

**BEFORE 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 Vulcan Resources, LLC, for an) Docket No. 19-CONS-3206-CUIC
application for a permit for salt -)
water disposal in the Hatch I-1,) CONSERVATION DIVISION
located at NE SE NW NE of Section 2)
Township 23S, Range 13E in Coffey) License No. ? Permit No. E-32,766
County, Kansas)

In the Matter of Vulcan Resources, LLC for an application for a permit for the disposal of salt water into the Squirrel Formation at the Hatch I-1 well, located at the NE SE NW NE of Section 2, Township 23S, Range 13E in Coffey County, Kansas, with a maximum operating pressure of 600 PSI and a maximum injection rate of 500 bbls. per day. Docket Number 19-CON-3206-CUIC.

**PROTESTANT'S MOTION TO RESCHEDULE Jan. 24, 2019 PREHEARING CONFERENCE CALL
TO A DATE AFTER COMMISSION ISSUES AN ORDER DESIGNATING A CHANGE IN THE
PREHEARING OFFICER IN THIS DOCKET**

Protestant Susan Royd-Sykes comes now and presents the following Protestant's Motion to Reschedule the Jan. 24 Prehearing Conference Call To A Date After Commission Issues An Order Designating A Change In The Prehearing Officer In This Docket related to Vulcan Resources, LLC application for a permit for the disposal of salt water into the Squirrel Formation at the Hatch I-1 well, located at the NE SE NW NE of Section 2, Township 23S, Range 13E in Coffey County, Kansas, with a maximum operating pressure of 600 PSI and a maximum injection rate of 500 bbls. per day.

In support of her Motion and request to reschedule the Jan. 24, 2019 pre-hearing call, she states the following:

- 1) On Nov. 15, 2018 Vulcan Resources LLC filed Notice of Application in the Coffey County Republican newspaper for an order to permit the disposal of saltwater into the Hatch I-1 Well in Coffey County Kansas.
- 2) In response, on Dec. 13, 2018 Susan Royd-Sykes filed a Protest in this matter which she followed with a Dec. 18, 2018 Request for Hearing causing the Docket to be opened.
- 3) On January 8, 2019, Commissioners approved an Order Designating Prehearing Officer and Setting Prehearing Conference in which the Commission appointed Michael J. Duennes as Prehearing Officer and also scheduled the Prehearing (phone) Conference for Jan. 24, 2019 at 9:15am.

- 2) Over the past week Commission staff attorney Jon Myers has sent out e-mails to parties in Docket 19-CONC-3206-CUIC in which he states plans for a change in prehearing officer in this docket from Michael Duennes to himself and in which he is to oversee the upcoming prehearing phone conference scheduled for 9:15am on

January 24, 2018. If he does so, he will do so without Commission order or authority, which constitutes procedural misconduct because:

to date, the *only* Commissioner appointed prehearing officer with legal standing to oversee this docket is Michael Duennes because, whatever Myers believes the Commissions intentions to be, to date, the Commission has not entered a new order replacing him with Jon Myers. (see Commissioners January 8, 2019 approved Order Designating Prehearing Officer and Setting Prehearing Conference in which the Commission appointed Michael J. Duennes as Prehearing Officer and also scheduled the Prehearing (phone) Conference for Jan. 24, 2019 at 9:15am.)

3) As a result of Jon Myers notice of change e-mails, and Myers refusal to grant Protestant's responding request to reschedule the Jan. 24, 2018 prehearing conference on Jan. 23, 2019 until such time that the Commission had approved and issued an order for a change of prehearing officer in this docket, Protestant filed a formal complaint against Myers for procedural misconduct. (Please see attached complaint, EXHIBIT 1)

Wherefore, Protestant now comes to the Commission and asks that the Commission grant Protestant's Motion to Reschedule the Jan. 24 Prehearing Conference Call To A Date After Commission Issues An Order Designating A Change In The Prehearing Officer In This Docket as related to Vulcan Resources, LLC application for a permit for the disposal of salt water into the Squirrel Formation at the Hatch I-1 well, located at the NE SE NW NE of Section 2, Township 23S, Range 13E in Coffey County, Kansas, with a maximum operating pressure of 600 PSI and a maximum injection rate of 500 bbls. per day.

