

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF	)	
MERIT ENERGY COMPANY, LLC, FOR AN	)	DOCKET NO. 15-CONS-843-CUNI
ORDER PROVIDING FOR THE	)	
UNITIZATION AND UNIT OPERATION OF	)	OPERATOR NO. 32446
THE GRIFFIN COX CHESTER UNIT IN	)	CONSERVATION DIVISION
HASKELL COUNTY, KANSAS.	)	

**PROTEST OF ABERCROMBIE ENERGY, LLC TO APPLICATION**

COMES NOW Abercrombie Energy, LLC ("Abercrombie"), 10209 W. Central, Suite 2, Wichita, Kansas, 67212-4658, and protests the Application filed by Merit Energy Company, LLC ("MEC"). In support of its protest, Abercrombie states as follows:

1. Abercrombie is the owner of oil and gas leasehold interests in Haskell County, Kansas, covering the NW/4, Section 12, Township 28 South, Range 33 West, Haskell County, Kansas, which has been identified as Tract No. 5 in the proposed Griffin Cox Chester Unit. Abercrombie has three producing wells on this lease: the Cox 1-12, the Cox 2-12 and the Cox 7-12.

2. Abercrombie also owns a leasehold interest covering the W/2 of the NE/4 of Section 12, Township 28 South, Range 33 West, Haskell County, Kansas, which is identified as Tract No. 6 in the proposed Griffin Cox Chester Unit. Abercrombie has one producing well on this acreage: the Cox 6-12 well.

3. Abercrombie currently produces approximately 100 BOPD from the Cox 1-12, Cox 2-12, Cox 7-12 and Cox 6-12 wells. Abercrombie estimates that it has produced approximately 625,000 barrels of oil from these leases since Abercrombie drilled the Cox 1-12 in 2005.

4. Based on information and belief, MEC is producing approximately 600 BOPD from Tract Nos. 2, 3, 4 and 7 of the proposed Griffin Cox Chester Unit from the Cox Minerals A-1, Cox

Minerals A-2, and Cox Minerals A-3 wells located in the NE/4 of Section 11, T28S, R33W, Haskell County, Kansas; the Griffin C-1 well located in the E/2 of the NW/4 of Section 11, T28S, R33W, Haskell County, Kansas; from the Griffin D-1 well located in the W/2 of the NW/4 of Section 11, T28S, R33W, Haskell County, Kansas; and from the Kenneth Cox A-1 well located in the N/2 SW/4 of Section 11, T28S, R33W, Haskell County, Kansas.

5. Abercrombie objects to this Application because Applicant does not satisfy the requirements set forth in K.S.A. 55-1304, 55-1305 and 55-1306.

6. Applicant cannot satisfy the requirements of K.S.A. 55-1304(a)(1) because the production from the pool sought to be unitized has not reached a low economic level and, without introduction of artificial energy, abandonment of oil wells is imminent. The wells producing on the above-referenced leases are producing at a high economic level and are between five years and ten years away from the need for a secondary recovery operation such as a water flood operation.

7. Applicant fails to satisfy K.S.A. 55-1304(a)(2) because unitized management of the acreage sought to be unitized is not economically feasible nor is it reasonably necessary to prevent waste within the reservoir. Unitized management would not increase substantially the ultimate recovery of oil or gas, but instead may cause waste by damaging the productive capability of Abercrombie's highly productive wells located in Section 12 by prematurely starting a water flood that could damage Abercrombie's highly productive wells and cause waste.

8. Applicant cannot satisfy the requirements of K.S.A. 55-1304(b) because the value of the estimated additional recovery of oil does not substantially exceed the estimated additional cost incident to conducting the proposed unit operations, particularly when Abercrombie's highly productive wells are not in need of any secondary recovery operations or the introduction of

artificial energy which could result in damaging Abercrombie's highly productive wells and cause waste.

