

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the matter of R. L. Barnard's (Operator's)) Docket No: 22-CONS-3465-CMSC
petition regarding its license renewal fee.)
) CONSERVATION DIVISION
)
_____) License No: 5193

ORDER DENYING PETITION

Operator seeks downward adjustment of the statutorily non-refundable fee he paid as part of his recent license renewal. For the following reasons, Operator's petition is denied.

1. As an initial matter, Operator's petition is substantially inadequate, omitting or obfuscating relevant factual background. The Commission takes extensive notice of its administrative records to understand Operator's claims and arguments and to place such contentions in relevant procedural and factual context.¹

2. On June 3, 2022, Operator renewed its license. Under K.S.A. 55-155, in order to obtain a license renewal, an operator must assure financial responsibility, and must do so by one of various means, including: (1) provision of a bond or letter of credit; (2) provision of a non-refundable fee equaling 6% of what the bond or letter of credit would have been; or (3) demonstration of an acceptable record of compliance along with a non-refundable fee of \$100.²

3. Commission records indicate Operator paid a \$3,600 non-refundable fee, equaling 6% of what the bond or letter of credit would have been. It appears Operator contends he should

¹ See K.A.R. 82-1-230(h) (the Commission may take administrative notice of its records).

² See K.S.A. 55-155(c)(6); K.S.A. 55-155(d).

have had the opportunity to instead pay the non-refundable fee of \$100. In other words, Operator contends he should have been considered to have had an acceptable record of compliance.³

4. K.A.R. 82-3-120(e) defines an acceptable record of compliance, in pertinent part, as meaning “[t]he operator has neither been assessed by final order of the commission with \$3,000 or more in penalties nor has been cited by final commission order for five or more violations in the preceding 36 months.”

5. Commission records indicate:

a. In Docket 22-CONS-3195-CPEN, on November 9, 2021, the Commission assessed against Operator a \$1,000 penalty and found one violation.⁴ Operator did not request a hearing, and the order became final.

b. In Docket 22-CONS-3294-CPEN, on February 17, 2022, the Commission assessed against Operator a \$600 penalty and found six violations.⁵ Operator’s untimely request for hearing was denied, as was his petition for reconsideration, and the order became final.⁶

6. Because Operator has been cited by final Commission order for seven violations in the preceding 36 months, by regulation and statute he does not have an acceptable record of compliance. Thus, Operator does not qualify to pay the non-refundable fee of \$100 as a manner of assuring financial responsibility when pursuing a license renewal.

7. Operator contends he “has possessed an operator’s license without any violations for a period of thirty-seven years” (since 1985).⁷ Under statute and regulation, such timeframe is

³ See, e.g., Petition of Operator for Reconsideration of License Renewal Fee of \$3600.00, p. 2 (Jun. 15, 2022) (“Mr. Barnard believes that this was really only two (2) violations.”).

⁴ See Docket 22-3195, Penalty Order, ¶ 11, Ordering Clause A (Nov. 9, 2021).

⁵ See Docket 22-3294, Penalty Order, ¶ 8, Ordering Clause A (Feb. 17, 2022).

⁶ See Docket 22-3294, Order Denying Request for Hearing (Apr. 5, 2022); Order Consolidating Dockets and Denying Petition for Reconsideration (Apr. 19, 2022).

⁷ See Petition of Operator, p. 1.

not relevant; moreover, it is highly unlikely such statement was made after inquiry reasonable under the circumstances, as Commission records, publicly available online, indicate that in addition to the aforementioned, at a minimum the Commission has also found violations against Operator in Dockets 14-CONS-430-CPEN, 14-CONS-627-CPEN, and 16-CONS-009-CPEN.

8. A substantial portion of Operator’s two-page petition consists of an improper collateral attack upon the findings and conclusions of the Commission’s final orders in Docket 22-3195 and Docket 22-3294. Even if such was not an improper collateral attack, the Commission is not inclined to revisit factual findings and legal conclusions within orders Operator failed to timely contest. And even if the Commission was so inclined, Operator is ultimately responsible for the actions of his contractor and for ensuring compliance with Commission deadlines and regulations.⁸ In addition, properly-paid financial assurance is statutorily non-refundable; Operator’s payment of 6% of what the bond or letter of credit would have been was a statutorily proper option.⁹

9. Operator’s request for a downward adjustment of the non-refundable fee he paid as part of his recent license renewal is denied, both as improper and outside the statutory and regulatory framework. Any other request within Operator’s pleading is similarly denied.¹⁰

10. Any party may file and serve a petition for reconsideration regarding this Order pursuant to the requirements and time limitations established by K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 06/23/2022



Lynn M. Retz
Executive Director

Mailed Date: 06/23/2022
JRM

⁸ See, e.g., *id.* at p. 1 (“The work was totally in control by the contractor...”); p. 2 (“Mr. Barnard was led to believe that the agreement would be timely approved.”).

⁹ See K.S.A. 5-155(d).

¹⁰ See, e.g., Petition of Operator at p. 2 (“Further, R. L. Barnard does request that there be a finding that he has always in the past promptly paid the two violation fee as requested by this body.”).

CERTIFICATE OF SERVICE

22-CONS-3465-CMSC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 06/23/2022.

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