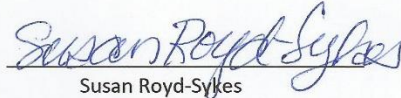
Susan Royd-Sykes, Protestant
504 S. 6th St.
Burlington, KS 66839
moondrummer88@gmail.com
620-803-2172

VERIFICATION

STATE OF KANSAS)
)
County of Coffey)

ss.

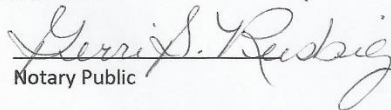
Susan Royd-Sykes, of lawful age, being first duly sworn upon oath, deposes and states: that she is responsible for the response to which this verification is attached, that she has read the above and foregoing and that the statements therein contained are true and correct according to her knowledge, information and belief.


Susan Royd-Sykes

Subscribed and sworn to before me this 23th day of January, 2019.

My appointment expires: 4/15/2020




Notary Public

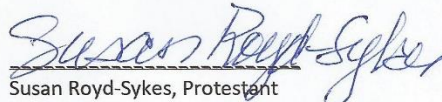
CERTIFICATE OF SERVICE

I hereby certify that on this 23th day of January, 2019, the above Protestant's Motion to Reschedule the Jan. 24 Prehearing Conference Call To A Date After Commission Issues An Order Designating A Change In The Prehearing Officer In This Docket was electronically served via (with hard copies following in the US Mail) on:

Lynn Retz, KCC
Michael Duenes
KCC Litigation Department
1500 SW Arrowhead Rd.
Topeka, KS 66604-4027

Lauren Wright <l.wright@kcc.ks.gov
KCC Conservation Division Staff
266 N. Main St., Ste. 220
Wichita, KS 67202-1513

Vulcan Resources, LLC
1102 Lenapah Ave.
Skiatook, OK 74070
"richard.xu@vulcan-resources.com
and
John R. Horst, Attny for Vulcan
207 W. 4th
PO Box 560
Caney, KS 67333
jrhorst48@yahoo.com


Susan Royd-Sykes, Protestant

23 January, 2019

Lynn M. Retz
Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Formal Complaint by docket Protestant Susan Royd-Sykes
regarding procedural misconduct related to
Jon Myers acting as unauthorized Pre-hearing Officer
in Docket 19-CONC-3206-CUIC

Over the past week Commission staff attorney Jon Myers has sent out e-mails to parties in Docket 19-CONC-3206-CUIC in which he states plans for a change in prehearing officer in this docket from Michael Duennes to himself and in which he is to oversee the upcoming prehearing phone conference scheduled for 9:15am on January 24, 2018. If he does so, he will do so without Commission order or authority, which constitutes procedural misconduct because:

to date, the *only* Commissioner appointed prehearing officer with legal standing to oversee this docket is Michael Duennes because, whatever Myers believes the Commissions intentions to be, to date, the Commission has not entered a new order replacing him with Jon Myers. (see Commissioners January 8, 2019 approved Order Designating Prehearing Officer and Setting Prehearing Conference in which the Commission appointed Michael J. Duennes as Prehearing Officer and also scheduled the Prehearing (phone) Conference for Jan. 24, 2019 at 9:15am.)

Please consider this writing a Formal Complaint regarding procedural misconduct related to Jon Myers' acting as unauthorized Prehearing Officer without legal standing to do so in Docket 19-CONS-3206-CUIC.

In support of this complaint, Protestant Royd-Sykes states the following:

- 1) On Nov. 15, 2018 Vulcan Resources LLC filed Notice of Application in the Coffey County Republican newspaper for an order to permit the disposal of saltwater into the Hatch I-1 Well in Coffey County Kansas.
- 2) In response, on Dec. 13, 2018 Susan Royd-Sykes filed a Protest in this matter which she followed with a Dec. 18, 2018 Request for Hearing causing the Docket to be opened.
- 3) On January 8, 2019, Commissioners approved an Order Designating Prehearing Officer and Setting Prehearing Conference in which the Commission appointed Michael J. Duennes as Prehearing Officer and also scheduled the Prehearing (phone) Conference for Jan. 24, 2019 at 9:15am.
- 4) On Jan. 17, 2019 Protestant received routine electronic notice that the Commissioner had cancelled their previously scheduled Tuesday 1/22/19 10:00am business meeting.

5) On the afternoon of Jan. 18, 2019, Commission staff attorney Jon Myers sent an e-mail to the Protestant and other parties in this docket in which he advised: "that on Thursday, January 24 the Commission will likely consider and approve an Order Designating New Prehearing Offer, wherein I will be authorized to take the place of Michael Duennes as Prehearing Officer in Docket 19-CONS-3206-CUIC. I anticipate presiding over the currently-scheduled January 24th prehearing conference, and thought it useful to let you know ahead of time. I look forward to speaking with you then."