9. Applicant cannot meet the requirements of K.S.A. 55-1304(c) because its proposed unit operations is not fair and equitable to all interest owners. Abercrombie objects to the proposed Phase 1 allocation and the Phase 2 allocation as not being fair. In addition, Applicant proposes operating overhead of approximately \$1,000 per well per month which is nearly three times higher than what a reasonable rate would be for operations and overhead rates for drilling a new well of \$10,000 which is also excessive.

10. Applicant seeks to include the Cox Minerals A-1 well located in the NE/4 of Section 11, T28S, R33W, Haskell County, Kansas, even though this well is currently overproduced by more than 90,000 barrels.

11. Abercrombie requests that the KCC take notice of the Order Denying Application entered on April 1, 2014, in connection with the Application of OXY USA, Inc., for a Special Allowable to the Cox Minerals A-1, KCC Docket No. 14-CONS-135-CEXC (April 1, 2014), a copy of which is attached hereto as Exhibit A. As set forth in the Order Denying Application, the KCC found that OXY had substantially overproduced the Cox Minerals A-1 well in violation of K.A.R. 82-3-203 that limited production of oil wells to 200 BOPD by producing said well at rates in excess of 500 BOPD. (Order Denying Rehearing, p. 1).

12. In the Order Denying Application, the Commission found that OXY's Cox Minerals A-1 well and Abercrombie's wells located immediately east in Section 12 are in pressure and fluid communication and that OXY's overproduction of the subject well caused waste of reservoir energy and therefore the waste of oil. (Order Denying Application, pp. 3-4, ¶ 9). The Commission further found that OXY's overproduction was violating Abercrombie's correlative

rights by draining oil away from Abercrombie's lease. (*Id.*, p. 4, ¶ 9). The Commission further found that the overproduction of the Cox Minerals A-1 well had damaged the common pool to the detriment of Abercrombie and the general public. (*Id.*, at p. 4, ¶ 10). The Commission ordered that "the Cox Minerals A-1 well shall be curtailed to 100 BOPD until the overproduction is made up." (*Id.*, at p. 4, ¶ 11).

13. Applicant seeks to include the Cox Minerals A-1 well in the proposed unit even though it remains a well that has been greatly overproduced and which has not yet been brought back into balance based on the Commission's April 1, 2014, Order Denying Application. Based on production data provided by Applicant to Abercrombie, Applicant has continued to violate the KCC's Order Denying Application by producing the Cox Minerals A-1 well in excess of 100 BOPD which has further damaged the reservoir and dissipated reservoir pressure by causing natural gas to prematurely come out of solution which dissipates reservoir energy. Based on information available to Abercrombie, the Cox Minerals A-1 well was produced at a rate in excess of 300 BOPD in April 2014; as high as 520 BOPD in May 2014; in excess of 420 BOPD in June 2014; in excess of 389.6 BOPD in July 2014; in excess of 142 BOPD in August 2014; in excess of 138 BOPD in September 2014; in excess of 170 BOPD in October 2014; and in excess of 147 BOPD in November 2014. Applicant has refused to provide Abercrombie with production data on this well after November 2014.

14. Based on Applicant's violation of the Order Denying Application by continuing to overproduce the Cox Minerals A-1 well, the Commission should exercise its discretion under K.S.A. 55-1304 to deny the Application. K.S.A. 55-1304 states the Commission "**may**" provide for compulsory unitization if all other elements are met, which means the Commission has the discretion to deny this Application even if all elements of K.S.A. 55-1304 have been met. K.S.A.

55-1304 (emphasis added); see, Order Denying Application, C12 Kansas Oil, LLC, Docket No. 15-CONS-009-CUNI (May 7, 2015).

15. Based on information and belief, the Cox Minerals A-1 well is still overproduced in excess of 90,000 BOPD and should not be included in any unit until it is brought back into compliance under the Order Denying Application.

