

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

In the Matter of the Application of Unit)	Docket No.: 19-CONS-3097-CUIC
Petroleum Company to authorize injection of)	
saltwater into the Mississippi formation at the)	CONSERVATION DIVISION
Royce A #1 enhanced recovery well, located in)	
Section 16, Township 25 South, Range 9 West,)	License No.: 35596
<u>Reno County, Kansas.)</u>	

**STAFF'S RESPONSE TO PROTESTER JUDITH WELLS'
REQUEST FOR RECONSIDERATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files this Response, wherein Staff opposes Protester Judith Wells' (Protester) Request for Reconsideration. In support of its Response, Staff states as follows:

I. BACKGROUND

1. On August 28, 2018, Unit Petroleum Company (Operator) filed an application with the Commission seeking a permit to authorize the injection of saltwater into the Mississippi formation at the Royce A #1 well in Reno County, Kansas.¹
2. On September 13, 2018, the Protester filed a protest and request for hearing in this docket.
3. On October 16, 2018, the Operator filed a Motion to Dismiss Protests.
4. On December 6, 2018, the Commission issued an Order on Motion to Dismiss Protests finding that the Protester failed to make a valid protest.²
5. On December 11, 2018, the Protester filed a Request for Reconsideration of Commission Order to Dismiss Protests, to which Staff presently responds.

II. LEGAL STANDARD

6. As the party challenging the legality of the Commission's December 6, 2018, Order, the Protester bears the burden of proof pursuant to K.S.A. 77-621(a)(1).³ A court may

¹ Application, ¶1 (Aug. 28, 2018).

² Order on Motion to Dismiss Protests, ¶23 (Dec. 06, 2018).

³ Citizens' Utility Ratepayer Bd. v. Kansas Corporation Commission, 28 Kan.App.2d 313, 315, 16 P.3d 319 (2000).

grant relief from an administrative order only if it finds one or more conditions are met under K.S.A. 77-621(c).⁴

7. In the Request for Reconsideration, the Protester does not explicitly cite to K.S.A. 77-621. However, the Protester does argue that the Commission does not have the statutory authority to enact certain regulations, essentially making the argument that the agency has acted beyond the jurisdiction conferred by any provision of law.⁵ Therefore, Commission Staff limits its analysis of the arguments made by the Protester in light of that standard only and does not reach other factors that might be raised pursuant to the Kansas Judicial Review Act.

III. DISCUSSION

8. The Commission has the exclusive jurisdiction and authority to regulate oil and gas activities in Kansas.⁶ The Commission shall adopt such rules and regulations necessary for the implementation of this act including provisions for the construction, operation, and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well.⁷

9. The Commission shall have authority to make rules and regulations for the prevention of such waste, including economic waste, underground waste, surface waste, and waste of reservoir energy.⁸ The Commission is directed to adopt such rules and regulations as may be just and equitable to process applications submitted by an Operator for the disposal of salt water.⁹

⁴ K.S.A. §77-621(c) provides: “The court shall grant relief only if it determines any one or more of the following: 1. The agency action, or statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied; 2. *The agency has acted beyond the jurisdiction conferred by any provision of law*; 3. the agency has not decided an issue requiring resolution; 4. the agency has erroneously interpreted or applied the law; 5. the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure; 6. the persons taking the agency action were improperly constituted as a decision making body or subject to disqualification; 7. the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or 8. the agency action is otherwise unreasonable, arbitrary or capricious.” (Italics added).

⁵ Judith L. Wells Request for Reconsideration of Commission Order to Dismiss Protests, ¶¶ 12, 13, 14 (Dec. 11, 2018).

⁶ K.S.A. 74-623.

⁷ K.S.A. 55-152(a), emphasis added.

⁸ K.S.A. 55-602.

⁹ K.S.A. 55-901.

10. It is well within the Commission's statutory authority to implement regulations regarding the procedural processes necessary to carry out the processing of applications for salt-water disposal and enhanced recovery wells.

11. Additionally, the Protester's argument that the Commission does not have the statutory authority to enact K.A.R. 82-3-135b and K.A.R. 82-3-402(c) is not germane to an enhanced recovery well application as the Commission did not promulgate these regulations in the present docket.

12. The Protester has failed to meet the burden of proof as required by K.S.A. 77-621(a)(1). Therefore, the Protester's Request for Reconsideration should be denied.

WHEREFORE, based on the foregoing, Staff respectfully requests the Commission deny Judith Wells' Request for Reconsideration of Commission Order to Dismiss Protests.

Respectfully submitted,



Lauren N. Wright #27616
Litigation Counsel, Kansas Corporation Commission
266 N. Main, Suite 220
Wichita, Kansas 67202
Phone: 316-337-6200; Fax: 316-337-6211

VERIFICATION

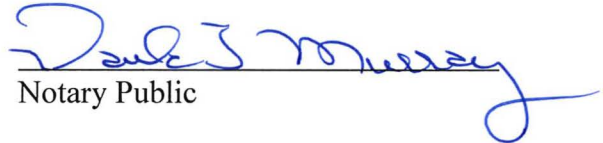
STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Lauren N. Wright, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Response*, and attests that the statements therein are true to the best of her knowledge, information and belief.



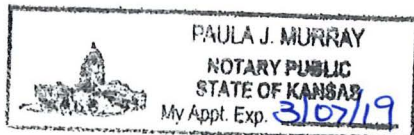
Lauren N. Wright, S. Ct. #27616
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 20 day of Dec, 2018.



Notary Public

My Appointment Expires: 3/07/19



CERTIFICATE OF SERVICE

19-CONS-3097-CUIC

I, the undersigned, certify that the true copy of the attached "Staff's Response to Protester Judith Wells' Request for Reconsideration" has been served to the following parties by means of electronic service on December 20, 2018.

DAVID E. BENGTON, ATTORNEY
STINSON LEONARD STREET LLP
1625 N WATERFRONT PKWY STE 300
WICHITA, KS 67206
Fax: 316-265-1349
david.bengtson@stinson.com

LAUREN WRIGHT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
Conservation Division
266 N. Main St. Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
l.wright@kcc.ks.gov

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

JUDITH WELLS
3317 W. 68th St.
Mission Hills, KS 66208
judithlouisewells@gmail.com

/S/ Paula J. Murray

Paula J. Murray