

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

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

In the Matter of the Application of Lario Oil) Docket No. 17-CONS-3516-CUNI
& Gas Company for an Order Authorizing the)
Unitization and Unit Operations of the) CONSERVATION DIVISION
Feiertag Unit in Scott County, Kansas.)
)
) License No: 5214

**ORDER DESIGNATING PREHEARING OFFICER, SETTING PREHEARING
CONFERENCE AND GRANTING INTERVENTION AND PROTESTANT STATUS
TO CHOLLA PRODUCTION LLC**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and records and being fully advised in the premises, the Commission makes the following findings and conclusions:

I. Factual Background

1. On March 17, 2017, Lario Oil & Gas Company (Lario) filed an Application with the Commission requesting an order approving the unitization and unit operations for the Feiertag Unit in Scott County, Kansas.¹

2. On April 4, 2017, Cholla Production LLC (Cholla) filed a Protest and Petition to Intervene (Protest and Petition).² In its Protest, Cholla indicated it “owns and operates producing oil and gas properties located both within and adjacent to the proposed Unit boundary.”³ Cholla asserted that Lario’s proposed “Unit boundary would cut through Cholla’s contiguous producing acreage, and take over two of Cholla’s wells.”⁴ Cholla asked for “clarification” regarding “which

¹ Docket No. 17-CONS-3516-CUNI, Application, p. 4 (Mar. 17, 2017).

² Protest and Petition to Intervene by Cholla Production LLC (Apr. 4, 2017).

³ *Id.*, ¶ 2.

⁴ *Id.*, ¶ 3.

of its leases and wells” Lario seeks to include in its proposed Unit.⁵ Cholla noted that it is protesting both for itself and for the other working interest owners on the affected Cholla leases.⁶ Cholla alleged that Lario’s proposed Unit fails to meet the standards of K.S.A. 55-1304 due to geological errors, as well as unfair and inequitable allocations to property owners, including Cholla.⁷ Cholla further claimed that approval of the proposed Unit will: (1) substantially and irreparably harm its correlative rights and the rights of the associated working interest and mineral owners; (2) cause waste; and (3) violate Cholla’s property rights.⁸

3. Therefore, Cholla asked the Commission to deny Lario’s Application as submitted.⁹ Cholla also asked the Commission to grant it protestant and intervenor status, to dismiss Lario’s Application, and barring dismissal, to set the matter for an evidentiary hearing.¹⁰

4. On April 26, 2017, Lario filed an Amended Application, which added “Section 16: NE/4 NE/4, and the SE/4 SE/4” to the description of the lands to be included in the proposed Feiertag Unit.¹¹

5. On April 26, 2017, Lario also filed a Response to Protest of Cholla Production, LLC (Lario Response), stating that Lario does not object to Cholla’s intervention in this docket.¹² Lario also admitted its oversight in omitting from paragraph 5 of its original Application the legal description of NE/4 NE/4 and SE/4 SE/4 of Section 16, Township 19 South, Range 33 West, which it has now included in its Amended Application and submission of Amended Notice.¹³

⁵ *Id.*, ¶ 4.

⁶ *Id.*, ¶ 5.

⁷ *Id.*, ¶ 7.

⁸ *Id.*, ¶¶ 8-10.

⁹ *Id.*, ¶ 11.

¹⁰ *Id.*, p. 3.

¹¹ Amended Application, ¶ 5, Exhibit F (Apr. 26, 2017).

¹² Lario Response, ¶ 1 (Apr. 26, 2017).

¹³ *Id.*, ¶ 3.

II. Legal Standards

6. The Commission has regulations pertaining both to intervention and protests.¹⁴ Regarding intervention, K.A.R. 82-1-225 states that in order to be granted, a petition to intervene must: (1) be submitted in writing; and (2) state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Further, the presiding officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. The presiding officer may also impose conditions limiting an intervenor's participation in the proceedings.

7. The Commission's intervention regulation applies to oil and gas matters because it is authorized by and implements K.S.A. 55-604 and K.S.A. 55-704.

8. Regarding protests, K.A.R. 82-1-218 states that all protests must comply with K.A.R. 82-1-219's pleadings requirements.

9. K.A.R. 82-1-218(e) further states that "[a]ll protests shall set forth the position and interest of the protestant and shall advise the commission and the parties in detail of the basis of the protest." In addition, "[p]rotests against the granting of applications and permits under the oil and gas conservation act shall comply with K.A.R. 82-3-135b."

10. K.A.R. 82-3-135b(a) states:

A protest may be filed by any person having a valid interest in the application. Each protest shall be submitted in writing and shall provide the name and address of the protester and the title and docket number of the proceeding. The protest shall include a clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the

¹⁴ K.A.R. 82-1-225 applies to intervention in Commission proceedings conducted pursuant to the Kansas Administrative Procedure Act (KAPA), as well as in non-KAPA proceedings. The KAPA also has an intervention statute that is essentially identical to K.A.R. 82-1-225. See K.S.A. 77-521.

application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.