16. Abercrombie also objects to any inclusion of the acreage set forth in Tract No. 1, the S/2 of the SW/4 of Tract 7, Tract 8 and Tract 9 because either production from the Chester Sand is non-existent (Tract No. 1) or is isolated by a structural low and produces based on a water drive reservoir mechanism substantially different from what is present in the N/2 of Section 11 and the NW/4 and the W/2 NE/4 of Section 12, T28S, R33W, Haskell County, Kansas. Abercrombie requests that Applicant be placed on strict proof that such acreage should be included in the proposed unit and whether Applicant can even meet the 63% working interest ownership requirement set forth in K.S.A. 55-1305(l) if such acreage is eliminated.

17. Abercrombie also protests this Application on the basis that the Phase I allocation is inequitable for many reasons, including the inclusion of overproduction from the Cox Minerals A-1 with respect to past production and use of average production rates which include time periods where the Cox Minerals A-1 produced in excess of 100 BOPD in violation of the Order Denying Application.

18. Abercrombie further objects to the Phase II allocation because Applicant's original oil in place appears to have been calculated as though Abercrombie's wells in Section 12 had not been producing for approximately eight (8) years before Applicant's predecessor, OXY, drilled the Cox Minerals A-1 well on Section 11 in early 2013. In addition, Applicant should be placed on strict proof that original oil in place ("OOIP") calculations for Applicant's lease covering the

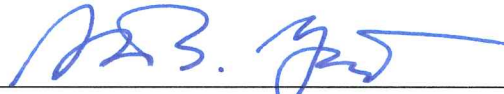
NE/4 of Section 11 does not include any reserves that migrated from this lease from 2005 through early 2013 when Applicant's predecessor, OXY, drilled the Cox Minerals A-1 well. Prior to that date, the only wells producing from the Chester Sand were Abercrombie's wells located immediately to the east in the NW/4 of Section 12, two of which started producing in 2005.

19. Once the Phase I allocation and Phase II allocations are properly corrected and based on reasonable and fair allocation factors, it is doubtful that Applicant meets the requirement of owning 63% of the working interest.

WHEREFORE, Abercrombie requests that this Application be denied in its entirety for all of the reasons stated above, including additional reasons which may be documented when Applicant is required to respond to discovery requests.

Submitted by:

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Steven D. Gough, #09016

*Attorneys for Abercrombie Energy, LLC*

**CERTIFICATE OF SERVICE**

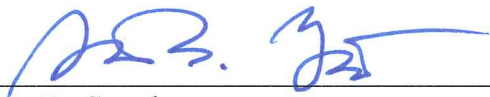
I HEREBY CERTIFY that on May 19, 2015, I have caused to be served a true and accurate copy of the foregoing *Protest of Abercrombie Energy, LLC to Application* to:

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Steven D. Gough

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Thomas E. Wright  
                                 Jay Scott Emler

In the matter of the application of OXY	)	
USA, Inc., for an exception to K.A.R. 82-3-	)	
203 and for a special allowable to the Cox	)	Docket No. 14-CONS-135-CEXC
Minerals A-1 well in Section 11, Township	)	
28 South, Range 33 West, Haskell County,	)	
Kansas.	)	

**ORDER DENYING APPLICATION**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission makes the following findings:

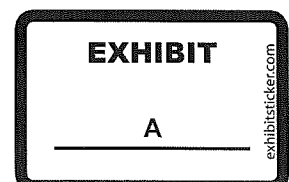
**I. Background**

1. OXY USA, Inc. (OXY) is a foreign corporation licensed to do business in Kansas. Pursuant to K.S.A. 55-155, OXY holds Commission oil and gas operator's license number 5447. On September 11, 2013, OXY filed an Application pursuant to K.A.R. 82-3-100(b) with the Commission requesting an exception to the allowable 200 barrels per day production limit under K.A.R. 82-3-203 for the Cox Minerals A-1 Well located in Haskell County, Kansas.<sup>1</sup> The Cox Minerals A-1 well began production in March 2013 at an initial rate of 588 barrels of oil per day, and its rate of production has not dropped significantly since then.<sup>2</sup> As of December 2013, OXY reported daily production from the subject well of 371 barrels of oil per day.<sup>3</sup> OXY filed an amended Application on October 2, 2013, again requesting an exception to the allowable limit of 200 barrels per day pursuant to K.A.R. 82-3-203.

