

**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 summary denial of)	Docket No.: 17-CONS-3701-CMSC
the application of AX&P, Inc. (“Operator”))	
for renewal of oil and gas well operator’s)	CONSERVATION DIVISION
license.)	
<hr/>		License No.: 3830

**AX&P, INC.’S MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

COMES NOW AX&P, Inc., by and through its attorneys, Timothy E. McKee and Amy Fellows Cline of Triplett Woolf Garretson, LLC, and hereby moves the Commission to enter summary judgment in its favor, pursuant to K.S.A. 60-256. AX&P, Inc. respectfully offers the following in support of this motion.

Nature of the Matter

1. On June 19, 2017, Commission Staff denied AX&P, Inc.’s application for renewal of its oil and gas operator’s license pursuant to K.S.A. 55-155(c)(4), on the grounds that Commission Staff believes individuals associated with AX&P, Inc. are associated with three other companies (Kelt Energy, Inc., Consolidated Gas & Energy Corp., and Kelly Oil Company), whose operator’s licenses are currently suspended. This denial has no factual or legal basis and should be set aside. AX&P, Inc. is entitled to summary judgment in its favor and the renewal of its oil and gas operator’s license.

Statements of Material Facts

2. On June 19, 2017, Commission Staff served its Notice of Denial of License Renewal Application upon AX&P, Inc. [Notice of Denial, Exhibit 1].

3. The stated statutory basis for the denial of AX&P, Inc.'s license renewal application was K.S.A. 55-155(c)(4).¹ *Id.*

4. The stated factual basis for the denial of AX&P, Inc.'s license renewal application was Commission Staff's belief that individuals associated with AX&P, Inc. are also associated with three entities whose operator's licenses are currently suspended; namely: Kelt Energy, Inc., Consolidated Gas & Energy Corp., and Kelly Oil Company. *Id.*

5. The Notice of Denial of License Renewal Application was a summary order pursuant to K.S.A. 77-537 and stated that AX&P, Inc. could request a hearing on the Notice of Denial by filing a written request for a hearing within 15 days. *Id.*

6. On June 28, 2017, AX&P, Inc. timely requested a hearing with the Commission on the Notice of Denial. [Motion to Set Aside Summary Denial of License Application and/or Request for Hearing, Exhibit 3.]

7. On November 30, 2017, Commission Staff pre-filed testimony in support of its denial of AX&P, Inc.'s license renewal application. In this testimony, Commission Staff states the basis for denial of AX&P, Inc.'s license renewal is Commission Staff's belief that Jurgen Hanke, president and partner in AX&P, Inc., is a partner in Consolidated Gas & Energy Corp., Jeff Goodrich, a partner in AX&P, Inc., is a partner in Kelt Energy, Inc., and Jon Viets, a partner in AX&P, Inc., is a partner in Kelly Oil Company. [Pre-Filed Testimony of Cynthia Maine, 2:17-3:3, Exhibit 4.]

8. Commission Staff's stated basis for its belief that Jurgen Hanke is a partner in Consolidated Gas & Energy Corp., Jeff Goodrich is a partner in Kelt Energy, Inc., and Jon Viets

¹ A copy of K.S.A. 55-155 is attached hereto as Exhibit 2.

is a partner in Kelly Oil Company is Commission's Staff's assertion that the Commission's licensing database says so. *Id.* at 3:6-11.

9. Jurgen Hanke is not and has never been a partner in Consolidated Gas & Energy Corp. [Jon R. Viets Affidavit, ¶ 4, Exhibit 5.]

10. Jeff Goodrich is not and has never been a partner in Kelt Energy, Inc. *Id.* at ¶ 5.

11. Jon R. Viets is not and has never been a partner in Kelly Oil Company. *Id.* at ¶ 6.

Summary Judgment Standards

12. The Commission has the power and authority to consider and rule on motions for summary judgment in matters set for hearing on its docket. The Commission has consistently applied standards applicable under the Kansas Code of Civil Procedure when considering and ruling on such motions.

13. In deciding this motion, the Commission must “examine any evidence tending to show triable issues in the light most favorable to the nonmoving party.”²

14. AX&P, Inc. is entitled to summary judgment if the evidence indicates there is no genuine issue as to any material fact and that AX&P, Inc. is entitled to judgment as a matter of law.³

15. Since “[a] principal purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses,” the Commission must determine “whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.”⁴

² *United Cities Gas Co. v. Brock Expl. Co.*, 995 F. Supp. 1284, 1290 (D. Kan. 1998).

³ *Id.*

⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

16. “Once the moving party properly supports its motion, the nonmoving party ‘may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.’”⁵

Argument and Authorities

17. The Commission Staff’s denial of AX&P, Inc.’s license renewal application was based upon a mistake or a disregard for the actual facts and should be set aside. According to Commission Staff, the sole basis for the denial of AX&P, Inc.’s renewal application was information contained in the Commission’s licensing database. However, that information is clearly incorrect.⁶

18. The purpose of the summary judgment rule would be served by awarding AX&P, Inc. summary judgment in this matter, since an evidentiary hearing would be a waste of time and resources. There is no genuine issue of material fact for the Commission to decide, since the uncontroverted facts show the officers of AX&P, Inc. were never and are not partners in the noncompliant entities.

19. Upholding the denial of AX&P, Inc.’s license renewal, which was based upon false information, would be unjust and an unconstitutional denial of its due process rights.

WHEREFORE, since there are no genuine issues of material fact and, based upon those uncontroverted material facts, AX&P, Inc. is entitled to judgment as a matter of law, AX&P, Inc. respectfully requests the Commission grant its motion and renew its operator’s license forthwith, along with such other and further relief as the Commission deems just and equitable.

⁵ *Sprague v. Peoples State Bank, Colby, Kan.*, 844 F. Supp. 662, 666 (1994) (internal citations omitted).

⁶ See ¶ 9, 10 & 11, above.

Respectfully submitted,

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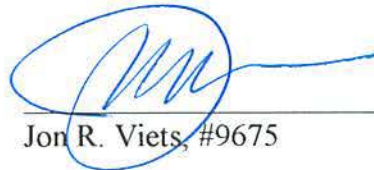
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Attorneys for AX&P, Inc.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF MONTGOMERY)

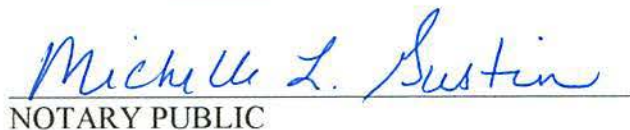
Jon R. Viets, of lawful age, being first duly sworn upon his oath states that he is one of the officers for AX&P, Inc. and states that the statements made herein are true and correct to the best of his knowledge and belief.



Jon R. Viets, #9675

SUBSCRIBED AND SWORN to before me this 7th day of December, 2017.





NOTARY PUBLIC

My Appointment Expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2017, the above AX&P, Inc.'s Motion for Summary Judgment and Memorandum in Support was electronically served on:

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