

BEFORE THE OIL & GAS COMMISSION

KEVIN J. SIMBALLA,

Appellant,

-v-

DIVISION OF OIL & GAS RESOURCES
MANAGEMENT,

Appellee,

Appeal No. 1006

Review of Chief's Order 2021-192
(Elkrun Wertz NE Unit; Hilcorp Energy Co.)

ORDER OF THE COMMISSION REGARDING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT

Appearances: Matthew W. Onest, Mary C. Simballa, Counsel for Appellant Kevin J. Simballa; Brian Ball, Gene Park, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Gregory D. Russell, Thomas H. Fusonie, Mark A. Hylton, Counsel for Movant for Intervention Hilcorp Energy Co.

Date Issued:

12/16/2022

BACKGROUND

This matter initially came before the Oil & Gas Commission upon appeal by Kevin J. Simballa ["Appellant"] from issuance of Chief's Order 2021-192 ["Order"] to Hilcorp Energy Company ["Hilcorp"] authorizing Hilcorp¹ to conduct unit operations for the Elkrun Wertz Northeast Unit ["Unit"] on November 30, 2021.

The Appellee Division filed a *Motion to Dismiss* asserting that Appellant failed to file his appeal in a timely manner. Hilcorp separately filed a *Motion to Dismiss* on substantially similar grounds. Appellant opposed these Motions. After considering these filings, the Commission issued its decision granting the Division's *Motion to Dismiss* and dismissed appeal #1006 on February 10, 2022. The Commission's decision was appealed by Appellant to the Court of Common Pleas of Franklin County pursuant to ORC § 1509.37. That case is still pending. (*Simballa v. Ohio Department*

¹ On January 10, 2022, Hilcorp Energy Co. filed a *Motion for Leave to Intervene* in this matter which was not opposed by Appellant or the Division. Therefore, Hilcorp was permitted to participate in pre-hearing motion practice.

of *Natural Resources, Division of Oil & Gas Resources Management*, No. 22 CV 000989.) The Commission's decision has not been vacated or remanded. Appellant's attempt to resurrect appeal #1006, through his ***Motion for Relief from Judgment and Request for Hearing***, is the subject of the immediate order.

The Oil & Gas Commission is a creature of statute. ORC § 1509.35, ORC § 1509.36, and ORC § 1509.37 are the statutes that set forth the Commission's powers, obligations, and authorities. None of these statutes grants the Commission authority to engage in the relief that Appellant seeks through his ***Motion for Relief from Judgment and Request for Hearing***. Moreover, ORC § 1509.36 states, "The order of the commission is final unless vacated by the court of common pleas of Franklin [C]ounty in an appeal as provided for in section 1509.37 of the Revised Code." The Commission's duty to obey these statutes is clear and consistent with Commission precedent.²

The Commission's February 10, 2022 decision that Appellant now seeks to vacate has been appealed to the Court of Common Pleas of Franklin County. Once the Commission's decision was appealed, the Commission lost jurisdiction. The Commission's decision has not been vacated or remanded by the Franklin County Common Pleas Court. Consequently, the Commission lacks jurisdiction to provide the relief sought by Appellant.

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² *American Water Management Services, LLC v. Division*, #889 & 890, August 16, 2019 Order of the Commission Granting Division's *Motion to Dismiss AWMS' Motion to Vacate* Decision.

ORDER

The Oil & Gas Commission has read and considered Appellant's *Motion for Relief from Judgment and Request for Hearing*. The Commission **FINDS** that it lacks jurisdiction to revisit, reconsider, or alter the decision rendered by this Commission in case #1006 on February 10, 2022. Thus, the Commission will not reassert its jurisdiction in this matter.


CHRISTINE SHEPARD-DESAI


ANDREW R. THOMAS, *Chairman*


FRANK J. REED, *Vice Chairman*


PHILLIP I. PARKER, *Secretary*


BRIAN M. CHAVEZ

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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