

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Berexo LLC)	Docket No. 17-CONS-3644-CEXC
for a second exception to the 10-year time limita-)	
tion of K.A.R. 82-3-111 for its Bamberger 6 SWD)	CONSERVATION DIVISION
well located in the NE SE of Sec. 29, T22S, R22W)	
Hodgeman County, Kansas)	License No. 34318
_____)	

MOTION FOR DEFAULT ORDER AND TO DISMISS PROTEST

COMES NOW, Berexco, LLC ("Berexco"), and moves the State Corporation Commission of the State of Kansas ("Commission") for an order holding Roger W. Holmes ("Holmes") in default, and dismissing his protest of the Application of Berexco in this docket as follows:

1. Berexco filed its Application herein on April 28, 2017. Pursuant to K.A.R. 82-3-135a(d), Berexco published notice of its Application in *The Wichita Eagle* on May 5, 2017 and in *The Jetmore Republican* on May 10, 2017. Holmes protested the Application by undated letter addressed to Berexco and the Commission, received by the Commission on May 15, 2017. Pursuant to Order Designating Prehearing Officer and Setting Prehearing Conference issued by the Commission and served on Berexco, Holmes, and other interested parties by mail on June 6, 2017, a prehearing conference was held by telephone on June 22, 2017 at 9:30 a.m. Appearing at the prehearing conference were the prehearing officer, the attorney designated to appear on behalf of the Commission, and the undersigned counsel for Berexco. Holmes did not appear.

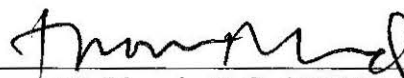
2. K.S.A. 77-520 provides that a party who fails to attend or participate in a prehearing conference may be held in default by order of the presiding officer, unless the defaulting party files a written motion to vacate such order and the reasons therefor within seven (7) days after service of

a proposed order of default. Absent a motion to vacate the proposed default order, or if the motion is denied, the proposed order of default becomes effective, the defaulting party's application for an adjudicative proceeding is dismissed, and issues raised by the application may be determined without participation of the party in default. Holmes is in default for failing to attend or participate in the prehearing conference in this docket, and issuance of a proposed order of default by the prehearing officer is warranted. Upon failure of Holmes to move to 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), Berexco requests that Holmes' protest be dismissed and its Application herein determined by the Commission without Holmes' participation.

3. K.A.R. 82-3-135b(a) requires that a person filing a protest have a valid interest in the application being protested, 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. Holmes' protest contains no reference to waste or violation of correlative rights, and fails to state any facts or evidence supporting the existence of pollution caused by the subject well. Instead, the protest is based strictly upon the length of time the well has been temporarily abandoned. The length of time a well has been out of service is not a determinant of its eligibility for exception to the ten (10) year limit to temporary abandonment under K.A.R. 82-3-111. The protest fails to acknowledge that the subject well meets all applicable mechanical integrity standards (Application, ¶ 6), and fails to state specifically whether or how the subject well has or will cause waste, violate correlative rights, or pollute water resources as required by Commission regulations. Holmes' protest thus fails to address issues raised by Berexco's Application, rests solely upon grounds that do not justify denial of the Application, and must be dismissed for these reasons as well.

WHEREFORE, Berexco prays that Commission order Holmes to be in default of these proceedings, that the protest of Holmes 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,

A handwritten signature in black ink, appearing to read 'Thomas M. Rhoads', is written over a horizontal line.

Thomas M. Rhoads (S.C. 10005)
Law Offices of Thomas M. Rhoads LC
200 E. 1st Street, Suite 301
Wichita, Kansas 67202-2114
Telephone: (316) 260-4440
Facsimile: (316) 260-4419
Email: tmrhoads@sbcglobal.net

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 For Default Order and 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.



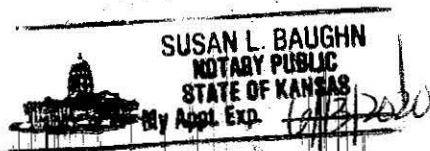
Thomas M. Rhoads

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 2nd day of June, 2017.

My commission expires:



Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 23 day of June, 2017, he caused a true and correct copy of the above and foregoing Motion For Default Order and To Dismiss Protest to be served via United States mail, postage prepaid, upon the following person at the address shown:

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

and to be served electronically upon the following persons at the email addresses shown:

Michael J. Duenes
Assistant General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027
m.duenes@kss.ks.gov

Jonathan R. Myers, Litigation Counsel
Kansas Corporation Commission,
Conservation Division
266 N. Main Street, Suite 220
Wichita, Kansas 67202-1513
j.myers@kcc.ks.gov



Thomas M. Rhoads