

**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 Brian L. Birk) DOCKET No. 19-CONS-3106-CUIC (Merritt #10) **and**
dba Birk Petroleum for a Permit to Authorize the) DOCKET No. 19-CONS-3107-CUIC (Merritt #5)
Disposal of Saltwater into the Merritt #10 and) License NO. 31280
Merritt #5, located in Coffey County, Kansas)

**PROTESTANT’S RENEWED MOTION TO CHANGE HEARING LOCATIONS
FROM WICHITA TO TOPEKA OR RESCHEDULE THE EVIDENTIARY HEARINGS**

Comes now Protestant Susan Royd-Sykes before the State Corporation Commission of the State of Kansas (Commission) and files the following Protestant’s Renewed Motion to Change the Hearing Location in Docket No. 19-CONS-3106-CUIC (Merritt #10) and Docket No. 19-CONS-3107-CUIC (Merritt #5), both located in Coffey County, Kansas from Wichita to Topeka **OR** Reschedule the Two Evidentiary Hearings to a 2019 Date and Time that would suit holding the Hearings at the Commission’s office in Topeka.

In support of her motion, Protestant Royd-Sykes provides the following docket histories:

1) Notice was filed Aug. 23, 2018 by Brian L. Birk dba Birk Petroleum in the Coffey County Republican Newspaper for “Application for a permit to authorize the disposal of saltwater into the Merritt #5 and Merritt #10, located in Coffey County, Kansas...” Per the Commission’s Order Setting Procedural Schedule, on August 31, 2018, Brian L. Birk dba Birk Petroleum (Operator) filed an application to authorize the injection of saltwater into the Kansas City formation at its Merritt # 10 well in Coffey County, Kansas.

2) Protestant followed suit and filed a singular letter of protest on Aug. 27, 2018 regarding both the Merritt #5 and Merritt #10 and followed the filing of this protest by filing a singular request for hearing on Sept. 12, 2018, again, for both the Merritt #5 and Merritt #10 wells.

Although the published notice referred to application for both wells, after the filing of Protestant’s joint Protests and Requests for Hearings, at the point in which Commission staff docketed the Merritt #5 and Merritt #10 matters, Commission staff chose to docket these wells separately as Docket No. 19-CONS-3106-CUIC (Merritt #10) and No. 19-CONS-3107-CUIC (Merritt #5).

3) On Oct. 2, 2018, the Commission followed the separate docketings by filing two separate orders, Order Designating Prehearing Officer and Setting Prehearing Conference for Docket No. 19-CONS-3106-CUIC (Merritt #10) which also set a Prehearing Conference Call for that Docket at 9:30am on Oct. 25, 2018; and Order Designating Prehearing Officer and Setting

Prehearing Conference for No. 19-CONC-3107-CUIC (Merritt #5) which also set a Prehearing Conference Call for that Docket at 10:30am on Oct. 25, 2018.

4) During the 9:30am Oct. 25, 2018 Prehearing Conference Call for Docket No. 19-CONS-3106-CUIC (Merritt #10), Prehearing Officer Duenes pointed out that the second Merritt call for No. 19-CONC-3107-CUIC (Merritt #5) was set to follow at 10:30am, that he and staff had a Commission Business Meeting at 10:00 am and asked if it would be possible to combine the second Merritt Prehearing Call with this one for the purposes of scheduling. All parties agreed to this, worked out a schedule for both dockets to have the same procedural deadline dates and to have both dockets heard at the same time and date of Jan. 24, 2019, 10:00 a.m. Duenes also determined that the hearings should be held at the Commission office at 266 Main, Suite 220, Wichita, Kansas 67202. Protestant Royd-Sykes asked for explanation of the location change (all hearings that Royd-Sykes has been involved with to date have been held in Topeka), explained that she has limited distance driving ability and that Wichita is twice as far for her to travel. Royd-Sykes also said she would file asking for Topeka to be the hearing site.

