

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

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

In the Matter of the Investigation of Danny G.)
Lambeth, d/b/a Truck Wholesale of Wellsville,)
Kansas, Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation for Violation(s) of) Docket No. 17-GIMM-408-KHP
the Kansas Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission’s Authority to)
Impose Penalties, Sanctions and/or the Revocation)
of Motor Carrier Authority.)

**ORDER DENYING DANNY LAMBETH’S PETITION FOR RECONSIDERATION OF
ORDER GRANTING IN PART AND DENYING IN PART DANNY LAMBETH’S
PETITION FOR RECONSIDERATION**

The above-captioned 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 makes the following findings:

BACKGROUND:

1. On January 5, 2017, the Commission issued a Notice of Violation(s) to Danny G. Lambeth d/b/a Truck Wholesale stemming from a January 3, 2017, Kansas Highway Patrol (KHP) roadside inspection.¹ The Notice stated that the “Kansas Highway Patrol inspected” a vehicle with a VIN # ending in A46298 “on January 3, 2017, and discovered violation(s) of the Federal Motor Carrier Safety Regulations, as adopted by K.S.A. 66-1,129 and K.A.R. 82-4-3 et seq.”² The Notice assessed a \$700 penalty against Mr. Lambeth for having “[n]o/Improper safety chains for towbar,

¹ See Notice of Violation(s), Invoice Number H000566219, p. 1 (Jan. 5, 2017). See also KHP Driver/Vehicle Examination Report No. KSHP02550894 (Jan. 3, 2017) (Page 2 of the Examination Report contains the KHP Officer’s Inspection Notes, detailing the Officer’s observations based on his inspection of Mr. Lambeth’s vehicle.).

² Notice of Violation(s), Invoice Number H000566219, p. 1.

[f]lat tire or fabric exposed, [i]noperative turn signal, and [n]o drivers record of duty status.”³ The Notice of Violation(s) also informed Mr. Lambeth he could submit a challenge of the violations to the KHP, and if he was not satisfied with the outcome of his KHP challenge, he had “the right to an administrative hearing with the Kansas Corporation Commission. The hearing request must be in writing and received within 15 days of the close of the challenge.”⁴

2. On January 24, 2017, another “Notice of Violation” was issued to Mr. Lambeth, reiterating the above violations and the penalty issued in the January 5, 2017, Notice of Violation(s).⁵

3. In response to the Notice of Violations, Mr. Lambeth sent a letter to the KHP, challenging the Notice of Violation(s) with the KHP.⁶

4. The KHP issued Mr. Lambeth a challenge denial letter, dated February 27, 2017, stating that “Invoice #H000566219 remains valid,”⁷ and that if he wanted a hearing before the Commission, his hearing request must be received by the KHP within fifteen days from the date of the denial letter.⁸

5. Subsequent to the KHP’s denial of his challenge, Mr. Lambeth requested a hearing with the Commission regarding KCC Invoice # H000566219 via handwritten letters, dated March 10, 2017, and March 14, 2017, respectively.⁹

6. On January 29, 2018, Commission Transportation Staff (Staff) filed a Motion to Convert Request for Hearing to Emergency Out of Service Proceeding (Motion to Convert), “for the purpose of obtaining a Commission order directing Respondent to cease and desist motor carrier

³ Notice of Violation(s), p. 2.

⁴ Notice of Violation(s), p. 1.

⁵ See Notice of Violation, p. 2 (Jan. 24, 2017).

⁶ See handwritten letter from Danny Lambeth, dated Feb. 22 by Mr. Lambeth, but filed with the Commission on March 29, 2017.

⁷ KHP Challenge Denial Letter (Feb. 27, 2017).

