

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 failure of Urban H. Hickert ) Docket No: 18-CONS-3190-CPEN  
dba Tyrok ("Operator") to comply with K.A.R. )  
82-3-120. ) CONSERVATION DIVISION  
 )  
 ) License No: 3071

**ORDER ON PETITION FOR RECONSIDERATION**

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:

1. On November 2, 2017, the Commission issued a *Penalty Order* against Urban H. Hickert dba Tyrok (Operator), finding the Operator in violation of K.A.R. 82-3-120.<sup>1</sup>
2. On December 4, 2017, the Operator filed a request for hearing.
3. On January 9, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for February 8, 2018.<sup>2</sup>
4. On February 8, 2018, the parties held a Prehearing Conference and agreed to continue the proceeding another thirty (30) days to allow Commission Conservation Staff (Staff) and the Operator an opportunity to work on a possible settlement.<sup>3</sup>
5. On March 8, 2018, another Prehearing Conference was held, during which the parties discussed the possibility of a Settlement Agreement.

<sup>1</sup> *Penalty Order*, ¶ 9 (Nov. 2, 2017).

<sup>2</sup> *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Jan. 9, 2018).

<sup>3</sup> *Prehearing Officer Order Continuing Prehearing Conference*, ¶ 2 (Feb. 12, 2018) (continuing the Prehearing Conference until March 8, 2018).

6. On March 13, 2018, Staff filed a Motion to Approve Settlement Agreement (Motion), attached to which was a proposed Settlement Agreement containing handwritten notations by the Operator.

7. On March 22, 2018, the Commission denied Staff's Motion without prejudice because the Operator's handwritten notations on the proposed Settlement Agreement rendered uncertain the terms to which both parties ostensibly agreed and whether the parties had freely agreed to such terms.<sup>4</sup>

8. On April 6, 2018, the Operator asked the Commission to reconsider its denial of the proposed Settlement Agreement, stating that he had "initialed all hand written notations on the agreement,"<sup>5</sup> certifying that all notations were only for his own use, and stating that he "considers all notations to be null and [v]oid and . . . not a part of the agreement."<sup>6</sup> As part of his PFR, the Operator attached a copy of the March 13, 2018, proposed Settlement Agreement, with all handwritten notations initialed.

9. On April 16, 2018, Staff filed a Response in Support of Operator's Petition for Reconsideration (Staff Response), stating that "Operator's petition for reconsideration cures the Commission's only identified issue with the Settlement Agreement as originally submitted . . . [and], as a matter of law, the Settlement Agreement was legally sufficient as originally submitted."<sup>7</sup> Staff requested that "the Settlement Agreement as executed and filed in this docket on March 13, 2018, be approved."<sup>8</sup>

10. The Commission accepts the Operator's statements in his PFR regarding the handwritten notations on the March 13, 2018, proposed Settlement Agreement. The Commission

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<sup>4</sup> *Order Denying Settlement Agreement*, ¶ 7 and Ordering Clause A (Mar. 22, 2018).

<sup>5</sup> Petition for Reconsideration, p. 7 (Apr. 6, 2018) (PFR).

<sup>6</sup> PFR, p. 7.

<sup>7</sup> Staff Response, ¶ 5 (Apr. 16, 2018).

<sup>8</sup> Staff Response, p. 4.

agrees with Staff that the Operator's PFR cures the Commission's uncertainty regarding the proposed Settlement Agreement, and therefore, the Commission grants the Operator's PFR on that basis. The Commission finds that the proposed Settlement Agreement, as attached to the Operator's PFR, shall be approved.

**THEREFORE, THE COMMISSION ORDERS:**

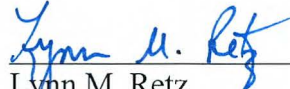
A. The Operator's PFR is granted, and the proposed Settlement Agreement, as attached to the Operator's PFR, is approved.

B. 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: 04/26/2018 \_\_\_\_\_

  
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Lynn M. Retz  
Secretary to the Commission

Mailed Date: 04/27/2018 \_\_\_\_\_

MJD

## CERTIFICATE OF SERVICE

18-CONS-3190-CPEN

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 04/26/2018.

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