<sup>1</sup> Amended Application, ¶4 (Oct. 2, 2013).

<sup>2</sup> Amended Application, ¶5.

<sup>3</sup> Updated Production Data Provided by OXY, (Jan. 21, 2014).





2. On September 24, 2013, Abercrombie Energy, LLC (Abercrombie) filed a protest to OXY's application, arguing OXY's overproduction from the Cox Minerals A-1 well is damaging a common reservoir shared with Abercrombie's wells, constituting waste and a violation of Abercrombie's correlative rights.

3. The parties submitted various pre-filed testimony to the Commission, and the Commission conducted an evidentiary hearing on this matter on January 17, 2013. The parties submitted simultaneous post-hearing briefs on February 14, 2014.

4. OXY primarily argues its overproduction should be forgiven, as the evidence shows the Cox Minerals A-1 well and Abercrombie's wells are not connected by a common reservoir, and thus there is neither waste nor a violation of correlative rights occurring as a result of the overproduction. Abercrombie argues OXY's application should be denied, as the evidence shows OXY's overproduction has damaged a common reservoir between OXY's well and Abercrombie's wells, constituting waste and a violation of Abercrombie's correlative rights. Commission Staff (Staff) agrees with Abercrombie that OXY's application for an exception from the allowable barrels per day limit should be denied.

## **II. Analysis**

5. The Commission is statutorily directed to prevent waste and protect correlative rights.<sup>4</sup> Waste includes economic waste, underground waste, surface waste, waste of reservoir energies, and production in excess of market demands.<sup>5</sup> The violation of correlative rights is described as the inequitable or unfair taking from a common source of supply.<sup>6</sup>

6. Under K.A.R. 82-3-203, the Cox Minerals A-1 well may not produce more than 200 barrels of oil per day. Furthermore, under K.A.R. 82-3-133(a), the production of oil in

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<sup>4</sup> K.S.A. 55-603.

<sup>5</sup> K.S.A. 66-602.

<sup>6</sup> K.S.A. 55-603 and K.A.R. 82-3-101(a)(21).

violation of Commission regulations “shall be deemed unlawful and shall be presumed to violate correlative rights and constitute waste.”<sup>7</sup> However, an operator may apply for an exception to any Commission regulation, and K.A.R. 82-3-133a(f) allows for overproduction to be retroactively reduced or eliminated at the Commission’s discretion, for good cause shown.

7. Staff argues an operator requesting an exception to Commission regulations must show the approval of its application will not unfairly shift economic burdens to another party. The Commission agrees with Staff’s interpretation of the burden of proof in this matter.

8. The Commission finds there was conflicting evidence submitted supporting both OXY’s position that the subject well and Abercrombie’s wells are not connected by a common reservoir,<sup>8</sup> as well as Abercrombie’s and Staff’s position that the subject well and Abercrombie’s wells share a common reservoir and OXY’s overproduction has damaged the reservoir and violated Abercrombie’s correlative rights.<sup>9</sup> The evidence shows OXY has been overproducing from the Cox Minerals A-1 well for at least nine months, from April 2013 to December 2013.<sup>10</sup>

9. After considering all of the evidence presented in this case, the Commission finds that although evidence was presented which supports the opposing positions of the parties, the overall weight of the evidence favors a ruling in Abercrombie’s and Staff’s favor. First, Staff’s expert witness opined that Abercrombie’s expert witnesses presented a clearer and likelier interpretation of the technical data.<sup>11</sup> Second, Abercrombie’s witnesses testified OXY’s Cox Minerals A-1 well and Abercrombie’s wells are pressure and fluid connected; that OXY’s overproduction of the subject well is causing waste of reservoir energy and therefore waste of

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<sup>7</sup> See also *Hartman v. State Corp. Comm’n*, 215 Kan. 758, Syl. ¶ 4, 529 P. 2d 134 (1974).