During this hearing, Prehearing Officer Duenes also noted that Royd-Sykes “had experience in settling these matters prior to the need for a hearing” and encouraged the parties to consider settlement. Royd-Sykes stated that she would consider settlement, but that Mr. Birk would need to present a workable offer.

5) With that narrative completed, Protestant Royd-Sykes states that she lives about 10 minutes from Mr. Birk, in Burlington, Kansas which is an hour straight south of Topeka and the Commission’s Topeka Office, and that the Commission’s Wichita Office is twice that distance from her Burlington home.

6) Protestant followed the prehearing call by filing Protestant’s Motion To Change Hearing Location from Wichita to Topeka on November 6, 2018.

7) Commissioners responded to Protestant’s request to change hearing location with their Order on Motion to Change Hearing Location and deny the request regarding Merritt #10 on Nov. 15 and regarding Merritt No #5 on Nov. 27.

Protestant’s Response to Commission Denial of her Change of Location Motion:

In response to Protestant’s Motion to Change the Hearing Location in Docket No. 19-CONS-3106-CUIC (Merritt #10) on Nov. 15, 2018 the Commission issued an Order On Motion To Change Hearing Location which denied Protestant’s Motion to move the hearing location.

Additionally, in response to Protestant’s Motion to Change the Hearing Location in Docket No. 19-CONS-3107-CUIC (Merritt #5), on Nov. 27, 2018 the Commission issued an Order On Motion To Change Hearing Location which denied Protestant’s Motion to move the hearing location.

In both of her Motions, Protestant Royd-Sykes gave a specific recounting of her health-related limited driving ability and provided proof of her handicapped driving automobile tag and parking placard. Because that information was previously provided, she will not recount it again here.

In their denial of both of her Motions for change of location, the Commission stated:

“5. The Commission is sensitive to Ms. Royd-Sykes health issues and the difficulties they create in terms of mobility. As a public agency, the Commission works to provide the widest

possible access to its proceedings within a legal, workable and efficient process. However, the Commission typically hears multiple cases on days when hearings are scheduled for Wichita, and further, the Conservation staff necessary for all such hearings are in Wichita, not Topeka.

6. *Moreover, by her own admission, Ms. Royd-Sykes husband has availability to drive her to a hearing in Wichita given the fact that he is an “on call substitute teacher,” meaning that he need not work every day. Since the scheduled hearing in this proceeding is approximately two months in the future, the Commission finds that Ms. Royd-Sykes has sufficient ability to make appropriate arrangements for a trip to Wichita on January 24, 2018. The fact that other dockets are scheduled for hearing in Wichita on the same day also weighs against the hearing location.*

7. *Based on the above, the Commission finds that the hearing in this proceeding shall be held in Wichita, pursuant to the Commission’s Order Setting Procedural Schedule Paragraph 4. The Commission finds that Ms. Royd-Sykes Motion shall be denied.”*

In addressing her limited driving abilities, Protestant offers the following additional information as to why not only her driving, but general travel, is limited:

1) When required to do **any** vehicle travel beyond the average one-way hour she occasionally is able to manage, due to resultant joint inflammation and leg swelling from just sitting as a vehicle passenger she must keep her legs elevated to prevent resultant swelling to the degree that her legs will be unable to bend and she will be unable to stand or walk at the end of the journey. By her previous Motions’ listing of her medical diagnosis and driving limitations, she erroneously made the assumption that the Commission had been given enough medical information to accurately deduce the seriousness of her driving and travel limitations. Apparently the Commission was unable to follow the logic and failed to do so.

2) Additionally, in her previous Motions, while she did state that “her husband does most of the driving on any out of town trips” and that “her husband does take responsibility for nearly all of their out of town driving”, she also clearly stated that “he is an on-call substitute teacher who covers all of the schools in Coffey County, and his availability to be her driver cannot always be counted on.”

Further, from the Commission’s own analysis and interpretation of these statements, by their own written decision, the Commission has stretched, slanted, spun and reinterpreted them to clearly and solely serve only their desire to refuse to make any such handicapped accommodations and attempt to find reasoning to deny the Protestant’s request.

