

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Application of Berexco) Docket No: 17-CONS-3644-CEXC
LLC for an Exception to the 10-year Time)
Limitation of K.A.R. 82-3-111 for its) CONSERVATION DIVISION
Bamberger #6 SWD Well Located in the NE)
SE of Sec 20, T22S, R22W Hodgeman) License No. 34318
County, Kansas.)

DEFAULT ORDER

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:

1. On April 28, 2017, Berexco LLC (Berexco) filed an Application with the Commission, stating that it “obtained temporary abandonment status for the Bamberger #6 SWD [well] effective January 1, 1989,” and “[t]he subject well has maintained such status from January 1989 to the present date.”¹ Regarding the subject well, Berexco asked the Commission to grant it a three-year exception to K.A.R. 82-3-111’s 10-year temporary abandonment limitation.² The Application also asked the Commission to grant its request administratively or be set for hearing.³

2. Publication of the Application was made in The Wichita Eagle on May 5, 2017,⁴ and in The Jetmore Republican on May 10, 2017.⁵

¹ Application, ¶ 4 (Apr. 28, 2017).

² *Id.*, ¶¶ 5, 9.

³ *Id.*, p. 4.

⁴ Affidavit of Publication, Dale Seiwert (May 5, 2017).

⁵ Affidavit of Publication, Dawn Wendel (May 10, 2017).

3. On May 15, 2017, Roger W. Holmes timely filed a letter of protest, expressing his concerns about “pollution of the groundwater as well as the loss of saltwater on the surface.”⁶

4. On June 6, 2017, an *Order Designating Prehearing Officer and Setting Prehearing Conference* designated Michael J. Duenes as the Prehearing Officer and set a Prehearing Conference for June 22, 2017.⁷ The Protestant, Mr. Holmes, was served with the Order via United States mail.⁸

5. On June 20, 2017, Thomas M. Rhoads filed an Entry of Appearance as counsel on behalf of the Operator.⁹

6. On June 22, 2017, the Prehearing Conference was held with the Prehearing Officer, Conservation Staff counsel, and Operator’s counsel in attendance. The Protestant did not appear.

7. On June 23, 2017, Operator filed a Motion for Default Order and to Dismiss Protest due to the failure of the Protestant to appear or participate in the Prehearing Conference. Operator requested that the Protestant be held in default.¹⁰ Operator also requested “[u]pon failure of Holmes to move or vacate or set aside the proposed order of default within the time prescribed by K.S.A. 77-520(b) or denial of a motion to vacate in accordance with subsection (c), . . . that Holmes’ protest be dismissed and [Operator’s] Application herein determined by the Commission without Holmes’ participation.”¹¹

8. Pursuant to K.S.A. 77-520(a), the Commission finds the failure of the Protestant to attend the Prehearing Conference constitutes default. Pursuant to K.A.R. 82-3-135b(e), the

⁶ Roger W. Holmes, Letter of Protest (May 15, 2017).

⁷ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clauses A & B (June 6, 2017).

⁸ *Id.*, Certificate of Service.

⁹ Entry of Appearance (June 20, 2017).

¹⁰ Motion for Default Order and to Dismiss Protest, p. 3 (June 23, 2017).

¹¹ *Id.*, ¶ 2.

Commission finds that consideration of a protest must be secured by the Protestant's offer of evidence or statement or participation in the hearing. The Commission also takes Operator's Motion to Dismiss under advisement and will hold it in abeyance until Protestant has had his opportunity to cure his default.

THEREFORE, THE COMMISSION ORDERS:

A. The Protestant, Roger W. Holmes, is found to be in default pursuant to K.S.A. 77-520(a).

B. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting that this Default Order be vacated and stating the grounds relied upon, within seven (7) calendar days after service of this Order, with three (3) additional days added to account for service by mail.

C. If a motion to vacate is not filed by the deadline, any party may then file a petition for reconsideration within fifteen (15) days.¹² The petition shall be addressed to the Commission and sent to 266 N. Main, Suite 220, Wichita, Kansas 67202. Reconsideration is a prerequisite for judicial review.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems appropriate.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JUL 11 2017


Lynn M. Retz
Secretary to the Commission

Mailed Date: July 11, 2017

MJD/sc

¹² See K.S.A. 77-529(a).

CERTIFICATE OF SERVICE

I certify that on July 11, 2017, I caused a complete and accurate copy of this Order to be served electronically and via United States mail, with the postage prepaid and properly addressed to the following:

Thomas M. Rhoads
Law Offices of Thomas M. Rhoads LC
200 E. 1st Street, Suite 301
Wichita, Kansas 67202-2114
tmrhoads@sbcbglobal.net
Attorney for Operator, Berexco LLC

Emma Richmond/Andrew J. Moore
Berexco LLC
2020 N. Bramblewood
Wichita, Kansas 67206

Roger W. Holmes
35990 NE O Road
Hanston, Kansas 67849

and delivered by e-mail to:

Jonathan R. Myers, Litigation Counsel
KCC Wichita Central Office

Michael J. Duenes, Assistant General Counsel
KCC Topeka Office

/s/ Cynthia K. Maine
Cynthia K. Maine
Administrative Assistant
Kansas Corporation Commission