

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Investigation of Matthias W.)
Schroeder of Hunter, Kansas, Regarding the)
Violation(s) of the Motor Carrier Safety) Docket No. 19-TRAM-051-PEN
Statutes, Rules and Regulations and the)
Commission’s Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

ORDER DISMISSING RESPONDENT’S REQUEST FOR HEARING

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:

Background

1. On August 9, 2018, the Commission issued a *Penalty Order*, finding Matthias W. Schroeder (Respondent) committed seven (7) violations of Kansas law governing motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.¹ The Commission assessed a \$4,100 civil penalty against the Respondent; ordered a representative from the Respondent to attend a Commission-sponsored safety seminar within ninety days, providing Litigation Counsel with written proof of attendance; and ordered the Respondent to submit to a safety compliance review within eighteen months.²

¹ *Penalty Order*, ¶ 13 (Aug. 9, 2018).

² *Id.* at Ordering Clauses A-C.

2. On November 13, 2018, Commission Transportation Staff (Staff) filed a Motion to Suspend Intrastate Motor Carrier Operations.³ Staff stated the Respondent failed to comply with the requirements of the *Penalty Order*, and therefore, asked the Commission to issue an order suspending the Respondent's intrastate motor carrier operations and requiring the Respondent to attend a Commission-sponsored safety seminar within ninety days, providing written proof of attendance to Litigation Counsel.⁴

3. On November 20, 2018, the Commission issued an *Order Suspending Intrastate Motor Carrier Operations* (Out-of-Service Order) of the Respondent due to the Respondent's failure to comply with the requirements of the aforementioned *Penalty Order*.⁵

4. On December 8, 2018, the Respondent faxed a response to a letter received from Staff on November 23, 2018, in which the Respondent stated he "know[s] nothing about any . . . 4100 owed to the K.C.C." and "need[s] a hearing to be set probably in the Middle of January 2019."⁶

5. On December 14, 2018, Staff filed a Motion for Order Setting Hearing, asking the Commission to set an evidentiary hearing for Thursday, January 17, 2019, with pre-filed testimony due on January 7, 2019.⁷

6. On December 20, 2018, the Commission issued an *Order Designating Prehearing Officer and Setting Hearing*, designating Michael J. Duenes as the Prehearing Officer and scheduling an evidentiary hearing for January 17, 2019.⁸

³ Motion to Suspend Intrastate Motor Carrier Operations (Nov. 13, 2018).

⁴ *Id.* at p. 2.

⁵ *Order Suspending Intrastate Motor Carrier Operations*, ¶ 13 (Nov. 20, 2018).

⁶ Request for Hearing, p. 2 (Dec. 11, 2018).

⁷ Staff's Motion for Order Setting Hearing, ¶ 9 (Dec. 14, 2018).

⁸ *Order Designating Prehearing Officer and Setting Hearing*, Ordering Clauses A & B (Dec. 20, 2018).

7. On January 7, 2019, Staff witnesses Gregory Askren and Gary Davenport pre-filed direct testimony in this matter.⁹

8. On January 9, 2019, the Commission received a Request for Information – Kansas Open Records Act (KORA) from the Respondent, dated January 7, 2019, wherein the Respondent stated that he “did not file a request for a hearing on the out of service order.”¹⁰

9. On January 15, 2019, the Commission continued the evidentiary hearing pending the issuance of a procedural schedule.¹¹ The Commission also scheduled a Prehearing Conference for February 14, 2019, ordering that “[a]ny party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA [Kansas Administrative Procedure Act].”¹² A Prehearing Conference was held on February 14, 2019, but the Respondent failed to attend.

