

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

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

In the matter of the application of Palomino ) Docket No: 21-CONS-3127-CWLE  
Petroleum, Inc. for a location exception for its )  
Spectre #1 well located in the NW/4 NW/4 of ) CONSERVATION DIVISION  
Section 17-T18S-R24W, Ness County, Kansas. )  
\_\_\_\_\_ ) License No: 30742

**ORDER GRANTING APPLICATION AS AMENDED**

Pending before the Commission are an application for a well location exception, two motions to intervene and protest, a motion to establish a procedural schedule, a motion to amend the application and for issuance of an order via summary proceedings, and two motions to withdraw protests. The Commission resolves all motions as follows.

**I. PROCEDURAL BACKGROUND**

1. On December 30, 2020, Palomino Petroleum, Inc. (Operator) filed an application requesting a well location exception, drilling unit, and full allowable for its proposed Spectre #1 (Subject Well), an oil well to be located 268 feet from the north line and 178 feet from the west line of section 17, township 18 south, range 24 west in Ness County, Kansas.<sup>1</sup> Between December 31, 2020, and January 19, 2021, Operator filed various affidavits of mailing and publication.

2. On January 20, 2021, Pickrell Drilling Co, Inc. filed a motion to intervene and protest; on January 27, 2021, Norstar Petroleum, Inc. did the same.

3. On February 12, 2021, Operator filed a motion to establish a procedural schedule.<sup>2</sup> On March 2, 2021, the Commission issued an order holding all pending motions in abeyance, but

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<sup>1</sup> See Application, ¶¶ 2, 10, Draft Notice of Intent to Drill (Dec. 30, 2020).

<sup>2</sup> See Mtn. of Palomino Petroleum, Inc. to Establish Dates for Prefiled Testimony and Hearing Date (Feb. 12, 2021).

designating a presiding officer and setting a prehearing conference.<sup>3</sup> On March 11, 2021, the prehearing conference was duly held.<sup>4</sup>

4. On March 23, 2021, Operator filed a motion to amend its application, to reflect a new ask of an allowable of 58 barrels of oil per day for the Subject Well rather than a full allowable, and also asking that its application, as amended, be approved via summary proceedings.

5. On March 25, 2021, Pickrell and Norstar filed motions to withdraw their protests.

6. On March 31, 2021, Commission Staff filed a response in support of Operator's motion to amend the application and to have the Commission grant it via summary proceedings.

## **II. RESOLUTION OF PICKRELL'S & NORSTAR'S MOTIONS**

7. Pickrell and Norstar motioned to intervene and protest, and then motioned to withdraw their protests. Under K.A.R. 82-3-135b, one files a protest; a motion to do so is neither necessary nor anticipated by the regulatory framework. Regardless, since Pickrell and Norstar no longer wish to protest, the motions as they pertain to protesting are moot. As for intervention, the motions are granted. The Commission finds such interventions to be in the interests of justice, and that the interventions will not impair the orderly and prompt conduct of this proceeding.<sup>5</sup>

## **III. RESOLUTION OF OPERATOR'S MOTION TO AMEND ITS APPLICATION**

8. Operator motioned to amend its application, to reduce the requested allowable. The Commission notes no party opposed the motion; in fact, it appears to be the basis for Pickrell's and Norstar's requests to withdraw their protests.<sup>6</sup> In addition, the Commission finds such

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<sup>3</sup> See Order Designating Presiding Officer and Setting Prehearing Conf., ¶ 4, Ordering Clauses A, C (Mar. 2, 2021).

<sup>4</sup> See *id.* at Ordering Clause C.

<sup>5</sup> See K.S.A. 77-521(b); K.A.R. 82-1-225(b).

<sup>6</sup> See Protesters' motions to withdraw their protests ("[P]arties have reached an agreement whereby Palomino will limit the allowable...and Palomino filed a Motion to Amend...the relief sought...has been resolved.").

amendment does not affect the sufficiency of Operator's published notice of its application. Operator's motion is granted.

#### **IV. RESOLUTION OF OPERATOR'S PROCEDURAL REQUESTS**

9. Operator motioned for a procedural schedule and then motioned for issuance of an order via summary proceedings. These are mutually exclusive asks; the Commission finds the request for an order via summary proceedings supplanted and rendered moot the other request.

10. Regarding summary proceedings, the Commission must first determine whether such proceedings are legally available. Operator seeks a well location exception for an oil well under K.A.R. 82-3-108. That regulation implements, among other statutes, K.S.A. 55-605, which provides that proceedings such as this are governed by the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* Under K.S.A. 77-537, a provision of the KAPA, a state agency may use summary proceedings, subject to a party's request for hearing on the order, if: (1) the use of those proceedings does not violate any law; (2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties; (3) based upon an investigation of the facts, beyond receipt of the allegations, the state agency believes in good faith that the allegations will be supported to the applicable standard of proof; and (4) the order does not take effect until after the time for requesting a hearing has expired.

11. Regarding the first factor, the Commission finds no statute prohibits the use of summary proceedings. Regarding the second factor, Commission statutes and regulations have already obligated Operator to publish notice of its application in *The Wichita Eagle* and the *Ness County News*, and to notify various persons of the application.<sup>7</sup> Further, Commission Staff's review is meant to protect the public interest. Thus, the second factor has been met.

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<sup>7</sup> See K.A.R. 82-3-108(f); K.A.R. 82-3-135a.

