

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 Unit)	Docket No. 19-CONS-3097-CUIC
Petroleum Company to authorize injection of)	
saltwater into the Mississippi formation at)	CONSERVATION DIVISION
the Royce A #1 enhanced recovery well,)	
located in Section 16, Township 25 South,)	License No. 33596
Range 9 West, Reno County, Kansas.)	
)	

MOTION TO DISMISS PROTESTS

Applicant Unit Petroleum Company ("Unit Petroleum") moves the Kansas Corporation Commission (the "Commission") for an Order dismissing the protests filed in this docket by Greg Holmes, Cindy Hoedel, Lori Lawrence, Felix Revello, and Judith L. Wells ("Protestants").

In support of this motion, Unit Petroleum states and alleges as follows:

1. On August 28, 2018, Unit Petroleum filed an Application (KCC Form U-1) seeking authorization to inject produced water in the Mississippi formation in the Royce A #1 enhanced recovery well in Section 16, Township 25 South, Range 9 West, Reno County, Kansas. Unit Petroleum published notice of the filing of that Application in The Hutchinson News newspaper on August 14, 2018.

2. Protestants filed their protests and requested a hearing as follows:

<u>Name</u>	<u>Date Filed</u>
Greg Holmes	September 12, 2018
Cindy Hoedel	August 24, 2018
Lori Lawrence	August 23, 2018

Felix Revello

September 13, 2018

Judith L. Wells

September 13, 2018; October 10, 2018

3. On September 18, 2018, the Commission entered an Order Designating Prehearing Officer and Setting Prehearing Conference scheduling a prehearing conference in this matter on October 11, 2018.

Procedural and Legal Standards Applicable to the Protests

4. K.A.R. § 82-3-135b states that "[e]ach protest . . . shall be considered under the following conditions and requirements" ¹ That regulation continues on to specifically require that "each protester shall serve the protest upon the applicant at the same time or before the protestor files the protest with the conservation division." ² That regulation makes clear that a protestant must serve a copy of their protest on the Applicant and that the Commission staff is not responsible for doing so.

5. Strict compliance with K.A.R. § 82-3-135b(d) is mandatory and the failure to serve a copy of the protest on the Applicant justifies dismissal of the protest. ³

6. K.A.R. § 82-3-135a(e) requires a protestant to file a "valid protest." According to K.A.R. § 82-3-135b(a), a valid protest is one that "include[s] a clear and concise statement of the direct and substantial interest of the protestor in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas."

¹ K.A.R. § 82-3-135b(d).

² *Id.* (emphasis added).

³ Docket No. 18-CONS-3205-CUIC, Order Granting Motion to Dismiss (filed January 9, 2018); Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss Protests (filed April 19, 2018).

7. The Commission has held that a protestant can only show a "direct and substantial interest" in the Application by alleging that "[1] he or she suffered a cognizable injury, and [2] that there is a causal connection between the injury and the challenged conduct."⁴

8. "A cognizable injury is established by showing . . . that [the protestant] personally suffers some actual or threatened injury as a result of the challenged conduct . . . [and] [t]he injury must be particularized, i.e., it must affect the [protestant] in a personal and individual way."⁵ "Mere allegations of possible future injury do not meet the requirements of standing and, instead, any threatened injury must be certainly impending."⁶ Also, generalized concerns common to all members of the public are not sufficient.⁷

9. Finally, to have standing, a protestant's claimed "injury must be more than a generalized grievance common to all members of the public."⁸

10. The Commission has previously held that Protestants have a "responsibility to review [KCC] regulations."⁹

11. Kansas courts have also held that "[a] pro se litigant in a civil case is required to follow the same rules of procedure and evidence which are binding upon a litigant who is represented by counsel."¹⁰ Pro se parties must comply with the rules and regulations irrespective of their level of sophistication or experience.¹¹

⁴ Docket No. 17-3689-CUIC, Final Precedential Order, ¶ 3 (April 5, 2018).

⁵ Docket No. 17-CONS-3689, Written Findings and Recommendations, ¶ 29 (March 29, 2018).

⁶ *Id.*

⁷ Docket No. 18-CONS-3344-CUIC, Order on Applicant's Motion to Dismiss the Protests Filed Herein, ¶ 15 (May 10, 2018).

⁸ Docket No. 18-CONS-3195, Order on Midstates' Motion to Dismiss Protests, ¶ 40 (April 19, 2018).

⁹ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss Protests, ¶ 28 (April 19, 2018).

¹⁰ *Mangiaracina v. Guitierrez*, 11 Kan.App.2d 594, 595, 730 P.2d 1109 (1986).

