

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

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

In the Matter of the Application of Midstates Energy Operating, LLC to authorize injection of saltwater into the Squirrel formation at the Thrasher Wells #1-5, #-4 and #-3, and to increase the injection pressure on all wells encompassed by Permit E-31965, located in Section 25, Township 13 South, Range 20 East, Douglas County, Kansas

Docket No: 19-CONS-3173-CUIC

Conservation Division

License No: 355031

**MOTION TO COMPLY WITH EX PARTE PROCEDURES FOR THE STATE
CORPORATION COMMISSION AS PROVIDED IN THE KANSAS
ADMINISTRATIVE PROCEDURES ACT CHAPTER 77 SECTION 545**

1. The Commission Order approved February 5, 2018 designated Jonathan Myers as the new pre-hearing officer. Mr. Myers was Chief Litigation Counsel for the Conservation Division. His title now is Assistant General Counsel Kansas Corporation Commission, still located in the Conservation offices in Wichita.

2. Michael Duenes was the original pre-hearing officer. Mr. Duenes conducted the pre-hearing telephone conference on January 10, 2019. During the conference, Mr. Duenes noted that all names on the notice list were parties to the proceeding. Mr. Duenes stated that all filings should include those names on the KCC notice list, including the geologist and the underground injection well director.

3. Chapter 77-545 (c) states "For purposes of this section, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness".

4. Chapter 77-545(c) concludes that "Subsection (b) shall apply to staff counsel in regard to any adjudicatory proceeding before the commission". Chapter 77-545(b)

includes staff counsel in the prohibiting of ex parte communication with the presiding officer.

5. Staff counsel is subject to Chapter 77-545(b)(2) that requires “copies of all written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the commission”. Specifically, Lauren Wright is litigation counsel in this proceeding and as a staff counsel needs to share any written communications regarding this proceeding that are directed to the presiding officer, Jonathan Myers, with all parties of record to avoid ex parte communications.

6. Chapter 77-545(c) does not limit disclosure of ex parte communications to written communications for the person to whom any ex parte communication has been made. “The person or persons to whom any ex parte communication has been made shall promptly and fully inform the full commission of the substance of the communication, and the circumstances thereof, to enable the commission to take appropriate action.” This would require the pre-hearing presiding officer to disclose any verbal communications received that are not disclosed to all parties who did not receive reasonable notice to all parties to enable the parties to be present at the conference, Chapter 77-545(b)(1).

7. Communications with technical staff are not ex parte communication, per Chapter 77-545(c) unless the facts shared with the pre-hearing officer are outside the record. “(N)o facts that are outside the record and that reasonably could be expected to influence the decision in any matter pending before the commission, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond.”

8. Protestant Wells requests that the requirements that prohibit ex parte communication in the Kansas Administrative Procedures Act be known to all and that all parties and the pre-hearing officer in this proceeding follow these requirements. To summarize, technical staff are not parties, but information they furnish to the pre-hearing officer that is not in the

application Midstates filed should be furnished to all parties. Staff counsel is a party to the proceeding and is required to provide copies of any written communications regarding the proceeding directed to the presiding officer to all parties and provide proof of service to the commission. Verbal communications to the presiding officer require prompt and full disclosure by the presiding officer, including verbal communications regarding this proceeding from staff counsel Lauren Wright. As Chief Litigation Counsel, such communication with Jonathan Myers was not ex parte, but as Assistant General Counsel for the KCC and appointed as the pre-hearing officer such communication as may have been customary in the past now requires careful adherence to the ex parte requirements of the KAPA.

9. Chapter 77-545(b)(2) requires that “communications requested by members of the commission staff from any party and any written communications received by members of the commission staff from any party shall be made a part of the file and the docket and shall be made available all persons who desire to use them, provided that all commission requests for information from a party shall be mailed to all parties of record”. Protestant Wells requests that this and all proceedings before the commission adhere to the statute requiring a written record for information gathered and shared until the issuance of a final order in the proceeding, as required by statute.

Respectfully submitted:

/s/ Judith L. Wells

3317 W. 68th Street
Mission Hills, KS 66208
816-392-1474
judithlouisewells@gmail.com

CERTIFICATE OF SERVICE

I certify that I emailed the true and exact copy of the attached motion to the following on February 6, 2019:

Keith Brock, Attorney
Anderson & Byrd, LLP
2116 S. Hickory
PO Box 17
Ottawa KS
kbrock@andersonbyrd.com

James Bondurant and Patricia
Bondurant
1028 E. 1901 Road
Eudora, KS 66025
pbondurant@hotmail.com
jpbondurant50@gmail.com

Jonathan Myers, Assistant General
Counsel, KCC
266 N. Main St, Ste 220
Wichita, KS 67202-1513
j.myers@kcc.ks.gov

Karin Pagel-Meiners
2906 Stratford Court
Lawrence, KS 66049
kpagelmeiners@earthlink.net

Lauren Wright, Litigation Counsel
Kansas Corporation Commission
266 N. Main St, Ste 220
Wichita, KS 67202-1513
l.wright@kcc.ks.gov

Richard Bettinger
1071 E. 1900 Road
Lawrence, KS 66046
rickbett63@gmail.com

Jake Eastes, Geologist Specialist
Kansas Corporation Commission
266 N. Main St, Ste 220
Wichita, KS 67202-1513
j.eastes@kcc.ks.gov

Rene Stucky, UIC Director
Kansas Corporation Commission
266 N. Main St, Ste 220
Wichita, KS 67202-3354
r.stucky@kcc.ks.gov

/s/ Judith L. Wells

