

3. On November 20, 2018, Arlyn Hare, Director of Eagle Oak Land Development (Protestor), filed a letter protesting the Application.²

4. On November 29, 2018, Protestor requested a hearing.³

5. On January 16, 2019, the Commission issued an order scheduling an evidentiary hearing for April 18, 2019.⁴ Operator's pre-filed direct testimony was due by March 4, 2019; Operator failed to submit any testimony. Protestor's and Commission Staff's (Staff) testimony are due by March 18 and April 1, respectively; to date, neither Protestor nor Staff have filed testimony.

6. On January 31, 2019, the Prehearing Officer issued an order scheduling a February 15, 2019, status conference.⁵ Neither Operator nor Protestor attended.

7. On February 18, 2019, Staff filed a Motion for Default Order against both Operator and Protestor for their failure to appear at the February 15, 2019, status conference, stating that Operator and Protestor were properly noticed and afforded an opportunity to attend.⁶

8. On February 26, 2019, Operator filed a document entitled "Motion to Dismiss Staff's Motion for Default Order and Proceedings," a two-sentence document that does not comply with most provisions of K.A.R. 82-1-219 regarding required parts of pleadings. In the document, Operator states that it intends to participate in this docket, requests that Staff's motion be dismissed, and asks for the prehearing conference to be rescheduled. There is no evidence this document was served upon parties.

9. On March 4, 2019, attorney David Bengtson of Stinson Leonard Street entered an appearance on behalf of Operator, and filed a "Combined Response to Staff's Motion for Default

² Letter of Protest (Nov. 20, 2018).

³ Letter Requesting Hearing (Nov. 29, 2018) ("I find it disgusting that I should have to go to such measures to protect what is ours. . . . I suppose having a hearing will help my case in legal actions that I will bring later.").

⁴ *Order Setting Procedural Schedule*, ¶ 4 (Jan. 15, 2019).

⁵ *Prehearing Officer Order Setting Status Conference*, Ordering Clause A.

⁶ Motion for Default Order, ¶ 7.

Order, Motion to Dismiss Protest and, in the Alternative, Motion to Establish New Procedural Schedule.” Mr. Bengtson noted he had been retained by Operator on March 1, 2019.⁷

Ruling on Staff’s Motion for Default Order Against Operator

10. In light of Operator’s March 4, 2019, filing, the Commission denies Staff’s motion for a default order against Operator. Although Operator provided no rationale for its failure to attend the status conference, Operator has now retained counsel, timely responded to Staff’s motion, and expressed a desire to pursue its Application. If Operator was defaulted from this proceeding, Operator could simply file a new application if it wished to pursue injection authority. Accordingly, there is no utility in defaulting Operator now that it has responded to Staff’s Motion.

Ruling on Staff’s Motion for Default Order Against Protestor

11. In addition to not attending the February 15, 2019, status conference, Protestor has not timely responded to Staff’s motion for a default order. As Staff’s motion is thus uncontested, the Commission finds that Staff’s motion, as it pertains to Protestor, should be granted.

Ruling on Operator’s Motion to Dismiss Protest/Establish New Procedural Schedule

12. In its March 4, 2019, filing, Operator supported Staff’s Motion for Default against Protestor. Operator requested, however, that if the Commission denied Staff’s motion, then Protestor should be dismissed for failure to serve the protest upon Operator, and if that request was denied, then a new hearing date and procedural schedule should be established.

13. Since the Commission shall grant Staff’s motion for a default order against Protestor, the Commission finds Operator’s alternative motions should be denied as moot. In the

⁷ Operator’s Combined Response, ¶ 1 (Mar. 4, 2019). Operator’s March 4th filing asks for somewhat different relief than Operator’s February 26th filing. As both filings were timely and addressed the same issue, and the March 4th filing was subsequent and clearly more considered, the Commission shall disregard the February 26th filing. Alternatively, to the extent the February 26th filing requests different relief than the March 4th filing, and such relief is not provided in this order, such request is denied.

event the Commission vacates its default order against Protestor, the Commission will establish a response deadline to Operator's motions, and shall again take up such motions after such deadline.

III. Conclusions of Law

14. Staff's Motion for Default Order, as it pertains to Operator, should be denied.

15. Staff's Motion for Default Order, as it pertains to Protestor, should be granted. Pursuant to K.S.A. 77-520(a), Protestor's failure to attend the February 15, 2019, Prehearing Conference constitutes default.

16. Operator's alternative motions, to dismiss Protestor or establish a new procedural schedule, should be denied as moot.

17. Since Protestor has been defaulted from these proceedings, and there are no remaining protests to consider, the established procedural schedule is no longer necessary.

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Motion for Default Order against Operator is denied.

B. Staff's Motion for Default Order against Protestor is granted.

C. Operator's motions regarding dismissing Protestor or establishing a new procedural schedule are denied. The procedural schedule, including the evidentiary hearing, is cancelled.

D. 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 calendar days after service of this Order, with three additional days added to account for service by mail.

E. In the event no timely motion is filed requesting this *Default Order Against Protestor* be vacated, Staff shall process Operator's Application accordingly. If a timely motion to vacate is received, then Staff shall take no action on the Application until the Commission has ruled on the motion to vacate.

F. 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).⁸

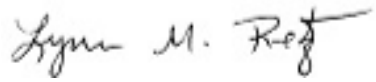
G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 03/12/2019

Mailed Date: 03/12/2019



Lynn M. Retz
Secretary to the Commission

JRM

⁸ 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-3191-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 03/12/2019.

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