Protest of Greg Holmes

12. The protest filed by Greg Holmes consists of the following one sentence: "[I]f you truly aim to serve the people, and even the corporations of Kansas, enabling a type of catalyst by which the recent series of earthquakes may well have come about is not logical." Mr. Holmes did not serve a copy of his protest on Unit Petroleum.

13. The Commission has previously held that a protestor's failure to serve a copy of their protest on the Applicant justifies dismissal of their protest.¹² Mr. Holmes protest should be dismissed for that reason alone.

14. Moreover, the substance of the protest filed by Mr. Holmes falls far short of the requirements for a valid protest. Mr. Holmes did not provide a clear and concise statement of his direct and substantial interest in this proceeding nor any specific allegations as to the manner in which the grant of Unit Petroleum's Application will cause waste, violate correlative rights or pollute Kansas' water resources. Moreover, the protest does not show that Mr. Holmes has personally suffered some actual or threatened injury, nor that he faces a specific impending harm as a result of Unit Petroleum's planned actions.¹³

Protest of Cindy Hoedel

15. Ms. Hoedel lives in Matfield Green, Kansas, which is more than 85 miles from the Royce A #1 well.

16. The only concerns expressed in Ms. Hoedel's protest are generalized concerns about possible earthquakes and the potential effects. She also expresses a concern that she will

¹¹ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss Protests, ¶ 29 (April 19, 2018).

¹² Docket No. 18-CONS-3205-CUIC, Order Granting Motion to Dismiss (filed January 9, 2018); Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss Protests (filed April 19, 2018).

¹³ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss, ¶ 42 (April 19, 2018).

be impacted as a taxpayer by increased governmental expenditures. An alleged increase in taxes that will be incurred by the public generally is not a sufficient injury to create standing.¹⁴

17. The substance of the protest filed by Ms. Hoedel does not demonstrate a prima facie case for standing showing that he has a "direct and substantial interest" in the proceeding. Moreover, the protests lacks any specific allegations as to the manner in which the grant of Unit Petroleum's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Generalized concerns about possible earthquakes are insufficient to show that Ms. Hoedel has personally suffered some actual or threatened injury, nor that she faces a specific impending harm as a result of Unit Petroleum's planned actions.¹⁵

Protest of Lori Lawrence

18. Ms. Lawrence lives in Wichita, Kansas, which is more than 54 miles from the Royce A #1 well.

19. The only concerns expressed in Ms. Lawrence's protest are generalized concerns about possible earthquakes and the effects thereof and are grievances common to all members of the public.

20. The protest filed by Ms. Lawrence does not demonstrate a prima facie case for standing showing that she has a "direct and substantial interest" in the proceeding. Moreover, her protest lacks any specific allegations as to the manner in which the grant of Unit Petroleum's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Generalized concerns about possible earthquakes are insufficient to show that Ms. Lawrence has personally suffered some actual or threatened injury, nor that she faces a specific impending

¹⁴ *Linker v. Unified School Dist. No. 259*, 344 F. Supp. 1187 (D. Kan. 1972).

¹⁵ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss, ¶ 42 (April 19, 2018).

harm as a result of Unit Petroleum's planned actions. *See* Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss, ¶ 42 (April 19, 2018).

Protest of Felix Revello

21. The only concerns expressed in Mr. Revello's protest are generalized concerns about possible earthquakes and the effects thereof and are grievances common to all members of the public.

22. The protest filed by Mr. Revello does not demonstrate a prima facie case for standing showing that he has a "direct and substantial interest" in the proceeding. Moreover, the protest lacks any specific allegations as to the manner in which the grant of Unit Petroleum's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Generalized concerns about possible earthquakes are insufficient to show that Mr. Revello has personally suffered some actual or threatened injury, nor that he faces a specific impending harm as a result of Unit Petroleum's planned actions.¹⁶

Protest of Judith I. Wells

23. Ms. Wells lives in Mission Hills, Kansas, which is more than 213 miles from the Royce A #1 well.

24. The concerns expressed in Ms. Wells protest are generalized concerns about possible earthquakes and the effects thereof and are grievances common to all members of the public.

25. Ms. Wells also expresses a belief that the Royce A #1 well is not really an EOR well, but merely a disposal well because there are no producing wells located on the lease on which that well is located. That the Royce A #1 wells is an EOR wells is clear from the face the

¹⁶ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss, ¶ 42 (April 19, 2018).

