

BEFORE THE OIL & GAS COMMISSION

ERIC PETROLEUM CORPORATION, et al.

Appellant,

-vs-

DIVISION OF OIL & GAS RESOURCES
MANAGEMENT,

Appellee.

and

EAP OHIO, LLC,

Intervenor.

Appeal No. 1004

Review of Chief's Order 2021-173
Dawson South Unit (EAP Ohio, LLC)

ORDER OF THE COMMISSION DISMISSING APPEAL

Appearances: Thomas A. Hill, Jim Wherley, Counsel for Appellant Eric Petroleum Corporation, et al.; Brett Kravitz, Joseph Wambaugh Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Gregory D. Russell, Timothy McGranor, Ilya Batikov, Counsel for Intervenors EAP Ohio, LLC

Date Issued:

2/16/2023

BACKGROUND

On November 26, 2021, Eric Petroleum Corporation & Eric Petroleum Utica, LLC ["Eric Petroleum"] filed a *Notice of Appeal* with the Oil & Gas Commission. This appeal was taken from Chief's Order 2021-173. This order approved an application for the establishment of a statutory oil & gas drilling unit to be known as the Dawson South Unit. The application for unitization was sought by EAP Ohio, LLC ["EAP"]. On December 7, 2021, EAP was **granted** intervenor status in these matters.

Prior to filing its appeal with the Commission, Eric Petroleum sought remedy for similar claims in court. See *Eric Petroleum Corporation, et al. v. Ascent Resources-Utica, LLC, et al.*, Columbiana County Court of Common Pleas Case No. 2019-CV-536 [“Columbiana County litigation”]. That litigation is ongoing.

The Appellee Division and EAP filed *Motions to Dismiss*, which were fully briefed by the parties. On December 6, 2022, the Appellee Division’s *Motion to Dismiss* and EAP’S *Motion to Dismiss* came on for oral arguments before the Commission. All parties participated in these arguments. An evidentiary hearing has not been conducted in this appeal. However, certain factual matters are contained within the pleadings and other filings of the parties which the Commission has reviewed.

DISCUSSION

The crux of the matter before the Commission is that Eric Petroleum claims to have a contractual option to participate in the Dawson South Unit. Eric Petroleum asserts that EAP does not have the right to develop the subject lease because of that contract dispute, which is currently being litigated in Columbiana County. The Division and EAP argue Eric Petroleum’s claimed right to participate in the unit does not amount to a working interest because Eric Petroleum had no interest to reflect in the subject lease at the time the unit application was made and the Order was issued. The Division and EAP contend the terms of the Order are and were correct and since Eric Petroleum does not have a direct interest in this unit, they lack standing to bring this appeal.

The Oil & Gas Commission is a creature of statute, created under Chapter 1509 of the Ohio Revised Code. See *Bass Energy v. Division and Duck Creek Energy*, (Oil & Gas Commission, #815; Jan. 29, 2010); *City of Munroe Falls v. Division and D & L Energy*, (Oil & Gas Commission, #793; Aug. 7, 2008). As a creature of statute, the Commission possesses only those powers which have been expressly conferred by the General Assembly or which are necessarily implied. See *Chesapeake Exploration v. Oil & Gas Commission*

(2011) 135 Ohio St.3d 204, quoting *Delaney v. Testa*, 128 Ohio St. 3d 248, 2011-Ohio-550. Thus, the authority and jurisdiction of this Commission is both defined and limited by the express provisions of Revised Code Chapter 1509.

Questions regarding the validity of leases, as well as questions regarding other property rights disputes, are beyond the regulatory authority of the Division Chief. See *Bruce Doolittle vs. Transcontinental Oil & Gas, Inc.*, (Franklin C.P., #94CVF02-839; Nov. 30, 1994). Because these issues are beyond the Chief's regulatory authority, such issues are likewise beyond the jurisdiction of this Commission when reviewing the actions of the Chief. The Commission has previously held it not authorized to adjudicate property rights. See *John & Arelene Wehr v. Division* (Oil & Gas Commission, #947; December 11, 2019, ruling upon a motion to dismiss); *Clarence Tussel, Jr., et al., v. Division and Kastle Resources Enterprises*, (Oil & Gas Commission, #818; July 16, 2010, ruling upon a motion in limine); *Bass Energy v. Division and Duck Creek Energy*, supra.

O.R.C. §1509.36 sets forth the method by which an appeal is perfected to the Oil & Gas Commission. That section of law provides *inter alia*:

Any person adversely affected by an order by the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order.

The rules of the Oil & Gas Commission define an "Interested Person," at O.A.C. §1509-1-02(I), as follows:

"Interested Person" means any person having a pecuniary or proprietary interest directly affected by an appeal before the commission.

