

**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 Palomino) Docket No. 19-CONS-3078-CUIC
Petroleum, Inc. to authorize the injection of saltwater)
into the Arbuckle Formation at the Carter Trust SWD) CONSERVATION DIVISION
#1 well located in the SW/4 of Section 23, Township)
17 South, Range 26 West, Ness County, Kansas) License No. 30742

ORDER ON MOTION TO DISMISS PROTEST OF CINDY HOEDEL

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background

1. On July 13, 2018, Palomino Petroleum, Inc. (Applicant) filed an Application to authorize injection of saltwater into the Arbuckle formation at the Carter Trust SWD #1 well in Ness County, Kansas.¹ Notice of the Application was published in the Ness County News newspaper on July 19, 2018,² and in The Wichita Eagle newspaper on July 26, 2018.³
2. On August 17, 2018, Cindy Hoedel filed a letter of protest and request for hearing (Protest).⁴
3. On August 24, 2018, John G. Pike of Withers, Gough, Pike & Pfaff, LLC, entered his appearance on behalf of the Applicant.⁵

¹ Application, p. 1 (Jul. 13, 2018).

² Affidavit of Publication – Ness County News (Aug. 7, 2018)

³ Legal Proof of Publication – The Wichita Eagle (Aug. 7, 2018).

⁴ Letter of Protest and Request for Hearing – Cindy Hoedel (Aug. 17, 2018).

⁵ Entry of Appearance (Aug. 24, 2018).

4. On September 21, 2018, the Applicant filed a Motion to Dismiss Protest of Cindy Hoedel (Motion to Dismiss).

5. On September 28, 2018, Ms. Hoedel filed a Response to Applicant's Motion to Dismiss (Response).

Legal Standards

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 protester 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." In Docket No. 17-CONS-3689-CUIC (17-3689 Docket or *Cross Bar*), the Commission found that to meet the "direct and substantial interest requirement, each protestant must demonstrate that he or she has "standing" under Kansas' traditional two-part test for standing.⁶

7. Under the two-part standing test, each protestant must demonstrate that [1] he or she suffered a cognizable injury and [2] that there is a causal connection between the injury and the challenged conduct.⁷ A cognizable injury is established by showing . . . that [an individual] 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 plaintiff in a personal and individual way.⁸ Mere allegations of possible future injury do not meet the requirements of standing.⁹ Any threatened injury must be certainly impending.¹⁰ Moreover, an individual must assert his or her

⁶ Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

⁷ *Id.*

⁸ Docket No. 17-CONS-3689-CUIC, *Written Findings and Recommendations*, ¶ 29 (Mar. 29, 2018), incorporated by reference into the *Final Precedential Order*, ¶ 1.

⁹ *Id.*

¹⁰ *Id.*

own legal rights and interests, and . . . an injury must be more than a generalized grievance common to all members of the public.¹¹

8. The Commission also found that at the pre-evidentiary stage of a proceeding, a party need only demonstrate a prima facie case for standing, meaning the Commission must determine if the facts alleged in the protest, and inferences to be made therefrom, demonstrate standing.¹² However, once an evidentiary hearing has taken place, the burden increases to a preponderance of the evidence.¹³

Findings and Conclusions

9. In her Protest, Ms. Hoedel expressed a generalized concern about possible earthquakes which may threaten water.¹⁴ Ms. Hoedel alleged that her “home has been shaken repeatedly by earthquakes” ostensibly “caused by injection activity.”¹⁵ Further, she asserted that she is “directly impacted by induced seismicity” and fears that such seismicity “can reasonably be expected to occur if this large volume well is permitted.”¹⁶ She argued that such earthquakes “could damage my home and my water supply.”¹⁷

10. In its Motion to Dismiss, the Applicant relied on the Commission’s reasoning in the 17-3689 Docket to argue the Protestant did not file a valid protest.¹⁸ The Applicant stated:

The protester in this docket does not demonstrate that she has any direct and substantial interest in this application, or that she resides and owns property within any reasonable proximity to the subject well. Rather, her property appears to be approximately 200 miles distant from the subject well. On the face of the protest, it does not

¹¹ *Id.*

¹² *Id.* at ¶ 30 .

¹³ *Id.*

¹⁴ Protest, p. 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Motion to Dismiss, pp. 1-2.

appear that the protester would have even been a person or entity entitled to notice of the application.¹⁹

11. In her Response, Ms. Hoedel reiterated her allegation that she is “directly affected by the cumulative effect of wastewater injection wells” by way of earthquakes in Kansas and Oklahoma.²⁰ She claimed that Conservation Staff does not represent her interests and asserted that the Commissioners should want to hear her questions and concerns, “rather than hearing from the echo chamber of the regulated community and KCC staff.”²¹

12. The Commission finds that pursuant to K.A.R. 82-3-135b and the findings of the 17-3689 Docket, Ms. Hoedel has not made a valid protest. Her allegations do not demonstrate a direct and substantial interest in an injection well located roughly 200 miles from her home.²² By itself, such a distance forecloses the possibility of demonstrating that any alleged cognizable injury she may suffer has a causal connection to the proposed injection well. Moreover, her concerns about home damage and threatened water from induced seismicity in the massive area encompassed by “Kansas and Oklahoma”²³ are not particularized, but rather, mere generalized allegations of possible future injury which would be common to all members of the public. Her allegation that earthquakes “threaten the integrity of underground cement well casings” is a mere generalized and wholly unsubstantiated allegation with regard to *any* injection well in Kansas, and specifically regarding the subject well here.²⁴ Thus, Ms. Hoedel’s Protest and Response allege no facts specific to the Applicant’s particular Application which demonstrate a *prima facie* case for standing, and therefore, her protest is not valid.

¹⁹ Motion to Dismiss, ¶ 4.

²⁰ Response, p. 1.

²¹ *Id.*

²² See Motion to Dismiss, ¶ 4.

²³ See Response, ¶ 2.

²⁴ See Protest, p. 1.

13. Based on the above, the Commission finds the Applicant's Motion to Dismiss Protest of Cindy Hoedel should be granted. There are no other protests of record in this matter. Thus, Staff is directed to process Palomino Petroleum, Inc.'s Application accordingly and advise the Commission if, in Staff's opinion, a hearing is necessary. Otherwise, the docket shall be closed, and there shall be no further proceedings.

THEREFORE, THE COMMISSION ORDERS:

A. Palomino Petroleum's Motion to Dismiss Protest of Cindy Hoedel is granted. Staff shall process the Application accordingly.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁵

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

BY THE COMMISSION IT IS SO ORDERED.

Altrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 12/06/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 12/06/2018

MD/sb

²⁵ I.S. A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

19-CONS-3078-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 12/06/2018.

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