

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

Before Commissioners:                      Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Pat Apple

In the matter of the application of Phillips ) Docket No: 18-CONS-3204-CUIC  
Exploration Company L.C., to authorize )  
injection of saltwater into the Cedar Hill ) CONSERVATION DIVISION  
formation at the Gaither #2-21 well, located )  
in Section 21, Township 14 South, Range 24 ) License No. 31160  
West, Trego County, Kansas )

**ORDER GRANTING MOTION TO DISMISS**

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 October 12, 2017, Phillips Exploration Company L.C. (Phillips) filed an Application with the Commission seeking a permit to authorize the injection of saltwater into the Cedarhill formation at the Gaither #2-21 well, located in Section 21, Township 14 South, Range 24 West, in Trego County, Kansas.<sup>1</sup> Initial notice of the Application was published in The Western Kansas World newspaper on October 5, 2017,<sup>2</sup> but stated that the protest period was fifteen (15) days.<sup>3</sup> Phillips re-published notice of its Application in The Western Kansas World newspaper on November 23, 2017, providing a protest period of thirty (30) days.<sup>4</sup>

2. On November 1, 2017, a letter by Cassandra Gaither Hutchinson and Christine Gaither Garten protesting and requesting a hearing on Phillips' Application was timely filed

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<sup>1</sup> Phillips Exploration Company L.C., Application for Injection Well, p. 1 (Oct. 12, 2017) (Application).

<sup>2</sup> Affidavit of Publication (Oct. 12, 2017).

<sup>3</sup> *Contra* K.A.R. 82-3-135b.

<sup>4</sup> Affidavit of Publication (Dec. 6, 2017).

in the docket.<sup>5</sup> The letter was addressed to “Mr. Rene Stucky, UIC Director, Production Supervisor at Kansas Corporation Commission,” at “266 Main Street, Suite 220, Wichita, Kansas 67202-1513.”<sup>6</sup>

3. On January 11, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, designating Michael J. Duenes as the Prehearing Officer and scheduling a Prehearing Conference for February 22, 2018.<sup>7</sup>

4. On January 30, 2018, Phillips filed a Motion to Dismiss Protest, arguing that the Protestor improperly failed to serve its protest letter on Phillips Exploration<sup>8</sup> and requesting “that the Commission follow its Rules and Regulations and dismiss the Protest filed herein and allow this matter to proceed expeditiously.”<sup>9</sup> The Motion to Dismiss noted K.A.R. 82-3-135b(d)’s requirement that “[e]ach protester shall serve the protest upon the applicant at the same time or before the protester files the protest with the conservation division” and the rule’s provision that the Conservation Division shall not serve protests on applicants.<sup>10</sup> The Motion to Dismiss also cited the Commission’s previous ruling in Docket No. 18-CONS-3205-CUIC “that strict compliance with K.A.R. § 82-3-135b(d) is mandatory and that a protestor’s failure to serve a copy of their protest on the Applicant justifies dismissal of their protest.”<sup>11</sup> Finally, the Motion to Dismiss cited Kansas case law in arguing

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<sup>5</sup> Letter from Tom & Cassandra Hutchinson and Carl & Christine Gaither Garten, residents of Salina, Kansas, to Rene Stucky, Commission Conservation Staff, UIC Director (Nov. 1, 2017) (Protest Letter).

<sup>6</sup> Protest Letter, p. 1.

<sup>7</sup> *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clauses A & B (Jan. 11, 2018).

<sup>8</sup> Motion to Dismiss Protest, ¶¶ 6-7.

<sup>9</sup> Motion to Dismiss, p. 3.

<sup>10</sup> Motion to Dismiss, ¶ 5.

<sup>11</sup> Motion to Dismiss, ¶ 8.

that the Protestor's *pro-se* status does not excuse non-compliance with the Commission's rule.<sup>12</sup>

5. On February 9, 2018, Steven D. Gough entered his appearance on behalf of the Protestants, namely, the Gaither Family Ranch, LLC, Cassandra Gaither Hutchinson, and Christine Gaither Garten.

6. On February 12, 2018, the Protestants filed a Response to Motion to Dismiss Protest (Response), requesting summary denial of Phillips' Motion to Dismiss.<sup>13</sup> In support of their request, the Protestants asserted that Tom Hutchinson, husband of Cassandra Gaither Hutchinson, discussed how to file the protest with Rene Stucky, and Mr. Hutchinson "had the understanding that if the Protest was mailed in to the Commission, the Commission would assign a docket number and provide the Applicant, Phillips, with a copy of the Protest."<sup>14</sup> The Protestants stated that Mr. Hutchinson's alleged conversation with Mr. Stucky led them to "believe that they had complied with the required procedure by mailing in their Protest to Mr. Stucky."<sup>15</sup>

7. The Protestants noted Phillips' admission that it has now received a copy of the actual protest.<sup>16</sup> The Protestants also argued that Phillips has not been prejudiced in this matter because Phillips has allegedly known for some time of the Protestants' objections to having a saltwater disposal well on the Gaither lease.<sup>17</sup> Moreover, the Protestants argued that

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<sup>12</sup> Motion to Dismiss, ¶ 9.

