

**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 Unit Petroleum Company to authorize injection of saltwater into the Mississippi Formation at the Royce A #1 enhanced recovery well, located in Section 16, Township 25 South, Range 9 West, Reno County, Kansas.) Docket No: 19-CONS-3097-CUIC
) CONSERVATION DIVISION
) License No. 33596

ORDER ON MOTION TO DISMISS PROTESTS

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 the following:

Background

1. On August 28, 2018, Unit Petroleum Company (Operator) filed an Application to authorize the injection of saltwater into the Mississippi formation at its Royce A #1 enhanced recovery well in Reno County, Kansas.¹ Notice of the Operator's Application was published in The Hutchison News newspaper on August 14, 2018.²

2. On August 23, 2018, Lori Lawrence submitted a written protest and request for hearing. Cindy Hoedel also submitted a written protest and request for hearing on August 24, 2018. On September 13, 2018, Judy Wells, Greg Holmes and Felix Revello submitted written protests.

3. On October 9, 2018, David Bengtson entered his appearance on behalf of the Operator.

4. On October 10, 2018, Judith L. Wells filed a Pleading in the docket.³

¹ Application, p. 1 (Aug. 28, 2018).

² Affidavit of Publication – The Hutchinson News (Sept. 10, 2018).

³ Pleading of Judith L. Wells (Oct. 10, 2018).

5. On October 16, 2018, the Operator filed a Motion to Dismiss Protests (Motion to Dismiss).

6. On October 23, 2018, Judith L. Wells filed a Response to Motion to Dismiss Protests (Wells Response).

7. On November 27, 2018, Lori Lawrence filed a Response to Motion to Dismiss Protests/Petition for Reconsideration, dated October 19, 2018 (Lawrence Response).

8. On November 29, 2018, Cindy Hoedel filed a Response to Motion to Dismiss Protests (Hoedel Response).

Legal Standards

9. 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.⁴

10. 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.⁵ 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

⁴ Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 (Apr. 5, 2018).

⁵ *Id.*

way.⁶ Mere allegations of possible future injury do not meet the requirements of standing.⁷ Any threatened injury must be certainly impending.⁸ Moreover, an individual must assert his or her own legal rights and interests, and . . . an injury must be more than a generalized grievance common to all members of the public.⁹

11. 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.¹⁰ However, once an evidentiary hearing has taken place, the burden increases to a preponderance of the evidence.¹¹

12. K.A.R. 82-3-135b(d) requires each protester to “serve the protest upon the applicant at the same time or before the protester files the protest with the conservation division.”

Findings and Conclusions

13. In her protest, Lori Lawrence claimed she is impacted by this well due to earthquakes,¹² and thus, “there should be a moratorium on new disposal wells.”¹³ Ms. Lawrence also claimed that the earthquakes in Kansas “will speed the degradation of cement casings in wells, allowing toxic fluids to migrate and threaten fresh and usable water.”¹⁴ Finally, she argued that “[a]ll waterways are connected in Kansas and across the globe.”¹⁵ In her Response to the Motion

⁶ Docket No. 17-CONS-3689-CUIC, *Written Findings and Recommendations*, ¶ 29 (Mar. 29, 2018), incorporated by reference into the *Final Precedential Order*, ¶ 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at ¶ 30.

¹¹ *Id.*

¹² Lawrence Protest, p. 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

to Dismiss, Ms. Lawrence reiterated her concerns about earthquakes.¹⁶ She also claimed that as a Wichita resident, she shares ground water with the subject well in Reno County because “[t]he Equus Beds are beneath both counties and beneath my home and the proposed well site,” and thus, she alleged that she is “directly affected.”¹⁷

14. Cindy Hoedel, in her protest, claimed she will be harmed by “the cumulative pressure USGS says is causing the earthquakes [to] shake my house.”¹⁸ She cited the 15-CONS-770-CMSC Docket for her assertion that “[a]n imminent threat [of earthquakes] exists in Reno County” which “will speed degradation of cement casings in wells.”¹⁹ In her Response to the Motion to Dismiss, Ms. Hoedel stated that she is a “party” to this docket and that according to K.S.A. 55-152(a), “no protestant should be required to show actual and specific harm, but only “potential” harm.”²⁰