In the heading of this e-mail, it should be noted that Myers sent it to the following: Lauren Wright <l.wright@kcc.ks.gov>, "richard.xu@vulcan-resources.com" <richard.xu@vulcan-resources.com>,"moondrummer88@gmail.com" moondrummer88@gmail.com (protestant) and cc: Michael Duenes <m.duenes@kcc.ks.gov>"

6) It should also be noted that since it was only "cc:" to Michael Duenes, this e-mail was clearly not sent out by the Commission appointed prehearing officer with legal standing to act in this docket (Duennes), and, therefore, holds no enforcement power since Myers has not, to date, been appointed by Commission order granting him any authority as prehearing officer in this matter or, therefore, any legal standing to act in such a capacity.

If any such communications were required to take place and they only ones that could hold enforcement power, by Commission-granted authority, they should have come from the appointed prehearing officer with the legal standing to act, Michael Duennes.

To date, Protestant states that she has not received such communications of any sort, albeit, electronic, written posting or letter, or phone call from the one actual prehearing officer with legal standing in this matter, Michael Duennes, related to Myers' claims of a change of prehearing officer from Duennes to himself.

While this Myers e-mail was sent out Friday afternoon, Protestant was away from home and did not see this e-mail until the following Saturday morning.

Once she did see it, however, because Myers was acting without Commission authority and, therefore, without legal standing to do so, at 9:48am Jan. 19, 2019, via the same e-mail thread, Protestant replied to Myers querying him as to whether "the Commissioners approved this change with an order amending and updating the Vulcan pre-hearing call order?"

Because Myers has not been appointed by the Commission through any official order granting him the position of prehearing officer in this matter, Protestant contends that Myers did not have any legal standing or authority to send this notice of change e-mail and that any such e-mail notification should have come only from the appointed prehearing officer with legal standing to act in this matter, Michael Duennes. By his doing so, Protestant charges that this amounts to procedural misconduct on the part of Jon Myers.

7) On Jan. 21, 2019, via the same e-mail thread, Protestant updated her response to Myers e-mail notice to provide additional information about when the Commission could possibly address any change in prehearing office, noting that it could not

happen until AFTER the 9:15am Jan. 24 prehearing conference and requested that the prehearing conference be rescheduled until such time the Commission does actually issue an order replacing Duennes with Myers:

“Jon, on 1/17/19 the Commissioners cancelled their 1/22/19 business meeting and the 1/24/19 business meeting does not begin until 45 minutes after our scheduled prehearing conference call.... I have not seen an order approving the change and believe it should be officially approved by the Commissioners and in place BEFORE our conference call takes place. At the moment, I do not see how that is possible, so I am making a request to have this prehearing conference call rescheduled until that matter has been resolved. Thank you, Susan Royd-Sykes”

To which Myers then replied via the same continued e-mail thread and stated (regardless of legal authority issues and concerns) the conference would not be rescheduled :

“Parties: I am in receipt of the following correspondences from Susan Royd-Sykes, and I am passing them along to cure any potential ex parte communication issues. The prehearing conference will not be rescheduled, and both Mr. Duenes and I will be in attendance. Sincerely, Jon Myers, *Assistant General Counsel.*”

Because Myers has not been appointed by the Commission through any official order granting him the position of prehearing officer in this matter, Protestant contends that Myers did not have any legal standing or authority to deny her request to reschedule the Jan. 24, 2019 prehearing call, that any such action to do so could have come only from the appointed prehearing officer in this matter, Michael Duennes, and that because Myers took it upon himself, this again, amounts to procedural misconduct.

8) On Jan. 22, 2019 Protestant checked the Docket to see if this thread of notice of change e-mails had been posted in the docket by prehearing officer Michael Duennes OR staff attorney Jon Myers and found that such posting had not occurred. K.S.A. 77-525 and K.S.A. 77545(b)1 govern communications and exparte communications with presiding/prehearing officers and what should be done by the prehearing office if they occur – which includes laying responsibility for posting them publicly in the assigned docket on the presiding/prehearing officer.