<sup>13</sup> Response, p. 1.

<sup>14</sup> Response, ¶ 2.

<sup>15</sup> Response, ¶ 3.

<sup>16</sup> Response, ¶ 4.

<sup>17</sup> Response, ¶¶ 5-6.

Phillips' Application misrepresented the size of the Gaither lease with the intent to dispose of saltwater brought into the leased acreage from outside the lease boundaries.<sup>18</sup>

8. On February 14, 2018, Phillips filed a Reply in Support of Motion to Dismiss Protest (Reply), arguing that the Protestants' Response was untimely,<sup>19</sup> does not comply with Commission rules,<sup>20</sup> and appears to ask the Commission to resolve contractual issues outside the Commission's jurisdiction.<sup>21</sup>

9. On February 15, 2018, the Protestants filed an Amended Response to Motion to Dismiss Protest. The only difference between the Protestants original Response to Motion to Dismiss Protest and the Amended Response to Motion to Dismiss Protest is that the Amended Response contains a "Verification" page wherein the Protestants' counsel swears that he knows the contents of the Response to Motion to Dismiss Protest and "declare[s] that the statements made therein are true and correct to the best of [his] knowledge and belief."<sup>22</sup>

**Analysis:**

10. The Commission grants Phillips' Motion to Dismiss due to the Protestants' failure to comply with K.A.R. 82-3-135b. K.A.R. 82-3-135b states, "[e]ach protest . . . *shall be considered under the following conditions and requirements . . .*" K.A.R. 82-3-135b(d) provides the specific requirement that, "[e]ach protester *shall serve* the protest upon the applicant at the same time or before the protester files the protest with the conservation division." The regulation makes it clear that the Conservation Division Staff (Staff) "shall not" serve the protest on the applicant.

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<sup>18</sup> Response, ¶ 8.

<sup>19</sup> Reply, ¶ 1.

<sup>20</sup> Reply, ¶ 2.

<sup>21</sup> Reply, ¶ 3.

<sup>22</sup> Amended Response to Motion to Dismiss Protest, p. 4.

11. The Commission interprets K.A.R. 82-3-135b to require strict compliance. The preamble to the regulation explicitly states that a protest will only be considered if the conditions and requirements are met.

12. The Protestants' Response demonstrates they did not serve Phillips with their protest. Indeed, the Protestants did not refute Phillips' allegation that the Protestants failed to serve Phillips with a copy of the protest as prescribed by K.A.R. 82-3-135b(d), but instead provided what they believed to be a proper justification for not serving the protest on Phillips, namely, a conversation with Mr. Stucky.<sup>23</sup> However, whether Mr. Hutchinson had the alleged conversation with Mr. Stucky, it does not advance the Protestants' case given the Commission's requirement of strict compliance with K.A.R. 82-3-135b. The fact remains that the Protestants did not serve their protest upon Phillips at all, much less at the same time or before filing their protest with the Conservation Division, as required by K.A.R. 82-3-135b(d).<sup>24</sup> Therefore, the protest shall be dismissed. All the other arguments raised by the Protestants are irrelevant as to whether the Protestants strictly complied with K.A.R. 82-3-135b, and thus, are now moot.<sup>25</sup>

13. There are no other protests of record in this matter. As such, Staff is directed to process the Application accordingly and advise the Commission if, in Staff's opinion, a hearing is necessary. Otherwise, the docket shall be closed and the Prehearing Conference that had been scheduled for February 22, 2018,<sup>26</sup> shall not be rescheduled.

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<sup>23</sup> See Response, ¶¶ 2-3.

<sup>24</sup> See Reply, ¶ 2.

<sup>25</sup> The other arguments raised by Phillips' Reply are likewise moot.

<sup>26</sup> The Prehearing Conference scheduled for February 22, 2018, was not held because the Commission's offices were closed on that day due to inclement weather.

**THEREFORE, THE COMMISSION ORDERS:**

A. Phillips' Motion to Dismiss is granted. Staff shall process the Application accordingly.

B. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). The petition shall be filed within 15 days after service of this Order, plus three days if mailed, and must state the specific grounds upon which relief is requested.<sup>27</sup> The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

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

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

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated:                     FEB 27 2018                    

                    Lynn M. Retz                      
Lynn M. Retz  
Secretary to the Commission

Mailed Date:                     FEB 27 2018                    

MJD

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<sup>27</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

## CERTIFICATE OF SERVICE

18-CONS-3204-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on FEB 2 2018 FEB 2 7 2018

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