10. On January 25, 2019, Staff filed a Motion to Dismiss Respondent’s Request for Hearing.¹³ Staff noted that the *Penalty Order* provided the Respondent with fifteen (15) days from the date of service of the Order to request a hearing, putting the deadline at October 5, 2018.¹⁴ Staff did not receive a timely request for hearing.¹⁵ Staff further noted that the *Order Suspending Intrastate Motor Carrier Operations*, issued on November 20, 2018, allowed any party to request a hearing on that Order “by submitting a written request, setting forth the specific grounds upon which relief is sought . . . within fifteen (15) days of the date of service

⁹ Askren Direct (Jan. 7, 2019); Davenport Direct (Jan. 7, 2019).

¹⁰ Request for Information – Kansas Open Records Act, p. 2, dated Jan. 7, 2019. *See* Staff’s Motion to Dismiss Respondent’s Request for Hearing, Attachment “B” (Jan. 25, 2019).

¹¹ *Order Continuing Evidentiary Hearing and Scheduling Prehearing Conference*, Ordering Clause A (Jan. 15, 2019).

¹² *Id.* at Ordering Clause D.

¹³ Staff’s Motion to Dismiss Respondent’s Request for Hearing (Jan. 25, 2019).

¹⁴ Staff’s Motion to Dismiss, ¶¶ 5-6.

¹⁵ Staff’s Motion to Dismiss, ¶ 6.

of this Order.”¹⁶ Staff stated that it received a KORA request from the Respondent on January 9, 2019, in which the Respondent stated that he “did not file a request for hearing on the out of service order” and that he “only get[s] [his] mail every two to three weeks, or when [he] knows [he has] bills coming.”¹⁷

11. Staff’s Motion to Dismiss boils down to the following assertions: (1) the Respondent was twice mailed a copy of the *Penalty Order*, in August and September of 2018, to which no response was made until December 2018;¹⁸ (2) when the Respondent ultimately requested a hearing, he asserted that it was not a request for hearing on the November 2018 Out-of-Service Order, and thus, it could only be a hearing request on the August 2018 *Penalty Order*;¹⁹ and (3) service of the *Penalty Order* was complete upon mailing, and therefore, the Respondent’s failure to check his mail does not toll his deadline to request a hearing.²⁰

12. The Respondent has made no response to Staff’s Motion to Dismiss.

Findings and Conclusions

13. It appears the Respondent’s December 8, 2018 request for hearing may have been timely had it been a request for hearing on the November 20, 2018 Out-of-Service Order. However, the record demonstrates that the Respondent “did not file a request for a hearing on the out of service order.” Moreover, the Respondent’s request for hearing referenced the \$4,100 penalty assessed against him, thus demonstrating that his hearing request pertained to the *Penalty Order*. Therefore, the Commission finds that the Respondent’s request for hearing could only be on the *Penalty Order*, making his request for hearing untimely.

¹⁶ Staff’s Motion to Dismiss, ¶ 10.

¹⁷ Staff’s Motion to Dismiss, ¶ 12.

¹⁸ Staff’s Motion to Dismiss, ¶ 14.

¹⁹ Staff’s Motion to Dismiss, ¶¶ 13-14, 22.

²⁰ Staff’s Motion to Dismiss, ¶¶ 15-21.

14. The Commission also finds that, in accordance with K.S.A. 77-531(b), service by mail is complete upon mailing. Moreover, the mailing address used by the Commission for the Respondent is clearly accurate, given that the Respondent ultimately responded to a mailing sent to his address.²¹ Thus, the Commission finds that the Respondent's inattentiveness to his mail does not toll the deadline by which he was required to request a hearing on the *Penalty Order*.

15. Therefore, because the Respondent's request for hearing on the *Penalty Order* was filed untimely, the Commission finds his request should be dismissed.

THEREFORE, THE COMMISSION ORDERS:

- A. The Respondent's request for hearing is dismissed.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²²
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 03/07/2019



Lynn M. Retz
Secretary to the Commission

MJD/sb

²¹ See Staff's Motion to Dismiss, ¶ 15.

²² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

19-TRAM-051-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 03/07/2019.

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