K.S.A. 77-525 Ex parte communications designates that a) A presiding officer serving in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with any party or participant, with any person who has a direct or indirect interest in the outcome of the proceeding or with any person who has served in an investigatory or prosecutorial capacity or presided at a previous state of the proceeding, without notice and opportunity for all parties to participate in the communication.

K.S.A. 77-545 (b)(1) addresses commission procedure more specifically and states that “after the commission has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commission has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are *directed to the presiding officer shall be served upon all parties of record and proof of service shall be furnished to the commission.* 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 to all persons who desire to use them, provided that all commission requests for information from a part shall be served upon all parties of record.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. *The deposit of such written communications and letters in the file shall not make them a part of the official record of the case."*

However, since this thread of e-mail communications between Myers and docket parties was not initiated or sent out by the Commission appointed prehearing officer in this docket, Michael Duennes, but rather by staff attorney Myers, who, to date, has not been appointed as prehearing officer by any Commission order granting him such authority or legal standing to act as prehearing officer in this docket, it remains unclear who should have posted this thread of notice of change e-mails onto the docket.

In an effort to keep the public record of this docket succinct and wholly intact, on the morning of Jan. 23, 2019, Protestant followed up by posting them herself.

9) In addition to the filing of this formal complaint regarding procedural misconduct on the part of Jon Myers acting as unauthorized prehearing officer without legal standing to do so in Docket 19-CONS-3206-CUIC, Protestant has also filed a motion for continuance of the prehearing conference till such time and date that this matter has been clarified and resolved by any additional docket Order issued by the Commissioners.

Therefore, in closing, Protestant asks that the Commission immediately look into this matter of procedural misconduct on the part of Commission staff attorney Jon Myers acting as unauthorized prehearing officer without legal standing to do so in Docket 19-CONS-3206-CUIC, and that the Commission find to assess any and all due sanctions and/or reprimands that should apply to any Commission employee who engages in such procedural misconduct, and, apply them to Jon Myers in this matter.

Sincerely,
Susan Royd-Sykes
Protestant in Docket 19-CONS-3206-CUIC
moondrummer88@gmail.com
620-803-2172

Kansas Corp. Comm. Docket 19-CONS-3206-CUIC, New Prehearing Officer Inbox

 **Jon Myers** <j.myers@kcc.ks.gov>

Fri, Jan 18, 12:29 PM (5 days ago)

to Lauren, richard.xu@vulcan-resources.com, me, Michael

Parties:

Please be advised that on Thursday, January 24th the Commission will likely consider and approve an *Order Designating New Prehearing Officer*, wherein I will be authorized to take the place of Michael Duenes as Prehearing Officer in Docket 19-CONS-3206-CUIC.

I anticipate presiding over the currently-scheduled January 24th prehearing conference, and thought it useful to let you know ahead of time. I look forward to speaking with you then.

Cordially,
Jon Myers
Assistant General Counsel



Office of General Counsel
Kansas Corporation Commission
266 N. Main, Suite 220 | Wichita, KS | 67202-1513
Phone (316) 337-6200 | Fax (316) 337-6211 | <http://kcc.ks.gov/>

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 **susan sykes** <moondrummer88@gmail.com>

Sat, Jan 19, 9:48 AM (4 days ago)

to Jon

Have the Commissioners approved this change with an order amending and updating the Vulcan pre-hearing call order?

susan sykes <moondrummer88@gmail.com>
to Jon

Mon, Jan 21, 5:17 AM (2 days ago)

Jon, on 1/17/19 the Commissioners cancelled their 1/22/19 business meeting and the 1/24/19 business meeting does not begin until 45 minutes after our scheduled prehearing conference call.... I have not seen an order approving the change and believe it should be officially approved by the Commissioners and in place BEFORE our conference call takes place. At the moment, I do not see how that is possible, so I am making a request to have this prehearing conference call rescheduled until that matter has been resolved. Thank you, Susan Royd-Sykes

 **Jon Myers**

Tue, Jan 22, 8:52 AM (20 hours ago)

to Lauren, richard.xu@vulcan-resources.com, Michael, me

Parties:

I am in receipt of the following correspondences from Susan Royd-Sykes, and I am passing them along to cure any potential ex parte communication issues. The prehearing conference will not be rescheduled, and both Mr. Duenes and I will be in attendance.

Sincerely,
Jon Myers, Assistant General Counsel
Office of General Counsel
Kansas Corporation Commission
266 N. Main, Suite 220 | Wichita, KS | 67202-1513
Phone (316) 337-6200 | Fax (316) 337-6211