

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Application of R.T.)	Docket No. 14-CONS-550-CWLE
Enterprises of Kansas, Inc. for Multiple Well)	
Location Exceptions for Wells Upon the)	CONSERVATION DIVISION
Pearson and Finnerty Leases Located in)	
Section 11, Township 15 South, Range 20 East)	License No.: 33715
in Douglas County, Kansas.)	

ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having reviewed the files and being fully advised of all matters of record, the Commission finds and concludes as follows:

Background:

1. On February 12, 2014, R.T. Enterprises of Kansas, Inc. (R.T. Enterprises) filed an Application for multiple well location exceptions for wells on the Pearson and Finnerty Leases located in Section 11, Township 15 South, Range 20 East in Douglas County, Kansas.¹

2. On February 28, 2014, Scott Adamson, Amy Adamson, Spring Creek Acres, LLC, Gayla J. Spradling, Rudy Sudja, Sally Sudja, Fernando Guerrero, Victoria Guerrero, Dan Yardley, Sara Yardley, John Fortin, Mary Kay Fortin, and Brian Stultz (collectively Protestants) filed Objections To Application For Exceptions.

3. On October 28, 2014, the Commission issued the final order in the matter followed by two orders on reconsideration on December 12, 2014 and January 22, 2015. The Commission ultimately concluded that 2.5 acre spacing was permitted on the Pearson and

¹ Application at 1 (Feb. 12, 2014).

Finnerty Leases and R.T. Enterprises shall adhere to a separate directive to set back oil and gas operations 165 feet from existing structures.²

4. On January 15, 2015, R.T. Enterprises filed a Petition for Judicial Review of Final Agency Action in the Third Judicial District Court of Shawnee County, Kansas.

5. On April 15, 2016, the Court issued an order finding the Commission violated K.S.A. 77-621(c)(7) holding the evidence in the record as a whole did not support the Commission's finding that the risk of public safety and pollution outweighed any potential waste and discriminatory effect of the setback requirement.³ Thus, the Court vacated the Commission's 165-foot setback requirement from existing structures on the leases and remanded the case back to the Commission for further proceedings not inconsistent with its decision.⁴

6. On October 19, 2017, the Commission issued the Final Order on Remand. Therein, the Commission concluded that the evidence of record did not provide an adequate basis upon which the Commission could review and sustain the 165-foot setback directive to R.T. Enterprises.⁵

7. On October 30, 2017, the Protestants filed a Petition for Reconsideration. The Protestants allege three reasons that the Commission should grant the Petition for Reconsideration. First, the Protestants allege that the Commission should draw on its general experience and knowledge of oil and gas operations and conclude that the record adequately supports that pollution has occurred on the leases.⁶ Second, the Protestants request that the

² Order Granting Application in Part and Creating Setback from Structures at 8-9 (Oct. 28, 2014); Order on Reconsideration at 13 (Dec. 12, 2014).

³ Memorandum Decision and Order, *R.T. Enters. of Kansas, Inc. v. State Corp. Comm'n*, Case No. 2015-CV-0048, at 16-20 (Apr. 15, 2016) [*hereinafter* District Court Order I].

⁴ *Id.* at 23-24.

⁵ Final Order on Remand at 5-7 (Oct. 19, 2017).

⁶ Protestant's Petition for Reconsideration at 2 (Oct. 30, 2017).

Commission find that R.T. Enterprises shall be bound by the 200-foot setback provision described in the leases if the leases are determined to be valid.⁷ Finally, the Protestants request the Commission find and conclude based upon the generalized knowledge of Staff that economic waste would occur due to the operation of oil and gas activities on the leases.⁸

Analysis:

8. A petition for reconsideration must state the specific grounds upon which relief is requested.⁹ The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission “wherein mistakes of law and fact were made in the order.”¹⁰ The Protestants’ Petition does not identify any mistakes in the Commission’s Order but instead requests additional or ancillary relief. To the extent that the Protestants are alleging that the Commission failed to issue a ruling on an issue, the issues presented in the Petition were either never before the Commission or dismissed by the District Court and therefore were not properly before the Commission on remand.