12. As for the third factor, the Commission can rely here not merely upon receipt of the allegations, but also upon Staff's review of the application; Staff recommended granting the application as amended and indicated it complies with all statutes and regulations.<sup>8</sup> Finally, the fourth factor can be met; the Commission may readily enough issue an order that does not take effect until after the time for requesting a hearing has expired. Thus, the Commission finds summary proceedings are available and appropriate in this matter; Operator's motion for an order on its application via summary proceedings is granted.

#### **IV. ANALYSIS OF APPLICATION**

13. The Commission now turns to the law as it pertains to the application, and the merits of the application itself. Operator's application, as amended, seeks a well location exception, drilling unit, and allowable of 58 barrels of oil per day for its proposed Subject Well, an oil well to be located 268 feet from the north line and 178 feet from the west line of section 17, township 18 south, range 24 west, Ness County, Kansas.<sup>9</sup> K.S.A. 74-623 provides the Commission exclusive jurisdiction and authority to regulate oil and gas activities in Kansas; the Commission finds it has jurisdiction over Operator and the application.

14. K.A.R. 82-3-108(a) provides that the setback requirement for oil wells shall be 330 feet from any lease or unit boundary line, except as provided in subsection (b) or (c). In turn, K.A.R. 82-3-108(b) does not apply to wells in Ness County, and K.A.R. 82-3-108(c) provides that the Commission may grant an exception to the well setback requirements if necessary to either prevent waste or protect correlative rights. In addition, K.A.R. 82-3-207 provides that a standard oil-well drilling unit shall be 10 acres.

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<sup>8</sup> See Response to Motion to Amend Application and for Summary Proceedings, ¶ 7 (Mar. 31, 2021).

<sup>9</sup> See Application, ¶¶ 1, 2, 10; Motion to Amend Application and for Summary Proceedings, ¶ 3 (Mar. 23, 2021).

15. Operator's lease for the land upon which the Subject Well is to be located covers the NW/4 of Section 17; the proposed location is not at least 330 feet from the northern lease line and the western lease line.<sup>10</sup> Operator states its 3-D seismic data indicates an underground structural feature necessitating a location exception for optimal hydrocarbon production.<sup>11</sup> The Commission has reviewed the application as amended and has considered Staff's favorable recommendation. The Commission finds granting the application as amended necessary to prevent waste, that such grant will be protective of correlative rights, and that such grant raises no pollution issues. The Commission also finds notice was proper and that the application as amended was filed in accordance with all pertinent rules, regulations, and statutes.

**THEREFORE, THE COMMISSION ORDERS:**

A. All pending motions are resolved as described above. Operator's application for a well location exception, as amended, is granted. The Subject Well shall have an allowable of 58 barrels of oil per day, and shall have a standard drilling unit, except the acreage of the drilling unit shall be reduced along its northern and western lines to match the lease boundary line.

B. Operator's application is being granted via summary proceedings; thus, this Order does not take effect until after the time for requesting a hearing has expired.<sup>12</sup> Any party may request a hearing on the above issues by submitting a written request setting forth the specific grounds upon which relief is sought, to the Commission at 266 N. Main, Suite 220, Wichita, Kansas 67202, within 15 days from the date of service of this Order.<sup>13</sup> If a hearing is not requested, then this Order shall become effective upon expiration of the time for requesting hearing.<sup>14</sup>

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<sup>10</sup> See Application, ¶ 1.

<sup>11</sup> See *id.*, ¶ 3.

<sup>12</sup> See K.S.A. 77-537.

<sup>13</sup> See K.S.A. 77-542.

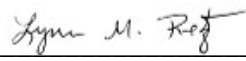
<sup>14</sup> See K.S.A. 77-537.

C. If this Order becomes effective, then 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>15</sup>

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

French, Chairperson; Keen; Commissioner; Duffy, Commissioner.

Dated: 04/13/2021 \_\_\_\_\_

  
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Lynn M. Retz  
Executive Secretary

Mailed Date: 04/13/2021 \_\_\_\_\_

JRM

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<sup>15</sup> See K.S.A. 55-606; K.S.A. 77-503(c); K.S.A. 77-531(b).

**CERTIFICATE OF SERVICE**

21-CONS-3127-CWLE

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 04/13/2021.

JAKE EASTES, GEOLOGIST SPECIALIST  
KANSAS CORPORATION COMMISSION  
266 N. Main St., Ste. 220  
WICHITA, KS 67202-1513  
Fax: 785-271-3354  
j.eastes@kcc.ks.gov

KELCEY MARSH, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
CENTRAL OFFICE  
266 N. MAIN ST, STE 220  
WICHITA, KS 67202-1513  
Fax: 785-271-3354  
k.marsh@kcc.ks.gov

JONATHAN R. MYERS, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
266 N. Main St., Ste. 220  
WICHITA, KS 67202-1513  
Fax: 316-337-6211  
j.myers@kcc.ks.gov

JEFF KENNEDY  
MARTIN, PRINGLE, OLIVER, WALLACE & BAUER, LLP  
645 E. DOUGLAS STE 100  
WICHITA, KS 67202  
Fax: 913-491-3341  
jkennedy@martinpringle.com

KLEE ROBERT WATCHOUS  
PALOMINO PETROLEUM, INC.  
4924 SE 84TH ST  
NEWTON, KS 67114-8827  
krw@ppiks.com

STEVEN D. GOUGH, COUNSEL  
WITHERS, GOUGH, PIKE & PETERSON, LLC  
O.W. GARVEY BUILDING  
200 W DOUGLAS, SUITE 1010  
WICHITA, KS 67202  
Fax: 316-303-1018  
sgough@withersgough.com

/S/ DeeAnn Shupe

DeeAnn Shupe