It should also be noted that the Protestant has been involved in previous such protests all of which the hearings for the same have been held in the Commission’s Topeka office and that all Wichita Conservation Division Staff and their witnesses, operators and their legal counsel, that needed to attend were all present and/or accounted for on all such occasions.

In response to the Commissions’ analysis that

“Ms. Royd-Sykes husband has availability to drive her to a hearing in Wichita given the fact that he is an “on call substitute teacher,” meaning that he need not work every day”,

Royd-Sykes states, first and foremost, that

1) her husband is not currently and never has been a party or protestant in these two docket matters, and because he is not, the Commission has no authority to assume he will attend or dictate that he must;

2) while her husband is and on-call substitute teacher, the Commission certainly has no authority to determine that his employment as such can be construed in any manner to mean *“that he need not work every day”*. Further, the Commission most certainly does not have any sort of legal authority over her husband’s employment or which days he may or may not be allowed to work;

3) further, the Commission cannot look into a crystal ball to see when the Coffey County schools will be calling her husband to teach, nor does the Commission have knowledge of how many calls per day he may receive or how far into the calendrical future he may already have dates scheduled.

Therefore, Protestant Royd-Sykes comes to the Commission and prays that the Commission take the Protestant’s Renewed Motion to Change the Hearing Location in Docket No. 19-CONS-3106-CUIC (Merritt #10) and Docket No. 19-CONS-3107-CUIC (Merritt #5), both located in Coffey County, Kansas into consideration and move the location of the Jan. 24, 2019, 10:00 a.m. hearing in both Dockets in the Application of Brian L. Birk dba Birk Petroleum for a Permit to Authorize the Disposal of in Coffey County, Kansas **from** the Commission office at 266 Main, Suite 220, Wichita, Kansas 67202 **to** the Commission’s Topeka office located at 1500 SW Arrowhead Rd., Topeka, KS 66604, **OR** Reschedule the Two Evidentiary Hearings to a 2019 Date and Time that would suit holding the Hearings at the Commission’s office in Topeka.

Susan Royd-Sykes
504 S. 6th St.
Burlington, KS 66839
moondrummer88@gmail.com

VERIFICATION

STATE OF KANSAS)
)
County of Coffey)

ss.

Susan Royd-Sykes, of lawful age, being first duly sworn upon oath, deposes and states: that she is responsible for the Motion to which this verification is attached, that she has read the above and foregoing and that the statements therein contained are true and correct according to her knowledge, information and belief.

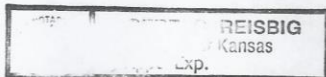


Susan Royd-Sykes
Susan Royd-Sykes

Subscribed and sworn to before me this 4th day of December, 2018.

My appointment expires: 4/15/2020

Gerri S. Reisbig
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 2018, the above Protestant's Renewed Motion to Change the Hearing Location in Docket No. 19-CONS-3106-CUIC (Merritt #10) and Docket No. 19-CONS-3107-CUIC (Merritt #5), both located in Coffey County, Kansas from Wichita to Topeka OR Reschedule the Two Evidentiary Hearings to a 2019 Date and Time that would suit holding the Hearings at the Commission's office in Topeka was electronically served (with hard copies following in the US Mail) on:

Lynn Retz and Michael Duenes
KCC Litigation Department
1500 SW Arrowhead Rd.
Topeka, KS 66604-4027

Kansas Corporation Commission
Conservation Division Staff
266 N. Main St., Ste. 220
Wichita, KS 67202-1513

via e-mail with hard copy through the US Mail on:

Amy Fellows Cline
% Triplett Woolf Garretson, LLC Law Firm
2959 N. Rock Road, Ste. 300
Wichita, KS 67226

amycline@twgfir.com

via hard copy through US Mail:

Brian L. Birk dba Birk Petroleum
874 12th Rd.
Burlington, KS 66839

Susan Royd-Sykes
Susan Royd-Sykes, Protestant