

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

In the Matter of the Application of Haas)	Docket No.: 19-CONS-3224-CUIC
Petroleum, LLC to Amend Injection Permit E-)	
31342, for the Thoele South Lease located in)	CONSERVATION DIVISION
Section 29, Township 18 South, Range 21 East,)	
Franklin County, Kansas.)	License No.: 33640

MOTION TO STRIKE

The Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively) moves the Commission to strike portions of Protesters’ joint Reply to Motion to Dismiss and Motion to Accept Protests. In support of its motion, Staff states as follows:

I. Background

1. On December 17, 2018, Haas Petroleum, LLC (Operator) filed an Application to amend injection permit E-31342.¹
2. On January 7, 2019, Cindy Hoedel, Scott Yeargain, and Polly Shteamer (Protesters) timely filed letters of protest.
3. On February 14, 2019, the Operator filed a Motion to Dismiss Protests stating that the protests filed in this docket failed to demonstrate they have standing to participate in this proceeding and failed to comply with Commission regulations.²
4. On February 22, 2019, the Protesters in this docket filed a joint Reply to Motion to Dismiss and a Motion to Accept Protests.³

¹ Application, p. 1 (Dec. 17, 2018).

² Motion to Dismiss Protests, ¶¶ 5, 6, (Feb. 14, 2019).

³ Reply to Motion to Dismiss and Motion to Accept Protests, p. 1 (Feb. 22, 2019), (“Reply”).

II. Argument

5. Two of the fundamental requirements of evidence is that the evidence proffered be both relevant and authentic.

6. The first foundational requirement of evidence is that the evidence be relevant. K.S.A. 60-401(b) defines relevant evidence as evidence that has “any tendency in reason to prove any material fact.” Materiality requires that the fact proved be significant under the substantive law of the case and properly at issue.⁴ “Although an evidentiary fact may be relevant under the rules of logic, it is not material unless it has a legitimate and effective bearing on the decision of the ultimate facts in issue.”⁵

7. The second foundational requirement of evidence is that it be authentic. As a measure of protecting the authenticity of evidence, pursuant to K.S.A. 60-460, hearsay evidence is excluded unless a specific exception exist. Evidence of a statement, which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is inadmissible hearsay evidence.⁶ Pursuant to K.S.A. 60-459, a statement includes a written expression.

8. The Protesters’ Reply attempts to submit a “survey” administered to “randomly chosen members of the public” and the results of this “survey” as evidence of harm suffered by the protesters in this docket.⁷ The survey and corresponding results are immaterial to the substantive law of this docket and should have no bearing on the ultimate facts at issue.

9. The results referenced in paragraph 11 and Attachment B of the Response are inadmissible hearsay evidence offered as proof of the matter asserted. The Protesters cannot

⁴ State v. Brown, 2007, 173 P.3d 612, 285 Kan. 261

⁵ *Id.*

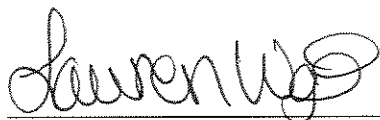
⁶ K.S.A. 60-460.

⁷ *Id.*, at ¶ 10, 11, Attachment A, Attachment B.

prove the authenticity of the statements, “results”, provided because the speakers are not available for cross-examination and questions unto their response cannot be asked. Further, the “random sample” does not have any supporting material to indicate it is relevant or statistically significant sample. As such, the results are wholly unreliable.

WHEREFORE, for the reasons set forth above, Staff respectfully requests paragraph 10, paragraph 11, attachment A, and Attachment B of the Protesters’ Reply be stricken from the record. Alternatively, Staff reserves their right to object to the admission of this evidence at the Evidentiary Hearing.

Respectfully submitted,

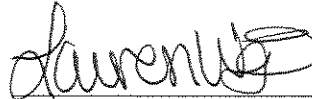
A handwritten signature in cursive script, appearing to read "Lauren Wright", written over a horizontal line.

Lauren N. Wright, #27616
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VERIFICATION

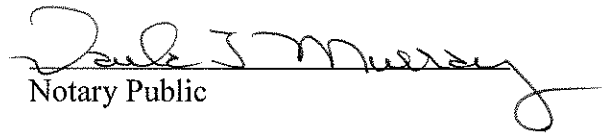
STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Lauren N. Wright, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Motion*, and attests that the statements therein are true to the best of her knowledge, information and belief.

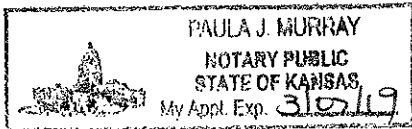


Lauren N. Wright, S. Ct. #27616
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 4 day of Mar, 2019.


Notary Public

My Appointment Expires: 3/07/19



CERTIFICATE OF SERVICE

19-CONS-3224-CUIC

I, the undersigned, certify that the true copy of the attached Motion has been served to the following parties by means of electronic service on March 4, 2019.

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