

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

In the Matter of the Application of Unit  
Petroleum Company to authorize injection of  
saltwater into the Mississippi formation at  
the Royce A#1 enhanced recovery well,  
located in Section 16, Township 25 South,  
Range 9 West, Reno County, Kansas

Docket No.  
19-CONS-3097-CUIC  
  
CONSERVATION  
DIVISION  
License No 33596

RESPONSE TO MOTION TO DISMISS PROTESTS

1. K.S.A. 74-601 created the State Corporation Commission known as the Kansas Corporation Commission in 1933.
2. K.S.A. 74-623 granted exclusive jurisdiction to regulate oil and gas activities to the state corporation commission in 1986. K.S.A. 74-623(a)(3) grants exclusive jurisdiction of the prevention and cleanup of pollution of the soils and waters of the state from oil and gas activities.
3. K.S.A. 55-152(a) requires that “The commission shall adopt such rules and regulations necessary for the implementation of this act including provisions for the construction, operation and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well. “

4. K.S.A. 55-151 (b) requires well construction to protect the usable waters of the state. K.S.A. 55-156 requires protection of the usable ground water or surface water from pollution prior to abandonment. K.S.A. 55-162 requires the commission to take appropriate action to prevent pollution and protect water quality in hearings to determine whether operating violations have occurred.

5. The Kansas Administrative Procedures Act permits the Kansas Corporation Commission to establish rules and regulations in compliance with statutory and constitutional requirements.

6. The regulations the Kansas Corporation Commission has created ignore the statutory standard of protection of the usable waters of the state from not only actual but potential harm from any well for not only construction but also operation and abandonment.

7. In 1986 the EPA awarded primacy for approval of class II injection wells to the Corporation Commission for enhanced oil recovery and for disposal to the KCC. In 1986, the EPA awarded primacy for approval of class II injection wells to store hydrocarbons to the Kansas Department of Health and Environment.

8. The 1986 designation of primacy for the KCC was under

1425 rules, a carve out to grandfather existing injection well permit procedures without regard to EPA requirements in the Safe Drinking Water Act. The 1986 EPA primacy designation for the KDHE was under 1420, in which the KDHE must follow Code of Federal Rules and require procedures approval by the EPA.

9. The Safe Drinking Water Act requires hearings to allow public participation in the permit approval process for injection wells through a public comment process. Per K.A.R. 28-46-21, KDHE conducts hearings for underground hydrocarbon permits per 40 CFR 124.10 through 40 CFR 124.12 that are open to any person to make public comment. Per K.A.R. 82-3-135(b), the KCC allows no public comments but requires members of the public responding to an application for an injection well permit to protest as adversaries in an evidentiary hearing to prove why the KCC should not issue an injection permit to the applicant, enforced by OGCD litigation counsel to deny public participation in hearings for class II injection well permits.

10. In the Order on Judith Wells' Petition for Public Comment, docket 18-CONS-3195-CUIC dated June 8, 2018, the commission findings on page 4 agree with staff that the Commission need not adhere to the provisions of 40 C.F.R. Parts 124, 144, 145....."

11. The Motion to Dismiss Protests cites KCC docket rulings nearly exclusively with the exception of 1 and 2, which are the same KAR citation, and 10 and 14, which are court precedents unrelated to protection of the usable waters of the state from actual or potential pollution from any well. The other 14 citations include seven citations from a single docket, 18-CONS-3195-CUIC, the same docket which dismissed Judith Wells Petition for Public Comment and over 20 protestants from the evidentiary hearing. The hearing was conducted with two remaining protestants, a married couple.

12. The Kansas Administrative Procedures Act (KAPA), K.S.A. 77-501 through 77-566, defines a “party” 77-502(e)(2) as “a person to a state agency proceeding or allowed to intervene as a party in the proceeding.”

13. K.A.R. 82-1-204(i)(1) “‘Party’ means a person with an articulated interest in a particular commission proceeding who meets any of the following conditions:...(B) The person is named as a party to a commission proceeding.”

14. K.S.A.-511(a)(a) allows 30 days after receipt of the request for a hearing to acknowledge receipt thereof and inform the applicant of the name, official title, mailing address and telephone number of a

state agency member or employee who may be contacted regarding the application.” Docket No. 19-CONS-3097-CUIC recorded a request for hearing from Cindy Hoedel on August 24, 2018 and four more by the deadline of September 13, calculated by legal staff from the date of publication and not from the September 28, 2018 filing of the application with the Oil and Gas Conservation Division.

15. The Kansas Corporation Commission e-mailed all parties, including the five protestants, the Order Designating Prehearing Officer and Setting Prehearing Conference on September 18, 2018. The recipients of the Order are referred to as “parties”.

16. K.S.A.-511 (c) “For purposes of this section, a hearing commences when the state agency or presiding officer notifies a party that a pre-hearing conference or other stage of the hearing will be conducted.” By this definition, the docket hearing began September 18, 2018.