⁸ *Id.*

⁹ Lambeth Request for Hearing, pp. 1-2.

operations and to assess civil fines and sanctions against Respondent, for the violation of Kansas motor carrier safety rules and regulations.”¹⁰

7. On February 6, 2018, Mr. Lambeth filed an Objection to Staff’s Motion to Convert and a Request for Dismissal.¹¹ Mr. Lambeth argued that he is “not guilty of the alleged violations described on Kansas Highway Patrol report # KSHP02550894 and invoice # H000566219.”¹² He also argued that he “timely filed a formal challenge with the Kansas Highway Patrol.”¹³ Mr. Lambeth stated that “[a] letter from Ahsan A. Latif of the KCC, dated September 13, 2017, stated that my Request for Hearing had been received and the KCC was compiling documents, photos, and video related to the inspection that was conducted on January 3, 2017. The letter stated that the Commission will issue an order setting hearing ‘in the near future.’ A hearing has never been set.”¹⁴ Moreover, Mr. Lambeth argued that the Kansas Administrative Procedures Act (KAPA) “entitle[s] [him] to an administrative hearing with the KCC regarding the alleged violations found during the January 3, 2017 routine motor carrier stop and inspection conducted by the KHP.”¹⁵ Ultimately, Mr. Lambeth asked that Staff’s Motion to Convert be denied and all the fines on Invoice # H000566219 be dismissed.¹⁶

8. On February 12, 2018, Staff made a filing in Support of its Motion to Convert, asking again to have the hearing request converted to an Emergency Out of Service proceeding, but also

¹⁰ Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 8 (Jan. 29, 2018) (Staff’s Motion to Convert).

¹¹ Danny Lambeth’s Objection to Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal (Feb. 6, 2018) (Objection to Staff’s Motion).

¹² Objection to Staff’s Motion, ¶ 2.

¹³ Objection to Staff’s Motion, ¶ 3.

¹⁴ Objection to Staff’s Motion, ¶ 5.

¹⁵ Objection to Staff’s Motion, ¶ 7.

¹⁶ Objection to Staff’s Motion, p. 3.

making the alternative suggestion that “the Commission may order a hearing on Respondent’s request.”¹⁷

9. On February 23, 2018, Mr. Lambeth filed an Objection to Staff’s Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal (Lambeth Objection). Mr. Lambeth alleged that he is exempt from Commission jurisdiction¹⁸ and need not keep a log book unless he travels over 100 miles from his business location.¹⁹ Mr. Lambeth argued that he is “a used vehicle dealer” with a dealer’s license plate, over which the Commission has no authority.²⁰ Mr. Lambeth stated that his “DOT number is 203558.”²¹ Mr. Lambeth also stated, “As directed by Captain Turner in his February 27, 2017 letter, I timely filed a Request for Hearing on March 10, 2017.”²²

10. Mr. Lambeth noted that in his previous pleading, he “objected to not being allowed *my right to a hearing* before the Commission. *I was entitled to a formal hearing*, to be held in a timely manner.”²³ Mr. Lambeth continued, “The KCC does not have the power to ‘summarily’ dismiss my Request for Hearing based on evidence of what it repeatedly admits and refers to as ‘alleged’ violations.”²⁴ Mr. Lambeth said he did not respond to Mr. Latif’s September 13, 2017, letter “because it was not necessary as I believed I was waiting for KCC to ‘issue an order *setting hearing*.’”²⁵ Mr. Lambeth quoted K.S.A. 77-511(b), noting that the aforementioned letter from Mr. Latif “was dated over six months after receiving my Request for Hearing.”²⁶ Mr. Lambeth provided

¹⁷ Staff’s Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 7 (Feb. 12, 2018) (Staff’s Filing in Support).

¹⁸ Lambeth Objection, ¶ 1.

¹⁹ Lambeth Objection, ¶ 1.

²⁰ Lambeth Objection, ¶¶ 1, 9.

²¹ Lambeth Objection, ¶ 1.

²² Lambeth Objection, ¶ 3.

²³ Lambeth Objection, ¶ 2. (Emphasis added).

²⁴ Lambeth Objection, ¶ 7.

²⁵ Lambeth Objection, ¶ 12. (Emphasis added).

