 (Kan. Ct. App. 2017). See also Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29.

<sup>9</sup> *Labette Cty. Med. Ctr.* 2017 WL 3203383 at \*10 (internal citations and quotations omitted).

## Findings and Conclusions

8. In its Motion to Dismiss Protests, the Applicant relied on the reasoning in the Commission's 17-CONS-3689-CUIC Docket (17-3689) to argue that the Protestants have not filed valid protests in this matter.<sup>10</sup> The Applicant argued that "[t]he letters of protest . . . do not contain specific allegations as to why granting the Application would cause waste, violate correlative rights, or pollute fresh water. Without specific allegations of a cognizable injury that could result from the granting of the Application, the Protesters have not shown a 'direct and substantial interest' in the Application, and the Commission should dismiss their protests."<sup>11</sup>

9. According to the Applicant, the Protestants' complaint that the well at issue interferes with their farming operations, and thus costs them revenue, is outside the Commission's jurisdiction because it "[has] nothing to do with the conservation of oil and gas resources, nor the protection of correlative rights and fresh water."<sup>12</sup> The Applicant argued that the Protestants' generalized concerns about potential casing leaks threatening fresh water "are completely unsubstantiated and entirely speculative,"<sup>13</sup> and further, "have been completely negated by the fact that [the well at issue] passed a [Conservation] staff-witnessed mechanical integrity test just several weeks ago."<sup>14</sup> The Applicant also asserted that the Protestants failed to offer any kind of evidence against the economic value of the Applicant's workover of the well at issue and the waste that would result from plugging the well.<sup>15</sup>

10. The Commission agrees with the Applicant and finds the Protestants' concerns about interference with their farming operations do not provide "specific allegations as to the manner in

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<sup>10</sup> See Motion to Dismiss Protests, pp. 4-5.

<sup>11</sup> Motion to Dismiss Protests, p. 4.

<sup>12</sup> Motion to Dismiss Protests, p. 4.

<sup>13</sup> Motion to Dismiss Protests, p. 4.

<sup>14</sup> Motion to Dismiss Protests, p. 4.

<sup>15</sup> Motion to Dismiss Protests, pp. 4-5.

which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas,” as required by K.A.R. 82-3-135b(a). The Commission finds the Protestants’ concerns about possible casing leaks to be speculative concerns of “possible future injury” which “do not meet the requirements of standing.”<sup>16</sup> The Commission finds that any concerns about the casing on the subject well are alleviated by the well’s passage of a Staff-witnessed mechanical integrity test on June 28, 2018.<sup>17</sup> Moreover, the Protestants have had the opportunity to respond to the Applicant’s Motion to Dismiss Protests, but have not done so. Hence, the Commission finds the filed protests do not meet the regulatory standard for protests, and thus, the Protestants have not filed valid protests pursuant to K.A.R. 82-3-135b(a).

11. Based on the above, the Commission finds the protests of Alan R. Staab and Roger Stotts shall be dismissed. There are no other protests of record in this matter. K.A.R. 82-3-111(b) requires that an exception to the 10-year time limitation for temporary abandonment status be granted by Commission order. Therefore, Staff is directed to complete its review of TGT Petroleum Corporation’s Application and advise the Commission if, in Staff’s opinion, a hearing is necessary. Otherwise, upon completion of its review, Staff shall provide the Commission with a recommendation regarding approval of the Application.

**THEREFORE, THE COMMISSION ORDERS:**

A. TGT Petroleum Corporation’s Motion to Dismiss Protests is granted. Staff shall complete its review of the Application accordingly and provide the Commission with a recommendation regarding approval of the Application.

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<sup>16</sup> Docket No. 17-CONS-3689-CUIC, Written Findings and Recommendations, ¶ 29.

<sup>17</sup> See Application, ¶ 7.


B. 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).<sup>18</sup>

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/11/2018

  
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Lynn M. Retz  
Secretary to the Commission

Mailed Date: 09/12/2018

MJD

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<sup>18</sup> 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**

19-CONS-3003-CEXC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 09/11/2018.

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