Standing is a threshold jurisdictional issue that must be resolved before an appellant may proceed with an appeal. See *New Boston Coke Corp. v. Tyler* (1987), 32 Ohio St.3d 216, 217. It is the burden of the appellant to prove its standing by demonstrating that the challenged action has caused, or will cause the party an injury in fact. See *Olmstead Falls v. Jones* (2003), 152 Ohio App.3d 282, 286. The alleged injury must be definite, not abstract or speculative.¹ The injury must

¹ See *Olmsted Falls, id.*, at 286.

also be actual and immediate or threatened, and, if threatened, the party must demonstrate a realistic danger arising from the challenged action.²

The issue of standing is a question of law that cannot be easily determined in a factual vacuum. Eric Petroleum's Notice of Appeal articulates in detail their concerns relative to EAP's unitization application and the Division's approval of the unitization application. Given that there has been no evidentiary opportunity for the development of facts relative to the specific interests of, or potential injuries to Eric Petroleum, the Commission believes that it is appropriate to consider information presented to it in the light most favorable to Eric Petroleum, for the purpose of determining whether Eric Petroleum has a sufficient stake in the outcome of an appeal of Chief's Order 2021-173.

Eric Petroleum claims their interest in the Unit derives from an option to acquire a working interest via a disputed private asset sale agreement and acquisition agreement. An option to acquire a working interest is not a direct interest in a unit. Eric Petroleum did not own a direct interest in the unit at the time the unit application was submitted or when the Order was issued. Simply put, Eric Petroleum had no direct interest to reflect in the subject lease when this Order was issued. Focusing specifically upon any real and concrete injury alleged, experienced or threatened to the Appellant has not adequately demonstrated that any real and current injury - or threat thereof - actually exists, which is fairly traceable to the Chief's order under appeal.

The Appellants may have issues relating to disputed interpretations of contract provisions or the retroactivity clause of the Ohio Constitution. But these issues cannot be addressed by the Division or decided by this Commission as it does not possess the authority to do so. It is also well-settled law in Ohio that administrative agencies and tribunals may not decide constitutional questions. *See Mobile Oil Corp. v. City of Rocky River* (1974) 38 Ohio St.2d 23; *State, ex rel. Park Investment Co. vs. Board of Tax Appeals* (1972) 32 Ohio St.2d 28. Thus, any contention by the Appellants that O.R.C. §1509.28, or the Chief's application of O.R.C. §1509.28 to the immediate facts, infringes upon the Appellants' constitutionally protected rights must also be taken up before a court of competent jurisdiction, and simply cannot be determined by this Commission. *See Bass Energy, Inc. v. Division & Duck Creek Energy, Inc., supra; Clewell Family Farm, LLC v. Division*, #862 (July 1, 2014, ruling on order on partial summary judgment). Only a court of competent jurisdiction can adjudicate

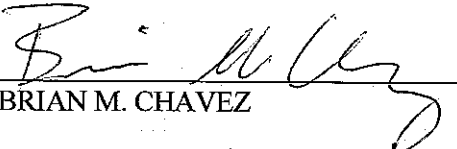
²*Id.*, at 286, citing *Johnson's Is. Prop. Owners' Assn. v. Schregardus* (1997), 1997 WL 360851 (Ohio App. 10 Dist, no. 96APH10-1330).

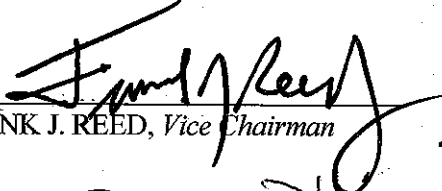
property rights, can evaluate the validity of leases, or answer Constitutional questions.

ORDER

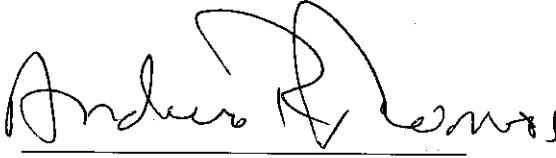
Based upon the foregoing, the Commission **FINDS** that Appellant Eric Petroleum has not demonstrated sufficient interest or injury to establish standing. The Commission hereby **GRANTS** the Division's Motion and EAP's Motion and **DISMISSES** the instant appeal for the Appellant Eric Petroleum's lack of standing.

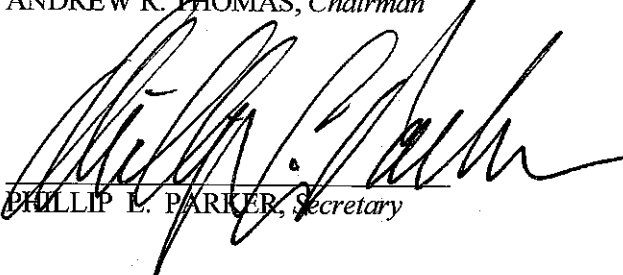
Date Issued: 2/16/2023


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