

**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
<u>in Douglas County, Kansas.</u>	)	

**POSITION STATEMENT OF COMMISSION STAFF**

In response to the Prehearing Officer Order Setting Procedural Schedule dated December 9, 2016, Commission Staff (Staff) submits the following position statement.

1. As part of its October 28, 2014, Order in this docket, the Commission created setback requirements from buildings located on the Pearson and Finnerty leases. This part of the Commission's Order was challenged by petitions for reconsideration and upheld by the Commission.

2. Following R.T. Enterprises unsuccessful challenge on reconsideration, it appealed the Commission's setback ruling to the Shawnee County District Court.

3. On April 15, 2016, the District Court issued an Order which vacated the Commission's 165 feet setback from existing buildings requirement, finding that this portion of the Commission's Order was not supported by substantial competent evidence and was arbitrary and capricious. The District Court remanded the case back to the Commission for further proceeding not inconsistent with its decision.

4. R.T. and the Protestants both motioned the District Court to alter and amend its decision. The District Court denied both motions, but did clarify its April 15, 2016, Order. The

District Court stated that on remand neither party could introduce new evidence to the Commission, the Commission could only re-examine the evidence already in the record and evaluate it in light of the Court's ruling.

5. This issue was fully briefed by all parties at the District Court. The briefs contained full discussions of the record supporting the Commission's decision, however the Court found that the evidence presented to the Commission did not support the building setback provisions in the Commission Order.

6. Staff's position is that rehashing what has already been fully briefed is completely unnecessary and a waste of the Parties and the Commission's time. As far as Staff can tell, all of the evidence supporting the building setback requirement was before the District Court, and the Court found it insufficient. Since the Commission cannot receive new evidence to support the setback requirement and since the Court has already ruled that the existing evidence is insufficient, there doesn't appear to be anything left to do except to close this docket.

7. In conclusion this docket has run its course through proceedings under the Administrative Procedures Act and the Act for Judicial Review. There is nothing left except to close the docket.

Respectfully submitted,

by   
John McCannon, #08277  
Litigation Counsel  
Kansas Corporation Commission  
266 N. Main, Suite 220  
Wichita, Kansas 67202-1513  
Phone: 316-337-6200; Fax: 316-337-6106  
Email: j.mccannon@kcc.ks.gov

## CERTIFICATE OF SERVICE

I certify that on January 27, 2017, I caused a complete and accurate copy of this Position Statement of Commission Staff to be served via United States mail, with the postage prepaid and properly addressed to the following:

Keith A. Brock  
Anderson & Byrd, LLP  
216 S. Hickory, P.O. Box 17  
Ottawa, Kansas 66067  
*Attorney for R. T Enterprises*

John L. Hampton  
3311 Clinton Parkway Court  
Lawrence, Kansas 66047  
*Attorney for Protestants*

And delivered electronically to:

Dustin Kirk  
KCC Deputy General Counsel

/s/ Cynthia K. Maine  
Cynthia K. Maine  
Administrative Assistant  
Kansas Corporation Commission