

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Berexco LLC )	Docket No. 17-CONS-3637-CEXC
for a second exception to the 10-year time limita- )	
tion of K.A.R. 82-3-111 for its Garden City A 4-29 )	CONSERVATION DIVISION
well located in the SW NW NW of Sec. 29, T22S, )	
R33W, Finney County, Kansas )	License No. 34318
_____ )	

MOTION TO DISMISS PROTEST

COMES NOW, Berexco, LLC (“Berexco”), and moves the State Corporation Commission of the State of Kansas (“Commission”) for dismissal of the protest to the Application in this docket filed by Bayshore Energy KS LLC (“Bayshore”) herein as follows:

1. Pursuant to K.A.R. 82-3-135a(d), Berexco published notice of its application in *The Garden City Telegram* on March 9, 2017 and in *The Wichita Eagle* on March 10, 2017. K.A.R. 82-3-135a(e) provides that, once notice of the application is published, the application shall be held in abeyance for 15 days for production matters and 30 days for environmental matters, pending the filing of any protest pursuant to K.A.R. 82-3-132b. Subsection (c)(1) of K.A.R. 82-3-135b repeats the deadline of 15 days after publication of notice for filing protests of production matters, and 30 days after publication of notice for filing protests of environmental matters, and subsection (c)(2) of the same section expressly states that failure to comply with the foregoing deadlines shall preclude an interested person from appearing as a protester. Bayshore submitted its letter to the Commission dated May 12, 2017 protesting the application in this docket, which was received by the Commission and entered into the record of these proceedings on May 22, 2017, more than 73 days after notice

of the application was last published. Bayshore's protest is untimely, having failed to meet any of the filing deadlines prescribed by K.A.R. 82-3 135a(e), and must be dismissed.

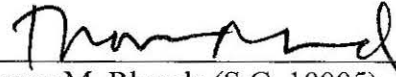
2. K.A.R. 82-3-135b(a) requires that a person filing a protest have a valid interest in the application, and that the protest include specific allegations as to the manner in which grant of the application will cause waste, violate correlative rights, or pollute water resources. Bayshore's protest states that the well which is the subject of the Application in this case is also subject to a farmout agreement which grants Bayshore rights to it should the well need to be plugged and abandoned. No reference to specific agreements is made, nor is proof of these allegations provided. Thus, no interest of Bayshore in these proceedings has been shown. Assuming, for the sake of argument, that Bayshore has a legitimate interest in these proceedings, its interest is not within the Commission's jurisdiction to prevent waste, protect correlative rights, and protect fresh and usable water resources. See, K.S.A. 55-602, 55-603, 55-604, 55-701, 55-702, 55-703 and 55-704. Note that, although Berexco intends to use the subject well for backup salt water disposal, its use of the well for such purpose is not in issue since: (a) Bayshore does not cite such use, or how its interest, if any, would be materially adversely affected thereby, as grounds for its protest, and (b) no application for such use has been made.

3. Bayshore's protest pertains to contractual matters only, and does not contain any allegations as to how its protest falls within the purview of the Commission's jurisdiction, i.e., the manner in which the grant of Berexco's Application will cause waste, violate correlative rights, or pollute water resources, as required by K.A.R. 82-3-135b(a). Bayshore's protest fails to satisfy any applicable jurisdictional and regulatory criteria for consideration by the Commission, and fails to state appropriate grounds for action it asks the Commission to take. Its remedy, if it has one, is

judicial rather than administrative. Bayshore's protest is therefore inapplicable to these proceedings, and must be dismissed.

WHEREFORE, Berexco prays that the protest of Bayshore in this docket be dismissed, and that the Commission grant to Berexco such other and further relief as the Commission may deem just and proper.

Respectfully submitted,



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Attorney for Operator,  
Berexco LLC

VERIFICATION

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

Thomas M. Rhoads, of lawful age and being first duly sworn upon his oath, deposes and states: That he is the attorney for the Operator, Berexco LLC, in the above-captioned action; that he has read the above and foregoing Motion to Dismiss Protest, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to his knowledge, information, and belief.



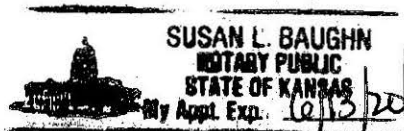
\_\_\_\_\_  
Thomas M. Rhoads

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 20<sup>th</sup> day of June, 2017.

My commission expires:



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Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 20 day of June, 2017, he caused a true and correct copy of the above and foregoing Motion to Dismiss Protest to be served electronically upon the following persons at the email addresses shown:

Jonathan Wilfong  
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Thomas M. Rhoads