

**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 Midstates) Docket No: 18-CONS-3196-CUIC
Energy Operating, LLC to authorize injection of)
saltwater into the Squirrel formation at the) CONSERVATION DIVISION
Thrasher #10 enhanced recovery well, located in)
Section 25, Township 13 South, Range 20 East,) License No. 35503
Douglas County, Kansas.)

**ORDER ON MIDSTATES' MOTION FOR ORDER REQUIRING THE USE OF
PREFILED TESTIMONY IN LIEU OF ORAL EXAMINATION**

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 makes the following findings and conclusions:

BACKGROUND:

1. On October 12, 2017, Midstates Energy Operating, LLC (Midstates) filed an Application with the Commission seeking a permit to authorize the injection of saltwater into the Squirrel formation at the Thrasher #10 well, located in Section 25, Township 13 South, Range 20 East, Douglas County, Kansas.¹

2. On March 21, 2018, Midstates filed a Motion asking the Commission to require the use of pre-filed testimony in lieu of oral examination.² Midstates argued that the Commission should require the parties to use pre-filed testimony because there are a “large number of parties in this Docket” and the use of pre-filed testimony will “ensure orderly, fair and expeditious [sic] treatment of the application and protests filed herein.”³

¹ Midstates Energy Operating, LLC, Application for Injection Well, p. 1 (Oct. 12, 2017) (Application).

² Motion for Order Requiring the Use of Prefiled Testimony in Lieu of Oral Examination (Mar. 21, 2018) (Motion).

³ Motion, ¶ 2.

3. Midstates proffered numerous reasons why it believes “the use of prefiled testimony would be in the public interest and would be conducive to a fair and expeditious disposition of this Docket.”⁴

- (1) Pre-filed testimony keeps the hearing from undue length;⁵
- (2) Pre-filed testimony keeps discovery from being “excessively thorough;”⁶
- (3) Pre-filed testimony allows parties to better prepare for meaningful cross-examination;⁷
- (4) Pre-filed testimony allows for a “clearer and more direct agency record,”⁸ as well as “permit[ting] all parties to develop all points which they wish to make in a more thorough and direct fashion tha[n] can be done using oral testimony;”⁹
- (5) Pre-filed testimony “results in more credible testimony and prevents witnesses from presenting false testimony at the hearing in ambush fashion;”¹⁰ and
- (6) Pre-filed testimony makes for “a more transparent disposition of these dockets.”¹¹

4. Midstates also argued that a Commission requirement to use pre-filed testimony “should carry with it an order that at the hearing, the Commission SHALL limit the parties direct and rebuttal testimony to the pre-filed testimony.”¹²

5. On March 26, 2018, Staff responded to Midstates’ Motion, indicating that it “supports Operator’s position . . . that the Commission should limit the parties’ direct and rebuttal testimony to the pre-filed testimony.”¹³

6. On March 27, 2018, the Commission issued its *Order Setting Procedural Schedule, Protective Order, and Discovery Order*, which set deadlines for Midstates’

⁴ Motion, ¶ 9.

⁵ Motion, ¶ 3.

⁶ Motion, ¶ 4.

⁷ Motion, ¶ 4.

⁸ Motion, ¶ 5.

⁹ Motion, ¶ 6.

¹⁰ Motion, ¶ 7.

¹¹ Motion, ¶ 8.

¹² Motion, ¶ 11.

¹³ Staff’s Response to Operator’s Motion to Dismiss Protests & Operator’s Motion to Require Use of Prefiled Testimony, ¶ 11 (Mar. 26, 2018).

Protestants’, and Staff’s pre-filed direct testimony and rebuttal testimony.¹⁴ The Commission also ordered that “[f]ailure to submit pre-filed testimony may result in the Commission restricting the right to testify and present evidence at the evidentiary hearing. At the hearing, the Commission may limit the parties’ direct and rebuttal testimony to the pre-filed testimony.”¹⁵

7. On March 29, 2018, Douglas County, Kansas, responded in opposition to Midstates’ Motion.¹⁶ Douglas County offered no arguments regarding the use of pre-filed testimony. Instead, Douglas County argued in favor of maximum public participation generally, stating that “[t]he Commission should, to the greatest extent possible, exercise its discretion to facilitate the ability of the public to participate in this hearing,”¹⁷ and should “maximiz[e] public participation in this proceeding.”¹⁸

DISCUSSION:

8. Given that all Protestants except for Douglas County, Kansas, and James and Patricia Bondurant, and Judith L. Wells were dismissed from this case,¹⁹ the Commission finds no remaining validity to Midstates’ argument that this docket has a “very large number of parties.”²⁰ With few parties left, the Commission has little concern about undue extension of the hearing.²¹ This development also alleviates Midstates’ alleged concern about “all

¹⁴ *Order Setting Procedural Schedule, Protective Order, and Discovery Order*, ¶ 15 (Mar. 27, 2018).

¹⁵ *Id.*, ¶ 16.

¹⁶ Response of Douglas County, Kansas, in Opposition to Midstates Energy Operating, LLC’s Motion to Dismiss Protests and Motion Requiring the Use of Prefiled Testimony in Lieu of Oral Examination, ¶ 1 (Mar. 29, 2018) (Douglas County Response).

¹⁷ Douglas County Response, ¶ 5.

¹⁸ Douglas County Response, ¶ 10.

¹⁹ *See Order on Midstates’ Motion to Dismiss Protests*, ¶ 40 (Apr. 19, 2018).

²⁰ Motion, ¶ 11.

²¹ *See* Motion, ¶ 3.

parties [being] forced to conduct thorough discovery.”²² To date, the Commission finds no evidence that discovery has become unwieldy.

9. The Commission does not see how the presence or absence of pre-filed testimony will affect the clarity or directness of the agency record, and Midstates provided no basis for its assertion that requiring all parties to pre-file testimony lends itself to “a clearer and more direct agency record.”²³ Thus, the Commission finds this contention unpersuasive.

10. Midstates appears to assume that where no pre-filed testimony is filed in the docket, oral testimony will be allowed in its place.²⁴ Such an assumption is unwarranted, given that the Commission has not issued such a ruling.

11. The Commission does not find any evidence that this docket presents a heightened risk of “ambush” testimony,²⁵ nor does the Commission find any lack of transparency in its dockets, which is virtually all of them, where the Commission has not positively required pre-filed testimony.²⁶

12. For the above-stated reasons, the Commission re-affirms its ruling in paragraph 16 of its March 27, 2018, *Order Setting Procedural Schedule, Protective Order, and Discovery Order*, stating that “[f]ailure to submit pre-filed testimony may result in the Commission restricting the right to testify and present evidence at the evidentiary hearing. At the hearing, the Commission may limit the parties’ direct and rebuttal testimony to the pre-filed testimony.”

²² See Motion, ¶ 4.

²³ Motion, ¶ 5.

²⁴ See Motion, ¶ 6.

²⁵ See Motion, ¶ 7.

²⁶ See Motion, ¶ 8.

THEREFORE, THE COMMISSION ORDERS:

A. Midstates' Motion asking the Commission to require the use of pre-filed testimony in this docket is denied.

B. The parties have fifteen (15) days, plus three (3) days if mailed service, in which to petition the Commission for reconsideration.²⁷

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/03/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 05/04/2018

MJD

²⁷ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

CERTIFICATE OF SERVICE

18-CONS-3196-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 05/03/2018.

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