15. Greg Holmes stated that if the Commission truly aims to serve people, it will not enable an earthquake catalyst, i.e., this injection well.²¹

16. As with the other Protestants, Felix Revello claimed he has an interest in the subject well because of earthquakes in the region and because of his concern for the well-being of structures in Hutchinson, Kansas.²² He stated that “every Kansan has a stake in tax revenues lost when these buildings and their businesses are damaged or destroyed.”²³ He further stated that “[a]ll Kansans, especially Hutchinson area residents, are entitled to having the Kansas Geological Survey and Kansas Corporation Commission conduct scientifically objective analyses to

¹⁶ Lawrence Response, p. 1.

¹⁷ *Id.*

¹⁸ Hoedel Protest, p. 1.

¹⁹ *Id.*

²⁰ Hoedel Response, pp. 1-2.

²¹ Holmes Protest, p. 1.

²² Revello Protest, p. 1.

²³ *Id.*

determine potential for earthquakes caused by this well and holding public hearings *before* considering its approval.”²⁴

17. Judith Wells, in her protest, charged the Commission with failing to conduct proper engineering studies on the impact of injections occurring over many years and on the geologic formations at issue.²⁵ She also claimed the “OGCD” does not provide the public with proper due process on injection well applications.²⁶ In her Response, Ms. Wells quoted numerous Kansas statutes without explanation and then charged the Commission with ignoring the protection of usable waters by the regulations it has enacted.²⁷ She then stated that the Commission requires the public to protest injection well applications, rather than holding public hearings on them.²⁸ Ms. Wells mentioned Commission findings in Docket No. 18-CONS-3195-CUIC, quoted further Kansas statutes and regulations, and noted various procedural events in the instant proceeding.²⁹ Ms. Wells alleged that the subject well is really a disposal well rather than an EOR well.³⁰ The remainder of Ms. Wells’ Response did not address anything pertaining to the subject well, but reiterated previous arguments and engaged in collateral attacks on the Commission’s procedural rules and regulations.³¹

18. The Operator’s Motion to Dismiss Protests specifically addressed each protest.³² The Operator noted that Mr. Holmes did not serve a copy of his protest on the Operator.³³ Regarding the protests of Ms. Hoedel, Ms. Lawrence, and Ms. Wells, the Operator noted that Ms.

²⁴ *Id.* at p. 2.

²⁵ Wells Protest, p. 1.

²⁶ *Id.*

²⁷ See Wells Response, ¶¶ 1-6.

²⁸ *Id.* at ¶ 9.

²⁹ See Wells Response, ¶¶ 12-17.

³⁰ *Id.* at ¶ 18.

³¹ *Id.* at ¶¶ 19-32.

³² Motion to Dismiss, ¶¶ 12-26.

³³ Motion to Dismiss, ¶ 12.

Hoedel lives more than 85 miles from the subject well,³⁴ Ms. Lawrence lives more than 54 miles away,³⁵ and Ms. Wells lives more than 200 miles away.³⁶ The Operator also stated that “the generalized concerns regarding seismicity and Arbuckle disposal wells in south central Kansas are not implicated by the relief sought in the Application” because “[t]his is an EOR well in which water that is withdrawn from the Mississippi formation will be reinjected into that same formation and, as a result, no new pressure will be added to the reservoir.”³⁷

19. The Commission finds that Mr. Holmes failed to make a valid protest because he did not serve his protest on the Operator as required by K.A.R. 82-3-135b(d).³⁸

20. The Commission finds that Ms. Lawrence failed to make a valid protest because her generalized concerns about earthquakes and their effects on her do not make a prima facie case for a “direct and substantial interest” in the subject well. Her references to “all waterways [being] connected” demonstrate that her concern would be common to all members of the public, and further, her distance of over 50 miles from the subject well forecloses any possibility of showing that the subject well could be the cause of any cognizable injury she might suffer. In addition, Ms. Lawrence’s allegation that earthquakes “will speed the degradation of cement casings in wells” is a mere generalized and wholly unsubstantiated allegation with regard to *any* injection well in Kansas,³⁹ and specifically regarding the subject well here. Moreover, Ms. Lawrence’s protest does not include a *specific* allegation as to the manner in which the Operator’s Application will cause waste, violate correlative rights or pollute the water resources of Kansas, as required by K.A.R. 82-3-135b(a).

