

**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 Formal Complaint)	Docket No. 19-CONS-3146-CMSC
Against Gateway Resources, USA Inc. for)	
Multiple Violations of 82-3-402. Notice of)	CONSERVATION DIVISION
Application by Publishing an Incomplete)	
and, there, defective, Notice for an)	License No. 32353
Application for Injection Well in October 6,)	
2018 Edition of the Coffeyville Journal)	

ORDER ADOPTING STAFF'S MEMORANDUM

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter, and being duly advised in the premises, the Commission makes the following findings:

I. BACKGROUND

1. On October 12, 2018, Susan Royd-Sykes (Complainant) filed a Formal Complaint against Gateway Resources, USA Inc. (Gateway) with the Commission.¹ The Formal Complaint focuses on Gateway's published notice for an application for injection well.²

2. On November 5, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations. A copy of Litigation Staff's Memorandum is attached to this Order and is further detailed below.

II. DISCUSSION

3. K.A.R. 82-1-220 pertains to formal complaints filed with the Commission against any public utility, motor carrier, or common carrier.³ This regulation does not apply to the

¹ See Formal Complaint Against Gateway Resources, USA Inc. by Susan Royd-Sykes (Oct. 12, 2018) (Formal Complaint).

² See *id.* at p. 1.

³ See K.A.R. 82-1-220(a).

Conservation Division. However, in the absence of an established process to evaluate a complaint of this nature, Litigation Staff recommended following the procedural process established in K.A.R. 82-1-220.⁴

4. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations.⁵ Upon this review, Litigation Staff determined the Formal Complaint has satisfied the Commission's complaint procedural requirements.⁶ However, Litigation Staff determined the Formal Complaint does not establish a *prima facie* case for Commission action.⁷

5. The Complainant states that Gateway's published notice is in violation of K.A.R. 82-3-402. The Complainant then provides the requirements of area notice listed under K.A.R. 82-3-402(b).⁸ When an application for an injection well is filed, the applicant must provide two different types of notice. First, they must provide notice pursuant to K.A.R. 82-3-135a(c) or according to the area notice provisions listed in subsection (b).⁹ Second, they must publish general notice of the application in at least one issue of the official county newspaper where the lands involved are located.¹⁰ The Complainant's conclusion that Gateway's published notice must satisfy the requirements of area notice as listed in K.A.R. 82-3-402(b) is incorrect.

6. Gateway provided notice pursuant to K.A.R. 82-3-135a(c) by mailing a copy of the application to the offset operators, unleased mineral owners, and landowners within a ½-mile radius.¹¹ Gateway published general notice in the Coffeyville Journal, the official county newspaper for where the lands involved are located.¹² Therefore, Gateway satisfied the general published notice requirements of K.A.R. 82-3-402(a).

⁴ See Memorandum, p. 2

⁵ See *id.* at pp. 1-3.

⁶ See *id.* at p. 2.

⁷ See *id.* at pp. 2-3.

⁸ See Formal Complaint, pp. 1-2.

⁹ See K.A.R. 82-3-402(a).

¹⁰ See *id.*

¹¹ See Memorandum, p. 3.

¹² See *id.*

7. Litigation Staff recommends the Commission find the Formal Complaint does not establish a *prima facie* case for Commission action.¹³ Litigation Staff further recommended the Commission grant the Complainant thirty (30) days to supplement its Formal Complaint to correct any deficiencies.¹⁴

8. Litigation Staff further recommends, if the Complainant fails to amend its Formal Complaint with thirty (30) days to remedy any deficiencies, the Formal Complaint be dismissed without prejudice and the docket be closed.¹⁵

III. FINDINGS AND CONCLUSIONS

9. The Commission finds and concludes that it has jurisdiction to conduct the requested investigation.¹⁶

10. Litigation Staff's Memorandum dated November 5, 2018, attached hereto is hereby adopted and incorporated by reference.

11. The Commission finds and concludes the Complainant has not established a *prima facie* case for Commission action at this time.

12. The Commission finds and concludes the Complainant shall be granted thirty (30) days to amend its Formal Complaint to correct the information deficiencies identified above.

THEREFORE, THE COMMISSION ORDERS:

A. The Complainant shall have thirty (30) days from the date of this Order to file an Amended Formal Complaint that addresses the informational deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

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).¹⁷

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ K.S.A. 74-623; K.A.R. 82-3-220.

