

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

|                                            |   |                              |
|--------------------------------------------|---|------------------------------|
| In the Matter of the Application of Darrah | ) | Docket No. 25-CONS-3342-CWLE |
| Oil Company, L.L.C. for a well location    | ) |                              |
| exception for its Drummond #1 well, to be  | ) | CONSERVATION DIVISION        |
| located in the S/2 SE/4 of Section 26,     | ) |                              |
| Township 33 South, Range 5 East, Cowley    | ) | License No. 35615            |
| County, Kansas.                            | ) |                              |

**RESPONSE TO PROTESTER'S POST-HEARING MOTION**

Darrah Oil Company L.L.C. ("Applicant") submits the following Response to Protesters' Post-Hearing Motion ("Protesters' Motion"). Applicant requests that Protestors' Motion be denied for the following reasons:

1. The Protesters' Motion seeks to exclude evidence already in the record, specifically, certain testimony of Mike Atterbury and two exhibits that are top leases granted by Protesters to Val Energy. Protesters' Motion is inappropriate for several reasons:

a) The testimony of Mike Atterbury at issue was duly admitted into the record during the hearing, and the time to object has passed. Moreover, Mr. Atterbury was already cross-examined by Protesters on the very issues raised in Protesters' Motion. Protesters belated attack on Mr. Atterbury's credibility is completely inappropriate, and the request to exclude his testimony should be denied.

b) One of the exhibits that Protesters now seeks to exclude was offered into the record by Protesters themselves as Protesters Exhibit 1.<sup>1</sup> Protesters Exhibit 1 is the first top lease granted by Protesters to Val Energy, a direct competitor of Applicant. Protesters cannot now seek to disappear this evidence, and there can be no question that this exhibit

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<sup>1</sup> The transcript for the hearing is not yet available, but this is counsel's recollection.

demonstrates that Protesters indeed granted a top lease to Val Energy. Accordingly, Protesters' Exhibit 1 should remain part of the record.

c) The other exhibit that Protesters seek to exclude is Applicant's Exhibit B. This exhibit was offered by Applicant and admitted into the record with no objection from Protesters. Protesters only request was that it be permitted to offer rebuttal evidence to this exhibit, a request the Commission granted. Rather than offer rebuttal evidence, Protesters filed the Protesters' Motion seeking to exclude this evidence from the record, a procedural pivot that was not authorized by the Commission. Protesters simultaneously make belated legal arguments attempting to interpret this exhibit—arguments which are directly belied by the instrument itself. Protesters' Motion is not the post-hearing filing the Commission authorized, and is inappropriate and should be summarily denied. Applicant's Exhibit B should remain part of the record.

2. Protesters argue the testimony and exhibits should be removed from the record because they are irrelevant. Per K.S.A. 60-401, relevant evidence is defined as "evidence having *any tendency* in reason to prove any material fact." (Emphasis added). Because both exhibits and Mr. Atterbury's testimony tend to provide support for Applicant's assertion that Protesters granted top leases of Applicant's leasehold rights, the evidence is relevant under the statute's definition. Further, relevance is an improper objection to lodge under the circumstances, as the Commission has the technical expertise and aptitude to weigh the relevance of duly admitted evidence in making its findings and rulings.

3. It is not disputed that Applicant's Brown Lease is a valid lease and holds Protesters' mineral rights underlying the NE/4 of Section 35. It cannot be disputed that the exhibits Protesters seek to exclude provide direct evidence corroborating that Protesters indeed granted top leases

over Applicant's leasehold rights. These subsequently granted leases are by industry definition "top-leases". Protesters' assertion that the leases depicted in the exhibits at issue are not "top-leases" is unfounded and incorrect, as the exhibits plainly purport to grant leasehold rights over the lands covered by Applicant's valid and subsisting Brown Lease.

4. Protesters go on to posit that Applicant's testimony concerning the existence of these top leases was intended "to mislead the Commission into believing that Protesters' unitization proposal was unreasonable and offered in bad faith" as if the top leases were the only piece of evidence demonstrating Protesters' selfish motivations. As a reminder, Protesters' unitization proposal required Applicant to release its leasehold rights in exchange for granting a new, "no-drill", six-month term lease that would also contain an acreage Pugh clause. As demonstrated at the hearing, the result of this new "no-drill" lease would have been that Applicant's leasehold rights would Pugh out as to any lands not included in the unit proposed by Protesters, because Applicant would be prohibited from drilling to retain that acreage. Protesters' proposed unit was an absurdly inequitable proposal, that would have allocated more than 2/3 of the royalty from the Drummond #1 well to Protesters to the direct detriment of the neighbor who would bear the full surface burden of the well. Applicant's Exhibit A. Ironically, the surface burden associated with a well was offered by Protesters as a rationale for its supposed family policy against unitization, and sharing generally. When questioned about the shape of the unit proposed, Protesters were unable to offer any legitimate basis for gerrymandering the unit dramatically in their favor. In any event, it is hardly a tremendous leap in logic for Mr. Atterbury to believe that once Applicant's leasehold rights Pughed out, Protesters likely would have leased them to Val Energy, as that would be entirely consistent with Protesters' conduct.

5. Lastly, to the extent that Protesters are offering the exhibits attached to the Protesters' Motion in rebuttal to Applicant's Exhibit B, Applicant has no objection. These exhibits are already part of the record, and directly support Mr. Atterbury's testimony that Protesters granted top leases over Applicant's Brown Lease.

For these reasons, Applicant requests that Protestors' Motion be denied in total, that the challenged exhibits and testimony remain part of the evidentiary record, and to provide such other and further relief as the Commission deems just and proper.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on this 27<sup>th</sup> day of October, 2025, I caused the original of the foregoing Response to Protesters' Post-Hearing Motion be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and a true and correct copy of the Response has been served to the following persons by means of electronic service:

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