Application – i.e., water that is being produced from the Mississippi formation is being injected into the Mississippi formation. In addition, the lease on which the Royce A #1 well is located is part of the Langdon Waterflood Unit and remains valid and in effect based on production from that unit.¹⁷

26. The protest filed by Ms. Wells does not demonstrate a prima facie case for standing showing that she has a "direct and substantial interest" in the proceeding. Moreover, the protest lacks any specific allegations as to the manner in which the grant of Unit Petroleum's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Generalized concerns about possible earthquakes are insufficient to show that Ms. Wells has personally suffered some actual or threatened injury, nor that she faces a specific impending harm as a result of Unit Petroleum's planned actions.¹⁸

Conclusion

27. The protests filed by Protestants do not satisfy the requirements of K.A.R. 82-3-135b or the standing requirements established by the Commission in the Final Precedential Order entered in Docket No. 17-CONS-3689. They fail to make even a prima facie showing of a "direct and substantial interest" or a "cognizable [personal] injury" suffered or threatened as a result of the relief sought in the Application. As a result, they should be dismissed by the Commission.

28. The Commission Staff is authorized and has the technical expertise to fairly and fully evaluate the merits of the Application, and to ensure that granting the Application will be consistent with the Commission's duties to prevent waste, protect correlative rights, and protect fresh and usable water.

¹⁷ Docket No. 17-CONS-3012-CUIC, Order Granting Unitization (February 16, 2017)

¹⁸ Docket No. 18-CONS-3195-CUIC, Order on Midstates' Motion to Dismiss, ¶ 42 (April 19, 2018).

29. Finally, the generalized concerns regarding seismicity and Arbuckle disposal wells in south central Kansas are not implicated by the relief sought in the Application. This is an EOR well in which water that is withdrawn from the Mississippi formation will be reinjected into that same formation and, as a result, no new pressure will be added to the reservoir.

WHEREFORE, for the reasons set forth herein, Applicant Unit Petroleum Company, L.C., respectfully requests that the Commission dismiss the Protests filed herein by Greg Holmes, Cindy Hoedel, Lori Lawrence, Felix Revel and Judith L. Wells; that the Application be allowed to proceed with administrative review and approval; and for such other and further relief as the Commission determines is just and equitable under the circumstances.

/s/ David E. Bengtson

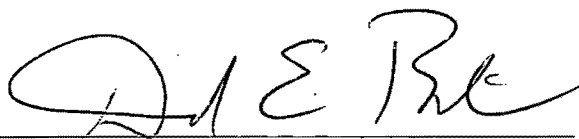
David E. Bengtson (#12184)
STINSON LEONARD STREET LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, Kansas 67206-6620
(316) 265-8800
Fax: (316) 265-1349
Email: david.bengtson@stinson.com

Attorneys for Unit Petroleum Company

VERIFICATION

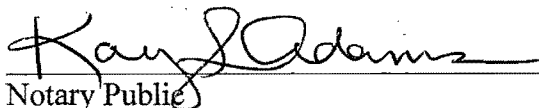
STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

David E. Bengtson, of lawful age, being first duly sworn on my oath, states that I have been retained to represent Unit Petroleum Company in this docket; that I have read the above Motion to Dismiss Protests; that I know the contents thereof and declare that the statements made therein are true and correct to the best of my knowledge and belief.



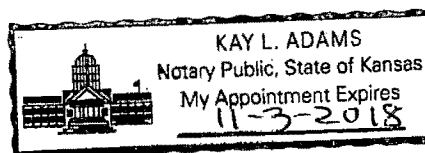
David E. Bengtson

SUBSCRIBED AND SWORN to before me this 16th day of October, 2018.



Notary Public

My appointment expires:
11/3/2018



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of October, 2018, he caused a true and correct copy of the foregoing Motion to Dismiss Protests to be filed via the Kansas Corporation Commission Electronic Filing System (EFS), and that he caused a copy to be served via first class mail and electronic mail to the following parties:

Greg Holmes
acejackalope@gmail.com

Cindy Hoedel
205 Mercer St.
Matfield Green, KS 66862
cindyhoedel@gmail.com

Felix Revello
1862 150th Ave.
Larned, KS 67550
linda@gbta.net

Judith Wells
3317 W. 68th St.
Mission Hills, KS 66206
judithlouisewells@gmail.com

Lori Lawrence
321 N. Lorraine
Wichita, KS 67214
lawrenceloid@gmail.com

Lauren Wright
Litigation Counsel
Kansas Corporation Commission
266 N. Main, Suite 220
Wichita, KS 67202-1513
l.wright@kcc.ks.gov

Michael J. Duenes
Assistant General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604
m.duenes@kcc.ks.gov

/s/ David E. Bengtson
David E. Bengtson