¹⁷ 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).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Date: 11/08/2018



Lynn M. Retz
Secretary to the Commission

Date Mailed: 11/09/2018

STATE OF KANSAS

CORPORATION COMMISSION
CONSERVATION DIVISION
266 N. MAIN ST., STE. 220
WICHITA, KS 67202-1513



PHONE: 316-337-6200
FAX: 316-337-6211
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

MEMORANDUM LEGAL DIVISION

TO: Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Dwight D. Keen, Commissioner

FROM: Lauren Wright, Litigation Counsel

DATE: November 5, 2018

SUBJECT: 19-CONS-3146-CMSC
In the Matter of the Complaint Against Gateway Resources, USA Inc. by
Susan Royd-Sykes

EXECUTIVE SUMMARY:

Susan Royd-Sykes (Complainant) has filed a Formal Complaint against Gateway Resources, USA Inc. (Gateway).¹ While the Formal Complaint does satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' (Commission) rules of practice and procedure, it does not establish a *prima facie* case for Commission action. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint.

BACKGROUND & ANALYSIS:

On October 12, 2018, the Complainant filed a Formal Complaint against Gateway regarding "incomplete and defective notice published by Gateway".² The Complainant discusses Gateway's failure to comply with K.A.R. 82-3-402 in their published notice.³ Upon the filing of a Formal Complaint, the Commission must determine whether the allegations, if true, would establish a *prima facie* case for action by the Commission and whether the formal Complaint conforms to the Commission's regulations.⁴

¹ See Formal Complaint Against Gateway Resources, USA Inc. by Susan Royd-Sykes (October 12, 2018) (Formal Complaint).

² See *id.* at p. 1.

³ See *id.* at pp. 1-2.

⁴ See K.A.R. 82-1-220(c).

K.A.R. 82-1-220(a) specifically mentions formal complaints filed relating to public utilities, motor carriers, or common carriers. It is Litigation Counsel's opinion that this regulation does not apply to the Conservation Division. However, in the absence of an established process to evaluate a complaint of this nature Litigation Counsel recommends following the procedural process established in K.A.R. 82-1-220.

K.A.R. 82-1-220(b) requires Formal Complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;
- (2) Set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and
- (3) State the relief sought by the complainant.

A review of the Formal Complaint, as filed, indicates the Complainant has met the three procedural requirements but has not established a *prima facie* case up. The Complainant's conclusion that Gateway's published notice must satisfy the requirements of area notice as listed in K.A.R. 82-3-402(b) is incorrect.

The Complainant states that Gateway's published notice is in violation of K.A.R. 82-3-402. The Complainant then provides the requirements of area notice listed under K.A.R. 82-3-402(b) along with a narrative of facts as to how Gateway's published notice does not meet these requirements.⁵

K.A.R. 82-3-402(a) gives Gateway the option to provide notice pursuant to the provisions of subsection (b) pertaining to area notice or pursuant K.A.R. 82-3-135a(c) which requires Gateway to mail a copy of the application to landowners, operators or lessees of record, and owners of unleased minerals within a one-half mile radius. In addition to area notice or notice provided pursuant to K.A.R. 82-3-135a(c), applicants are also required to publish general notice of their application.⁶

K.A.R. 82-3-402(a) in its entirety states:

Notice required: Each applicant shall give notice of the application either to those persons listed in K.A.R. 82-3-135a(c) or according to the provisions of subsection (b) below. Notice shall be mailed or delivered on or before the date the application is filed with the conservation division. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands involved are located.⁷

⁵ See Formal Complaint, pp. 1-2.

⁶ See K.A.R. 82-3-402(a).

⁷ Emphasis added.

When an application for an injection well is filed, the applicant must provide two different types of notice. First, they must provide area notice pursuant to the provisions of subsection (b) or notice pursuant to K.A.R. 82-3-135a(c).⁸ Second, they must publish general notice of the application in at least one issue of the official county newspaper.

Gateway provided notice pursuant to K.A.R. 82-3-135a(c) by mailing a copy of the application to the offset operators, unleased mineral owners, and landowners within a ½-mile radius.⁹ Complainant has not alleged Gateway's notice issued pursuant to K.A.R. 82-3-135a(c) is (or was) deficient.