²⁶ Lambeth Objection, ¶ 13.

no analysis regarding any remedies for failure to adhere to K.S.A. 77-511(b). Mr. Lambeth argued that he has “been prejudiced by not being allowed to *have a hearing* with the” Commission.²⁷ Again, Mr. Lambeth asked for dismissal of all fines assessed on Invoice # H000566219.²⁸

11. On February 27, 2018, the Commission issued its *Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding* (Order). The Order found that, because Mr. Lambeth filed his hearing request with the Commission sixteen (16) days after the February 27, 2017, KHP challenge denial letter, Mr. Lambeth’s hearing request was not timely, and therefore, dismissed.²⁹ The Order also denied Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding because Staff failed “in its pleadings to demonstrate a proper basis for conversion.”³⁰

12. On March 12, 2018, Mr. Lambeth filed a Petition for Reconsideration of Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding (PFR). Regarding the Commission’s finding that his request for hearing was filed untimely, Mr. Lambeth stated:

“I was not required to file and therefore did not file . . . my March 10, 2017 request for hearing letter with the KCC. I mailed both letters to the Kansas Highway Patrol (KHP), timely, as instructed and is evidenced by Captain Turner’s denial letter instructing me to submit my request for hearing to the KHP as well as Mr. Ahsan Latif’s September 13, 2017 letter stating that ‘the Commission will issue an order setting hearing with regard to your request.’”³¹

13. Mr. Lambeth’s PFR discussed the February 27, 2018 Order’s finding that Staff, in its Motion to Convert, failed to provide a basis for finding that Mr. Lambeth is a public motor carrier of property.³² In his prayer for relief, Mr. Lambeth alleged that “the Commission has determined

²⁷ Lambeth Objection, ¶¶ 14-15.

²⁸ Lambeth Objection, p. 6. (Emphasis added).

²⁹ Order, ¶ 11 and Ordering Clause A.

³⁰ Order, ¶ 20 and Ordering Clause B.

³¹ PFR, ¶ 1. (Emphasis in original).

³² See PFR, ¶¶ 2-4.

that it has no jurisdiction over me,” and thus, he again requested dismissal of all fines assessed on Invoice # H000566219.³³ Mr. Lambeth’s PFR did not mention K.S.A. 77-511.

14. On March 21, 2018, Staff filed its Response to Respondent’s Petition for Reconsideration (Staff’s Response). Staff argued that the only record evidence of the KHP’s receipt of Mr. Lambeth’s hearing request is the date the request “was filed with the Commission, on March 15, 2017, which is beyond the fifteen days set forth in the KHP’s challenge denial letter.”³⁴ Thus, according to Staff, “[t]he Commission properly dismissed Respondent’s Request for Hearing for failure to ensure its request was received in the proper time period.”³⁵ Staff also argued that Mr. Lambeth improperly asked for a hearing on vehicles the Commission previously impounded and sold.³⁶ Thus, Staff asked the Commission to deny Mr. Lambeth’s PFR.³⁷

15. On March 30, 2018, Mr. Lambeth filed his Response to Staff’s Response to Respondent’s Petition for Reconsideration (Lambeth Response to Staff’s Response), as well as Exhibit A. Mr. Lambeth again detailed the alleged timeliness of his hearing request,³⁸ and asserted that “[t]he Commission’s Order found no evidence to suggest that it has jurisdiction over me.”³⁹ Mr. Lambeth then stated that he “[is] *not requesting a hearing before the Commission* as it has already determined that it does not have jurisdiction in this matter.”⁴⁰ Mr. Lambeth again requested dismissal of all fines assessed on Invoice # H000566219.⁴¹ Mr. Lambeth’s Response to Staff’s response did not mention K.S.A. 77-511.

³³ PFR, p. 5.

³⁴ Staff’s Response, ¶ 8.

³⁵ Staff’s Response, ¶ 8.

³⁶ Staff’s Response, p. 3 and ¶ 10.

³⁷ Staff’s Response, p. 4.

³⁸ Lambeth Response to Staff’s Response, ¶¶ 1-4.

³⁹ Lambeth Response to Staff’s Response, ¶ 5.

⁴⁰ Lambeth Response to Staff’s Response, ¶ 5.

⁴¹ Lambeth Response to Staff’s Response, p. 3.