³⁴ Motion to Dismiss, ¶ 15.

³⁵ Motion to Dismiss, ¶ 18.

³⁶ Motion to Dismiss, ¶ 23.

³⁷ Motion to Dismiss, ¶ 29.

³⁸ See Motion to Dismiss, ¶ 12.

³⁹ See Lawrence Protest, p. 1.

21. The Commission finds that Ms. Hoedel failed to make a valid protest. As with Ms. Lawrence, her distance of over 80 miles from the subject well precludes her from any possibility of showing that the well could be the cause of any cognizable injury she might suffer. Moreover, her concerns about induced seismicity in such a broad area are not particularized, but rather, mere generalized allegations of possible future injury which would be common to all members of the public. Also like Ms. Lawrence, Ms. Hoedel's allegation that earthquakes "will speed the degradation of cement well casings in wells" is generalized and unsubstantiated.⁴⁰ Ms. Hoedel has not made a prima facie allegation that the subject well may "potentially harm" the usable waters of Kansas.⁴¹ Rather, her protest simply amounts to the inference that *any* injection well, by its very existence, may potentially pollute usable water. If accepted, this generalized and unsubstantiated implication would render meaningless the Commission regulations authorized by K.S.A. 55-152(a). Ms. Hoedel has not provided any specific allegations as to the manner in which the grant of the Operator's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Thus, Ms. Hoedel's Protest and Response allege no facts specific to the Operator's particular Application which demonstrate a prima facie case for standing.

22. The Commission finds that Mr. Revello failed to make a valid protest. His concerns about induced seismicity, the structures in Hutchinson, and the loss of tax revenues are not particularized, but rather, mere generalized allegations of possible future injury which would be common to all members of the public. There is no basis for Mr. Revello's assertion that "all Kansans . . . are entitled" to seismic analyses by the Commission and the Kansas Geological Survey prior to consideration of the Operator's Application.⁴² Mr. Revello did not provide any

⁴⁰ See Hoedel Protest, p. 1.

⁴¹ See Hoedel Reponse, pp. 1-2.

⁴² See Revello Protest, pp. 1-2.

specific allegations as to the manner in which the grant of the Operator's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Thus, Mr. Revello has not demonstrated a prima facie case for standing because he has not shown he has a "direct and substantial interest" in the subject well.

23. The Commission finds that Judith Wells failed to make a valid protest. Her allegations do not demonstrate a direct and substantial interest in an injection well located over 200 miles from her home.⁴³ Again, 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. Ms. Wells' mere quotations of statutes, regulations and procedures are irrelevant to the protest requirements under K.A.R. 82-3-135b and the 17-3689 Docket, and further, constitute an unwarranted and unsubstantiated collateral attack on such regulations and procedures. Ms. Wells' assertions regarding engineering studies are also irrelevant to the requirements for injection well Applications, and thus, do not validate her protest.⁴⁴ Moreover, her concerns about seismic activity and any effects from such activity are grievances common to all members of the public.⁴⁵ Also like Ms. Hoedel's protest, Ms. Wells' statement about "potential harm" to usable water amounts to the improper inference that *any* injection well, by its very existence, may potentially pollute usable water, and therefore, fails for the same reason.⁴⁶ Ms. Wells failed to provide any specific allegation as to the manner in which the grant of the Operator's Application will cause waste, violate correlative rights, or pollute the water resources of Kansas. Thus, Ms. Wells' Protest and Response allege no facts specific to the Operator's particular Application which demonstrate a prima facie case for standing, and therefore, her protest is not valid.

⁴³ See Motion to Dismiss, ¶ 23.

⁴⁴ See Wells Protest, p. 1.

⁴⁵ See Wells Response, ¶ 27.

⁴⁶ See Wells Response, ¶ 26.

24. Based on the above, the Commission finds the Operator's Motion to Dismiss Protests should be granted. There are no other protests of record in this matter. Thus, Staff is directed to process the Operator'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. Unit Petroleum Company's Motion to Dismiss Protests 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).⁴⁷

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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 12/06/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 12/06/2018

MJD

⁴⁷ K.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-3097-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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