K.A.R. 82-3-402(b) permits applicants to provide area notice "in lieu of" the notice requirements detailed in K.A.R. 82-3-135a(c). If an applicant provides notice in accordance with K.A.R. 82-3-135a(c), the more specific area notice requirements outlined in K.A.R. 82-3-403(b) do not apply. Because Gateway provided notice pursuant to K.A.R. 82-3-135a(c), the area notice requirements detailed in K.A.R. 82-3-402(b) do not apply. Rather, pursuant to K.A.R. 82-3-402(a), Gateway is only required to publish general notice of its application in one issue of the official county newspaper where the lands involved are located. Gateway published general notice in the Coffeyville Journal, the official county newspaper for where the lands involved are located.¹⁰ Gateway satisfied the general published notice requirements of K.A.R. 82-3-402(a). Therefore, the Complainant has not established a *prima facie* case requiring Commission action.

If the Commission determines that the Complainant has failed to establish a *prima facie* case requiring Commission action, the Complainant shall be given the opportunity to amend its Formal Complaint.¹¹

RECOMMENDATION:

Litigation Staff recommends the Commission:

1. Find the Formal Complaint does not establish a *prima facie* case for Commission action;
2. Grant the Complainant thirty (30) days to amend its Formal Complaint to remedy the deficiencies. If the Complainant fails to correct the deficiencies identified herein Litigation Staff recommends the Formal Complaint be dismissed without prejudice and the docket be closed.

⁸ See K.A.R. 82-3-402(a).

⁹ See Exhibit A.

¹⁰ See Formal Complaint, p. 2.

¹¹ See K.A.R. 82-1-220(c).

Affidavit of Notice ServedRe: Application for: Injection WellWell Name: Koger 25-10 (SWD)Legal Location: 25-34S-14E

The undersigned hereby certifies that he / she is a duly authorized agent for the applicant, and that on the day 3rd of October, 2018, a true and correct copy of the application referenced above was delivered or mailed to the following parties:

Note: A copy of this affidavit must be served as a part of the application.

Name	Address (Attach additional sheets if necessary)
John Shrock	PO Box 13, Tyro, KS 67333
Terrie & Timothy Welton	2576 CR 2200, Caney, KS 67333
Terry Brake	2364 CR 2200, Caney, KS 67333
Jim Clubine	3867 CR 3100, Independence, KS 67301
Jimmy & Rose Wilmoth	2525 CR 2200, Caney, KS 67333
Billy D Henry	2511 CR 2200, Caney, KS 67333
Production Maintenance Service	2700 RD, Caney, KS 67333
Dart Cherokee Basin Coal Area	PO Box 117, Mason, MI 48854
Allene M Koger	2633 Mission Dr SE #237, Bartlesville, OK 740

Received
KANSAS CORPORATION COMMISSION

OCT 05 2018

I further attest that notice of the filing of this application was published in the Coffeyville Journal CONSERVATION DIVISION WICHITA, KS, the official county publication of Montgomery county. A copy of the affidavit of this publication is attached.

Signed this 2nd day of October, 2018



A. Blue Hutz
Applicant or Duly Authorized Agent

Subscribed and sworn to before me this 2nd day of October

[Signature]
Notary Public

My Commission Expires: 7/31/21

Protests may be filed by any party having a valid interest in the application. Petitions for protests shall be in writing and shall clearly identify the name and address of the protestant and the title of the application. The petition shall include a clear and concise statement of the direct and substantial interest of the protestant in the proceedings, including the manner in which the protestant may be affected, and the nature, extent, character and grounds of the protest. Protestants shall serve the protest upon the applicant by mail or personal service at the same time or before the protestant files the protest with the Conservation Division. Protests must be filed within 30 days of the publication notice of the application.

CERTIFICATE OF SERVICE

19-CONS-3146-CMSC

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 11/08/2018.

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

Susan Royd-Sykes
504 S. 6th St.
Burlington, KS 66839
moondrummer88@gmail.com

RENE STUCKY
KANSAS CORPORATION COMMISSION
Conservation Division
266 N. Main St. Ste. 220
WICHITA, KS 67202-1513
Fax: 785-271-3354
r.stucky@kcc.ks.gov

LAUREN WRIGHT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
Conservation Division
266 N. Main St. Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
l.wright@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe