

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

BEFORE COMMISSIONERS: Pat Apple, Chair
Jay Scott Emler, Commissioner
Shari Feist Albrecht, Commissioner

In the Matter of the Application Larson) Docket No. 18-CONS-3205-CUIC
Engineering, Inc. dba Larson Operating Company,)
to authorize injection of saltwater into the) CONSERVATION DIVISION
Pleasanton and Altamont formations at the Danis)
#1-21 well, located in Section 21, Township 18) License No. 3842
South, Range 29 West, Lane County, Kansas)
)

MOTION TO DISMISS PROTESTS

COMES NOW the Applicant, Larson Engineering, Inc., dba Larson Operating Company, and respectfully moves the Kansas Corporation Commission (the "Commission") for an Order dismissing the Protests filed by Susan Royd-Sykes dated October 13, 2017 and received by the Commission October 16, 2017, and Cindy Hoedel received by the Commission October 23, 2017.

In support of its Motion, Applicant states:

1. This Commission's regulation K.A.R. 82-3-135b specifically provides in subpart (d) Protesters:

"Each protester shall serve the protest upon the applicant at the same time or before the protestor files the protest with the conservation division. The protest shall not be served on the applicant by the conservation division."

2. In this case, neither Susan Royd-Sykes nor Cindy Hoedel served a copy of their respective Protests on the Applicant. The Applicant learned of the Protest by Susan Royd-Sykes from the Commission's Order Designating Prehearing Officer and Setting Prehearing Conference, dated December 5, 2017. The Applicant learned of the Protest by Cindy Hoedel because Applicant was copied on correspondence dated October 27, 2017

from Commission Staff Rene Stucky to Ms. Hoedel. In both cases, Applicant was notified of the Protests by the Commission, not the Protestants.

3. On December 5, 2017, the Commission entered its Order Designating Prehearing Officer and Setting Prehearing Conference. In this Order, the Commission acknowledged the receipt of a letter of protest from Susan Royd-Sykes on October 16, 2017 and from Cindy Hoedel on October 23, 2017.

4. The Commission's Order Designating Prehearing Officer and Setting Prehearing Conference ordered *inter alia*:

"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 Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501, et seq. Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default pursuant to KAPA."

5. The Protestant Cindy Hoedel's letter of protest was acknowledged by the Commission Staff's Director of Underground Injection Control, Mr. Rene Stucky, in a letter of October 27, 2017, in which he informed her that if she had any questions she could contact the Commission's legal staff at a specifically provided telephone number. Further, Mr. Stucky provided her a copy of the Commission's Regulations regarding applications, hearings, and protests and informed Ms. Hoedel if she had any questions "Please do not hesitate to contact me."

6. The Prehearing Conference was scheduled for and held on December 19, 2017 at 8:30 a.m. by telephone, and neither of the Protestants participated or were represented.

7. It is clear that these two Protestants have failed to follow the Commission's Rules and Regulations in two very clear and specific regards: First, they

violated the Commission's Regulation noted above, K.A.R. 82-3-135b(d) by failing to provide a copy of their protests to the Applicant. Second, they failed totally to participate in the Prehearing Conference held on the morning of December 19, 2017 at 8:30 a.m., as required by the Commission's Prehearing Order.

8. An additional ground for dismissal of these protests is that the Protestants have not and cannot demonstrate that they have standing to assert a valid and substantive protest in this Docket.

9. A review of the protest letter of October 13, 2016 filed by Susan Royd-Sykes gives as the grounds for her protest that the Danis #1-21 well will endanger surface and ground waters, rivers and watersheds of the State, which she alleges that she makes use of from time to time. It is noteworthy, however, that she offers no empirical or scientific evidence to support her allegation that the Danis #1-21 well will endanger waters of the State of Kansas. Her second basis for the objection is that the Danis #1-21 well (although an injection well for secondary recovery purposes, which recycles the produced water and does not dispose of the produced water) will cause earthquakes. Again, Ms. Royd-Sykes offers no empirical or scientific evidence to support her claim.

The third alleged basis for Ms. Royd-Sykes' protest is that the Danis #1-21 well will cause "potential damage to public service infrastructures such as roads, bridges, rain lines [sic] and public service buildings." It is obvious that Ms. Sykes has failed to demonstrate even a color of standing to assert a valid protest as she has not and cannot demonstrate that she will be personally damaged by the approval of the Danis #1-21 well. Her allegations in this regard are further weakened by the fact that Ms. Royd-Sykes' residence at Burlington, Kansas is some 284 miles east of the Danis #1-21 well. Thus,

she has not and cannot establish her geographic nexus to this Application for the Danis #1-21 well

10. With respect to the protest filed by Ms. Cindy Hoedel, a resident of Matfield Green, Kansas, whose residence is 240 miles east of the Danis #1-21 well, the alleged basis for her protest is that “these wells” are known to create induced seismic activity. Ms. Hoedel then proceeds to list earthquakes that have allegedly occurred in Mankato, Kansas, Harper, Kansas, Salina, Kansas, Anthony, Kansas, all noteworthy only because these locations are between 194 miles (Salina, Kansas) and 220 miles (Anthony, Kansas) from the Danis #1-21 well. Again, Ms. Hoedel has failed to demonstrate any geographic nexus between her allegations and the situs of the Danis #1-21 well and, therefore, no standing.