9. As to the Protestants’ first allegation of error, the Protestants allege that “there is more than sufficient evidence that the activities conducted by R.T. Enterprises of Kansas, Inc. have caused substantial pollution”¹¹ However, the Protestants provide no record citations or make any other identification of what evidence the Commission overlooked. The Protestants are essentially asking the Commission to make a finding that all oil and gas operations cause pollution.¹² This argument was advanced at the District Court and properly rejected.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ K.S.A. 2016 Supp. 77-529(a).

¹⁰ *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 525 (1982)).

¹¹ Protestants’ Petition for Reconsideration at 2.

¹² *Id.*

The Protestants argue that the Court failed to consider the knowledge and experience of the members of the KCC sitting as a quasi-judicial body in reaching its decision regarding the setback requirements. However, possessing knowledge and experience in a field does not justify forming conclusions without adequate findings of fact.¹³

10. Regarding the Protestants' request that the Commission issue an order finding that R.T. Enterprises shall be bound by the lease provisions, the Commission never made any finding regarding the leases. Again, this point was brought up and thoroughly discussed by the District Court.

[T]he issue of the validity of the Leases was not the matter before this Court on judicial review. Instead, the matter before this court was R.T. Enterprises' request for the Court to modify the KCC's Order Granting Application in Part and Creating Setback from Structures so as to remove the separate directive relating to surface improvements and setbacks therefrom. During the proceedings regarding R.T. Enterprises' application, *the KCC took no position on the validity of any leases covering the existing wells or on the merits of any civil suits regarding the existing wells*. If the Protestants protest that the KCC took no position on the validity of the leases, then the Protestant may consider filing a petition for Judicial Review.¹⁴

11. The Protestants' final argument repeats in essence the first issue by asking the Commission to make a *de facto* ruling that all oil and gas activities create economic waste.

We must assume that, given the expert knowledge the Commission's staff has of the activities associated with the exploration for and production of oil and gas, it should be self evident [sic] that the presence of such equipment, as well as such things as sludge pits etc., would seriously impact the value of those homes.¹⁵

This argument fails for the same reason as the first argument. The Commission cannot assume nor can facts not in the record be relied upon as self-evident. The matter was remanded for a review of the evidence not for additional rule making.

¹³ Memorandum Decision and Order at 16-17, *R.T. Enters. of Kansas, Inc. v. State Corp. Comm'n*, Case No. 2015-CV-0048 (August 31, 2016) [*hereinafter* Dist. Ct. Order II].

¹⁴ *Id.* at 17-18 (emphasis added).

¹⁵ Protestants' Petition for Reconsideration at 3.

12. The District Court concluded its review of the Protestants' arguments with the following warning: "[t]he Protestants' attempt to bootstrap additional issues to the matter before the Court will not be tolerated."¹⁶ The Commission echoes the admonishment. The Protestants are asking the Commission to go beyond the scope of remand and order additional relief. This is not a valid use of a petition for reconsideration.

13. For the forgoing reasons, the Commission concludes that a valid petition for reconsideration was not filed in the Docket. Therefore, the Docket shall be closed.

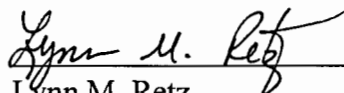
THEREFORE, THE COMMISSION ORDERS:

- A. This Docket shall be closed.
- B. This Order constitutes final agency action.¹⁷ Any request for review of this action shall be in accordance with K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is the proper party to receive service of a petition for judicial review on behalf of the Commission.¹⁸
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman (recused); Albrecht, Commissioner; Emler, Commissioner

Dated: NOV 07 2017



Lynn M. Retz
Secretary to the Commission

DLK

¹⁶ Dist. Ct. Order II at 20.

¹⁷ K.S.A. 77-607(b)(1).

¹⁸ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

I certify that on 11/7/17, I caused a complete and accurate copy of this Order to be served electronically and via United States mail, with the postage prepaid and properly addressed to the following:

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Legal Assistant
Kansas Corporation Commission