17. On October 9, 2018, David E. Bengtson entered an appearance on behalf of the applicant, Unit Petroleum.

18. On October 10, Judith L. Wells filed a pleading citing research indicating Unit Petroleum had already injected nearly 602,000 barrels of produced wastewater in the first 7 months of operation in 2017. The new EOR is on the Maxwell lease immediately adjacent to the sole

operating well on the Royce lease. The Royce lease will have no producing wells to enhance oil recovery from if its only well is converted to injection., so its only purpose is disposal.

19. On October 11, 2018, Michael Duenes presided over the prehearing conference attended by all five protestants and the applicant and applicant counsel.

20. On October 16, 2018, applicant's attorney David Bengston filed the Motion to Dismiss Protests.

21. On October 18, 2018, the Kansas Corporation Commission filed the Order Setting Procedural Schedule discussed at the prehearing conference.

22. K.S.A. 77-515 Participation and representation. "(a) Any party may participate in the hearing in person...."

23. The Motion to Dismiss Protests might better be headed the Motion to Dismiss Protestants. The commission has delegated approval of injection well permits to the Oil and Gas Conservation Division. If all protestants are dismissed, the Unit Petroleum EOR conversion application will go back to the Oil and Gas Conservation Division to approve, with no public hearing. The issue is not only will any protestant be allowed to bring concerns to the public hearing, but

whether there will be a public hearing at all if the Motion to Dismiss Protests is granted. The KCC orders have already recognized the protestants as parties, and the hearing began September 18, 2018.

24. The commission knows or should know that a request for a judicial review of the precedential order cited in the Motion to Dismiss Protests is pending a district court hearing December 7, 2018.

25. The hearing for Docket No. 19-CONS-3097-CUIC has started. When all protestants are dismissed, the standard commission procedure has been to send the application to the Oil and Gas Conservation Division to make the decision with no public hearing.

26. Kansas Statutes Annotated are accessible online. Any person is entitled to read and use them. K.S.A. 77-201 Rules of construction for statutes specifies that words and phrases shall be construed according to the context and the approved usage of the language. A clear reading of K.S.A. 55-152(a) grants protection to the usable waters of the state from actual or potential harm so that no protestant should be required to show actual and specific harm. The regulations constructed by the KCC to obstruct public participation in the protection of the usable waters of the state from actual or potential harm contradict their responsibilities in K.S.A.-162 to take appropriate

action to prevent pollution and protect water quality in hearings to determine whether operating violations have occurred.

27. The EPA has recognized the existence of potential harm to the usable waters of the state from seismic activity. The Kansas Geological Survey produced Public Information Circular 36 "Induced Seismicity: The Potential for Triggered Earthquakes in Kansas."

28. Pleading of Judith L. Wells dated October 10, 2018 disputes item 25 of the Motion to Dismiss Protests. Enhanced oil recovery wells are to enhance oil recovery. The Royce lease has no producing well once the single well on the lease is converted to an EOR. One cannot enhance oil recovery from a well that no longer exists as a producing well because it was converted to injection.

29. Pleading of Judith L. Wells dated October 10, 2018 documents nearly 602,000 barrels of produced wastewater were injected into a new EOR close to the Royce proposed EOR by Unit Petroleum after operations began in May 2017. The SWD Unit Petroleum injections nearby declined in tandem with the huge injections into the 2017 new EOR. Total oil production for the Langdon field in 2017 was 4,613 barrels, per KGS records. The 2017 Maxwell EOR volume raises the potential of pollution of the usable waters of this state, which is a



concern of every resident of this state. Approval of a second well scarcely half a mile away and authorized to inject 10,000 barrels a day into the same producing formation compounds the potential of pollution of the usable waters of this state.

30. The proper procedures of the KDHE regarding public participation in hearings for class II injection wells that inject one hazardous substance adhere to the required procedures of the Safe Drinking Water Act and are at odds with the procedures employed by the KCC to allow no public hearings for class II injection wells to inject two other hazardous substances. Public participation laws for class II injection wells are not uniform in Kansas. In *pari materia* is Latin for on the same subject. Kansas Statutes charge the KDHE and the KCC with suppression of the same evil, water pollution, when issuing permits for injections into class II wells. Statutes and regulations for class II injection wells should be uniform in both agencies.

31. Failure to allow public participation in public hearings for injection well permits enables rubber stamp approval of all injection well permits. The public could very well have studies and concerns beyond the rushed processing of applications that occurs in the Oil and Gas Conservation Division in Wichita. New rules and regulations

are not considered by the OGCD for the implementation of the Oil and Gas Act but are necessary for the protection of the usable water of this state from any actual or potential pollution from any well.

32. The Oil and Gas Conservation Division should study total injections in limited areas for EOR wells that increasingly are being used across the state for volumes exceeding any relationship with production to prevent potential pollution to the usable waters of this state. Kansas residents should be heard when they bring this concern to the KCC for a hearing.

Dated: October 23, 2018

/s/ Judith L. Wells

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#### CERTIFICATE OF SERVICE

I certify that on the 23rd day of October 2018 I filed a true and exact copy of the forgoing Response to Motion to Dismiss Protests via the KCC EFS and I emailed a copy to the following parties:

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