THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen Chair

Shari Feist Albrecht Susan K. Duffy

In the Matter of the Investigation of Hotshot by)	
FireFighters, LLC of Wichita, Kansas,)	
Pursuant to the Kansas Highway Patrol)	Docket No: 19-GIMM-406-KHP
Issuance of a Notice of Violation(s) and)	
Invoice for the Violations of the Kansas Motor)	
Carrier Safety Statutes, Rules and Regulations.)	

DEFAULT ORDER

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 finds the following:

- 1. On March 8, 2019, the Commission issued a Notice of Violation(s) against Hotshot by FireFighters LLC (Respondent) for alleged violations found during a March 7, 2019 routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP). The Respondent was assessed \$650.00 in civil penalties, stemming from the following violations: a \$100.00 penalty for tire-flat and/or audible air leaking, citing 393.75A3, and a \$500.00 penalty for a false report of drivers record of duty status, citing 395.8E.
- 2. Subsequent to the Respondent's formal challenge of the alleged violations with the KHP, the KHP's denial of that challenge, and the Respondent's request for hearing with the Commission,³ Commission Transportation Staff (Staff) and the Respondent discussed the

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¹ See Notice of Violation(s), p.1 (Mar. 8, 2019), filed in the docket on April 5, 2019; Driver/Vehicle Examination Report No. KSHP01001354 (Mar. 7, 2019), filed in the docket on April 5, 2019.

² Notice of Violation(s), p. 2.

³ See Kansas Highway Patrol Challenge Letter (Mar. 14, 2019), filed in the docket on April 5, 2019; KHP Denial Letter (Mar. 25, 2019), filed in the docket on April 5, 2019; Request for Hearing, filed in the docket on April 5, 2019.

Respondent's hearing request.⁴ However, despite these discussions the parties were unable reach a resolution, and thus, Staff requested that a Prehearing Conference be scheduled.⁵

- 3. On August 22, 2019, the Commission issued an *Order Designating Prehearing Officer* and Setting Prehearing Conference, scheduling a Prehearing Conference for September 24, 2019.⁶ The Order stated: "Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under KAPA" (i.e., the Kansas Administrative Procedure Act). The Prehearing Conference was held as scheduled. Staff appeared at the Conference, but the Respondent did not. Staff made a verbal motion for default.
- 4. On September 26, 2019, Staff filed a Motion for Default Judgment, asking the Commission to find the Respondent in default, to dismiss the Respondent's request for hearing, to affirm the violations and civil penalties assessed against the Respondent, and to close the docket.⁸
- 5. K.S.A. 77-520(a) provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. Subsection (b) states that within seven days after service of a proposed default order, the party against whom it was issued has seven days to file a written motion to vacate, which shall state the grounds relied upon. Subsection (c) states: "The proposed default order shall become effective after expiration of the time within which the party may file a written motion under subsection (b) unless a written motion to vacate the order is filed with the agency within such time."
- 6. In accordance with the Commission's August 22, 2019 *Order Designating Prehearing Officer and Setting Prehearing Conference* and K.S.A. 77-520, the Commission finds the Respondent's failure to attend the Prehearing Conference constitutes default. Thus, the Commission

⁴ See Staff's Motion to Set Prehearing Conference, ¶ 5 (July 17, 2019).

⁵ *Id.* at ¶¶ 5-6.

⁶ Order Designating Prehearing Officer and Setting Prehearing Conference, Ordering Clause B (Aug. 22, 2019).

⁷ *Id.* at Ordering Clause D.

⁸ Staff's Motion for Default Judgment, ¶ 10 (Sept. 26, 2019).

grants Staff's Motion for Default Judgment, except that the Commission will not close the docket at

this time.

THEREFORE, THE COMMISSION ORDERS:

1. Staff's Motion for Default Judgment is granted, except the docket shall not be closed

at this time.

2. In accordance with K.S.A. 77-520(b), any party may file a written motion requesting

that this Default Order be vacated and stating the grounds relied upon, within seven calendar days

after service of this Order, with three additional days added to account for service. If no motion to

vacate this Order is filed within the stated time period, this Order shall become effective.

3. The Commission retains jurisdiction over the subject matter and the parties for the

purpose of entering additional orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: _____10/03/2019

Lynn M. Retz

Executive Director

Lynn M. Ret

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CERTIFICATE OF SERVICE

19-GIMM-406-KHP

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of		
electronic service on10/0	3/2019	
MARK D. GARCIA, MAN HOTSHOT BY FIREFIG 5619 SULLIVAN RD WICHITA, KS 67204 captainamerica@cox.	HTERS LLC	MICHAEL DUENES, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 m.duenes@kcc.ks.gov
AHSAN LATIF, LITIGAT KANSAS CORPORATIO 1500 SW ARROWHEAD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov	ON COMMISSION	
		/S/ DeeAnn Shupe DeeAnn Shupe