# THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:	Shari Feist Albrecl Jay Scott Emler Pat Apple	ht, Chair
In the Matter of the Failure of Urban H. Hickert ) dba Tyrok ("Operator") to comply with K.A.R.		Docket No: 18-CONS-3190-CPEN
82-3-120.	)	CONSERVATION DIVISION
	) )	License No: 3071

#### **ORDER DENYING SETTLEMENT AGREEMENT**

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.
  - 2. On December 4, 2017, the Operator filed a request for a 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>1</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>2</sup>
- 5. On March 8, 2018, another Prehearing Conference was held, during which the parties discussed the possibility of a Settlement Agreement.

<sup>&</sup>lt;sup>1</sup> Order Designating Prehearing Officer and Setting Prehearing Conference, Ordering Clause B (Jan. 9, 2018).

<sup>&</sup>lt;sup>2</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, attached to which is a proposed Settlement Agreement. The proposed Settlement Agreement is type-written, but in the section entitled, "Terms of the Settlement Agreement," there are handwritten notations in the margins and between two lines. In the margins beside paragraphs 12, 14, and 16, it appears the words "not clear" are handwritten and then crossed out. In the first line of paragraph 12, the word "shall" is crossed out, but the words, "This is O.K., U.H.," appear above the type-written line. Paragraph 3 of Staff's Motion says: "Staff notes that the Commission should disregard the Operator's handwritten notations, which are not substantive."
- 7. The Commission finds it cannot "disregard the Operator's handwritten notations" because the notations render uncertain the terms to which both parties have agreed, and whether, indeed, they have both freely agreed to such terms. The fact that the Operator initialed one of the terms he crossed out demonstrates he was capable of initially *all* the terms he crossed out. However, the Operator's initials do not appear next to any of the places where the handwritten words "not clear" are crossed out. Thus, the Commission is unable to determine with certainty whether the Operator crossed out the words or whether the Operator was agreeing to something that was unclear to him. "In order for parties to form a binding contract, there must be a meeting of the minds as to all essential terms." The Commission finds a "meeting of the minds" between Staff and the Operator doubtful, and thus, the Commission cannot approve the proposed Settlement Agreement as presented.
- 8. However, the Commission's denial of the proposed Settlement Agreement is without prejudice. Should the parties wish to re-submit a clean proposed Settlement Agreement, the Commission is willing to consider it for approval.

<sup>&</sup>lt;sup>3</sup> Sidwell Oil & Gas Co. v. Loyd, 230 Kan. 77, 79, 630 P.2d 1107, 1110 (1981).

### THEREFORE, THE COMMISSION ORDERS:

- A. Staff's Motion to Approve Settlement Agreement is denied, without prejudice.
- B. Parties have fifteen (15) days, plus three (3) days if mailed service, in which to petition the Commission for reconsideration.<sup>4</sup>
- C. 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, Comm	ssioner; Apple, Commissioner
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Dated:	03/22/2018	Lynn M. Retz Secretary to the Commission
Mailed Date: _	03/23/2018	_

MJD

<sup>&</sup>lt;sup>4</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 66-118b; K.S.A. 77-529(a)(l).

## **CERTIFICATE OF SERVICE**

#### 18-CONS-3190-CPEN

I, the undersigned, certify that the true copy	of the attached Order has been served to the following parties
by means of U.S. mail or electronic service on	03/22/2018

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027

Fax: 785-271-3354

m.duenes@kcc.ks.gov

I.wright@kcc.ks.gov

LAUREN WRIGHT, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION Conservation Division 266 N. Main St. Ste. 220 WICHITA, KS 67202-1513 Fax: 316-337-6211 URBAN H. HICKERT Tyrok PO Box 607 Dewey, OK 74029

/s/ DeeAnn Shupe DeeAnn Shupe