<sup>8</sup> OXY Exhibits 2-7; Hearing Transcript, Testimony of Robert Webster, pp. 34-38; Hearing Transcript, Testimony of Sanmi Adesanoye, pp. 104-114.

<sup>9</sup> Abercrombie Exhibit 12; Prefiled Testimony of Mark Galyon, pp. 2, 8-9.

<sup>10</sup> Updated Production Data Provided by OXY, (Jan. 21, 2014).

<sup>11</sup> Hearing Transcript, Testimony of Jim Hemmen, p. 188.

oil; and OXY's overproduction is violating Abercrombie's correlative rights by draining oil away from Abercrombie's lease.<sup>12</sup> Third, Staff also presented testimony concluding the subject well and Abercrombie's wells are in fluid and pressure communication and are producing from a common reservoir.<sup>13</sup>

10. The Commission therefore concludes substantial competent evidence supports a finding that the Cox Minerals A-1 well shares a common pool with Abercrombie's Cox 1-12 and Cox 2-12 wells,<sup>14</sup> and the overproduction at the Cox Minerals A-1 well has damaged the common pool to the detriment of Abercrombie and the general public.<sup>15</sup>

11. Regardless of the Commission's finding as to whether the subject well and Abercrombie's wells share a common reservoir, OXY has not made a showing that good cause exists to grant the exception and allow overproduction to continue at the subject well. The Commission therefore concludes OXY has failed to meet its burden of proof, and its application for an exception to the 200 barrels per day allowable limit pursuant to K.A.R. 82-3-203 should be denied. Furthermore, OXY's production at the Cox Minerals A-1 well shall be curtailed to 100 barrels of oil per day until the overproduction is made up.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission denies OXY's Application for an exception from the 200 barrels per day allowable set forth in K.A.R. 82-3-203. The allowable production for the Cox Minerals A-1 well shall be limited to 100 barrels per day until the overproduction is made up.

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<sup>12</sup> Prefiled Testimony of Gary Misak, pp. 2-3.

<sup>13</sup> Hearing Transcript, Testimony of Jim Hemmen, pp. 174.

<sup>14</sup> Hearing Transcript, Testimony of Jim Hemmen, pp. 174-175; Prefiled Testimony of Mark Galyon, pp. 2; Prefiled Testimony of Gary Misak, pp. 2-3

<sup>15</sup> Hearing Transcript, Testimony of Jim Hemmen, pp. 187, 175-176; Prefiled Testimony of Jim Hemmen, p. 4; Prefiled Testimony of Mark Galyon, pp. 2; Prefiled Testimony of Gary Misak, pp. 2-3.


B. The parties have 15 days from the date this Order was electronically served to petition the Commission for reconsideration.<sup>16</sup>

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

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

Albrecht, Chair; Wright, Commissioner; Emler, Commissioner

Dated: 4/1/2014

  
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Kim Christiansen  
Executive Director

JV

<sup>16</sup> K.S.A. 66-118b; K.S.A. 2013 Supp. 77-529(a)(1).

I CERTIFY THE ORIGINAL  
COPY IS ON FILE WITH  
The State Corporation Commission

APR 01 2014



**CERTIFICATE OF SERVICE**

I certify that on 4-2-2014, 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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And delivered by hand to:

Jim Hemmen  
Conservation Division Central Office

/s/ Jonathan R. Myers  
Jonathan R. Myers  
Litigation Counsel  
Kansas Corporation Commission