11. The Protestants’ statements regarding their concerns about the waters of the state are too speculative to constitute any likelihood of injury.

12. The courts in Kansas have defined standing as follows:

“Standing is a jurisdictional question whereby courts determine ‘whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant invocation of jurisdiction and to justify exercise of the court’s remedial powers on his or her behalf.’”¹

13. Further, the Kansas Supreme Court has also set the following requirements for one to be classified as having standing:

“Generally, ‘standing’ requires that a plaintiff have a personal interest in the court’s decision, and that he or she personally have suffered some

¹ *Board of County Commissioners of Sumner County v. Bremby*, 286 Kan. 745, 750-51, 189 P.3d 494, 499-500 (2008) citing *Moorehouse v. City of Wichita*, 259 Kan. 570, 574 (1996).

actual or threatened injury as a result of the putatively illegal conduct of the defendant.”²

14. The Kansas Supreme Court has also instructed:

“We have explained that if a person does not have standing to challenge an action or to request a particular type of relief, then ‘there is no justiciable case or controversy’ and the suit must be dismissed.” *Kansas Bar Ass’n. v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 490 (2000). When a person who does not have standing to file suit, nevertheless asks for relief, it is tantamount to a request for an advisory opinion. *See* 270 Kan. at 491. Advisory opinions are an executive, not a judicial, power. *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 885 (2008).”³

15. It is worthy of noting that the Kansas cases cited herein do not deal with a personal injury matter, but, instead, deal with matters of administrative nature, such as would be handled by the Board of County Commissioners of Sumner County or the Haskell County Cemetery District or the Kansas National Education Association. As stated in *Kansas National Education Association v. State of Kansas*:

“To possess standing, a party ‘must have a sufficient stake in the outcome of an otherwise justiciable controversy in order to obtain judicial resolution of that controversy’” ... (citation omitted) ... [g]enerally, this requires demonstrating the party has suffered a cognizable injury and that there is a causal connection between that injury and the challenged conduct.”⁴

16. Unlike a purely legislative or a rule-making proceeding, the Commission’s activities in the context of the subject Application is certainly a judicial or quasi-judicial process. Obviously, the Commission requires an application be submitted that is verified and that if any testimony is presented, that testimony has to be under oath, all of which are indicia of a judicial or quasi-judicial proceeding. In this case, the Protestants’

² *Lower v. Board of Directors of Haskell County Cemetery District*, 274 Kan. 735, 747, 56 P.3d 235,245 (2002).

³ *Board of Sumner County Comm’rs v. Bremby*, 286 Kan. 745, 750, 189 P.3d 494, 499 (2008).

⁴ 305 Kan. 739, 746-47 (2017).

concerns are not judicial or quasi-judicial; rather, they are in the nature of the expression of concerns properly addressed to the Legislature or to a purely rule-making process.

17. K.A.R. 82-3-135b(a) directs that:

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

It is obvious that these Protests have and cannot make a clear and concise statement of the direct and substantial interest of the protester in the proceeding. The phrase “direct and substantial” certainly implies a more significant and impactful relationship between the Application for the Danis #1-21 well and the personal impact that well will have on these two Protestants. These Protests have failed to meet that standard and, therefore, should be dismissed.

18. Both Protests raise unsupported and generic concerns, which fail to evidence that either Protestant has a direct or substantial interest in this proceeding. The Commission Staff has the responsibility of representing public interests, and the Commission should not allow these Protestants to usurp that responsibility. Allowing these improper Protests to proceed would be unduly burdensome, not only to the Applicant but also to the Commission, in that they will improperly delay approval of the Application, cause the Applicant to incur otherwise unnecessary legal expenses, and burden the already-filled Commission docket.

WHEREFORE, the Applicant respectfully requests for the above and foregoing reasons that the Commission follow its Rules and Regulations and dismiss the Protests filed herein and allow this matter to proceed expeditiously.

TRIPLETT WOOLF GARRETSON, LLC

By 

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF Barton)

Thomas Larson, of lawful age, being first duly sworn upon my oath, state that I am President and owner of Larson Engineering, Inc.; that I have read the above Motion; 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.

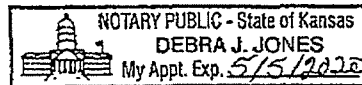
Thomas Larson

SUBSCRIBED AND SWORN to before me this 22nd day of December, 2017.

Alecia Jones
Notary Public

My Appointment Expires:

5/5/2020



CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2017, the above **Motion to Dismiss Protests** was sent via United States Mail, postage prepaid, addressed to the following:

Susan Royd-Sykes
504 S. 6th Street
Burlington, KS 66839

Cindy Hoedel
205 Mercer St.
Matfield Green, KS 66862

And via electronic mail to:

Jonathan Myers, Litigation Counsel
KCC Central Office
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Dustin L. Kirk, Deputy General Counsel
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Timothy E. McKee, #07135