11. K.A.R. 82-3-135b(e) provides that protestants must offer evidence or a statement or participate in the hearing if they want consideration of their protest.

III. Findings and Conclusions

12. Upon its own motion and pursuant to K.S.A. 77-551(c), the Commission finds that a Prehearing Officer should be designated in this proceeding to address any matters listed in K.S.A. 77-517(b), and a Prehearing Conference should be scheduled.

13. Although a Prehearing Officer is designated in this docket, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room before 5:00 p.m. on the date scheduled for service. Any electronic service received after the deadline set forth in the procedural schedule, or any filing made after 5:00 p.m. on the date scheduled for service, shall be accompanied by a Motion to File Out of Time.

14. Cholla's Motion is styled as both a Protest and a Petition to Intervene. Although the Commission's regulations on intervention and protests have no explicit or formal language connecting them with each other, the standards for both clearly overlap. Thus, the Commission finds that an entity cannot be treated by the Commission as a protestant without also being considered and treated as an intervenor. Moreover, as demonstrated above, oil and gas entities clearly come within the ambit of the Commission's intervention regulation.

15. Because Cholla has asked for intervention as well as protestant status, the Commission considers Cholla's request pursuant to K.A.R.s 82-1-218, 82-1-225 and 82-3-135b.

16. Cholla submitted its Protest and Petition in writing and has complied with the filing provisions of K.A.R. 82-1-219.¹⁵ Cholla has stated that Lario's proposed Unit formation

¹⁵ See K.A.R. 82-1-225(a)(1); K.A.R. 82-1-218.

will cause substantial and irreparable harm to Cholla's correlative rights, will cause waste, and will violate Cholla's property rights.¹⁶ Although Cholla's Protest and Petition did not detail precisely how Lario's proposed Unit is "flawed geologically, will cause waste, or will violate Cholla's property rights, the Commission finds Cholla's contention that the proposed Unit will harm its correlative rights sets forth Cholla's position, interest and basis of protest in sufficient detail.¹⁷ Cholla has also demonstrated that its legal interests may be substantially affected.¹⁸

17. Cholla's request for a hearing presumably means Cholla intends to participate in any scheduled hearing, or otherwise to offer evidence in consideration of its protest.¹⁹

18. The Commission finds that Cholla's intervention in this matter will not impair the interests of justice and the orderly and prompt conduct of the proceedings.²⁰ The Commission also finds it has discretion to impose conditions and limitations on Cholla's participation in the proceedings at any subsequent time.²¹

19. The Commission finds that its ultimate purpose in this matter is to render a decision on Lario's Application at the end of the proceedings. The Commission does not find sufficient grounds to deny or dismiss Lario's Application based on Cholla's Protest and Petition. Thus, the Commission denies Cholla's request for denial or dismissal at this time.

THEREFORE, THE COMMISSION ORDERS:

A. The Prehearing Officer in this proceeding shall be Michael J. Duenes, Assistant General Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, 66604-4027, telephone number (785) 271-3181, email address m.duenes@kcc.ks.gov. The Commission may designate other Staff members to serve in this capacity.

¹⁶ See ¶ 2 of this Order, *supra*.

¹⁷ See K.A.R. 82-1-218(e); K.A.R. 82-3-135b(a).

¹⁸ See K.A.R. 82-1-225(a)(2).

¹⁹ See K.A.R. 82-3-135b(e).

²⁰ See K.A.R. 82-1-225(a)(3).

²¹ See K.A.R. 82-1-225(c).

B. A Prehearing Conference is scheduled for **Thursday, June 8, 2017 at 9:00 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#.

C. At the Prehearing Conference, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, scheduling of a hearing with the Commission, and any other issues that will promote the orderly and prompt resolution of this proceeding.

D. At the Prehearing Conference, without further notice, this proceeding may be converted into a conference hearing or a summary proceeding for disposition of this matter as provided by the KAPA. Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA.²²

E. A corporation shall appear before the Commission by a Kansas licensed attorney.²³

F. The attorney designated to appear on behalf of the agency in this proceeding is Jon Myers, Litigation Counsel, telephone number (316) 337-6200, j.myers@kcc.ks.gov.

G. Cholla is granted intervention and protestant status in this proceeding.

H. Cholla's request that the Commission deny or dismiss Lario's Application is denied.

I. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.²⁴

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

²² K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

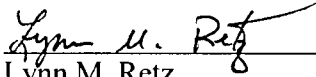
²³ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

²⁴ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: **MAY 18 2017**



Lynn M. Retz
Secretary to the Commission

MJD

CERTIFICATE OF SERVICE

I certify that on May 18, 2017, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

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