16. On April 10, 2018, the Commission issued its *Order Granting in Part and Denying in Part Danny Lambeth's Petition for Reconsideration* (April 10, 2018 Order). The Commission found the evidence presented in this docket showed that Mr. Lambeth “was denied sufficient due process regarding his request for hearing,”⁴² and therefore, “Mr. Lambeth may go forward with his request for hearing.”⁴³

17. Regarding the jurisdictional issues raised by Mr. Lambeth, the Commission found that “Staff’s Motion to Convert ‘was conclusory in nature and did not provide a proper evidentiary and legal basis *upon which the Commission may make such a conversion.*”⁴⁴ The Order further found:

Staff did not *demonstrate* the necessary jurisdictional elements *to convert the proceeding* from a request for hearing to an emergency out of service proceeding. However, the fact that Staff did not provide appropriate evidence for the Commission’s jurisdiction *to convert* the proceedings does not mean Staff can have no additional opportunity to argue for Commission jurisdiction through a hearing process. The Order does *not* preclude the Commission from making *a final determination regarding the jurisdictional status* of Mr. Lambeth’s operation as Truck Wholesale of Wellsville, Kansas. The Commission finds Mr. Lambeth has not provided a sufficient basis at this point for dismissal of his fines and for closure of this docket.⁴⁵

18. Therefore, the Commission denied Mr. Lambeth’s request for dismissal of all fines assessed on Invoice # H000566219 and for closure of this docket.⁴⁶ The Commission granted reconsideration on Mr. Lambeth’s original request for hearing and directed Staff and Mr. Lambeth collaboratively to develop a procedural schedule in this matter.⁴⁷

19. On April 24, 2018, Staff filed a Motion for Procedural Schedule, noting that Mr. Lambeth was unresponsive to Staff’s attempts to collaborate on a schedule.⁴⁸

⁴² April 10, 2018 Order, ¶ 21.

⁴³ April 10, 2018 Order, ¶ 21.

⁴⁴ April 10, 2018 Order, ¶ 22. (Emphasis in original).

⁴⁵ April 10, 2018 Order, ¶ 22. (Emphasis added).

⁴⁶ April 10, 2018 Order, Ordering Clause B.

⁴⁷ April 10, 2018 Order, Ordering Clause A.

⁴⁸ Staff’s Motion for Procedural Schedule, ¶¶ 4-5.

20. On April 25, 2018, Mr. Lambeth filed a petition for reconsideration of the Commission's April 10, 2018 Order (PFR # 2). Mr. Lambeth asked the Commission to: (1) dismiss its Order directing him collaboratively to develop a procedural schedule with Staff; (2) dismiss all fines assessed on Invoice # H000566219 for alleged violations; and (3) re-open Docket No. 12-TRAM-816-PEN for a hearing.⁴⁹ Mr. Lambeth argued that the Commission engaged in an unlawful procedure or failed to follow prescribed procedure, set forth in K.S.A. 77-511(b)(1)-(2), by its failure to acknowledge his request for hearing within 30 days of its receipt by the Commission⁵⁰ and failure to commence a hearing within 90 days of its receipt.⁵¹ Mr. Lambeth claimed the Commission's decision in its February 27, 2018 Order was not based on substantial, competent evidence.⁵² Mr. Lambeth also argued that his \$700 penalty was unlawful because it exceeds the uniform fine schedule.⁵³ Mr. Lambeth alleged the Commission acted beyond its jurisdiction and in an otherwise unreasonable, arbitrary or capricious manner.⁵⁴

21. Mr. Lambeth reiterated his allegation that the Commission has no jurisdiction over him and no legal basis for assessing and collecting the fines levied against him.⁵⁵ Mr. Lambeth complained that Staff's Motion to Convert and Filing in Support of its Motion to Convert "inserted past dockets . . . into the agency record."⁵⁶ Mr. Lambeth discussed past Commission actions pertaining to him, with particular reference to Docket No. 12-TRAM-816-PEN, and asserted that the Commission exceeded its jurisdiction in taking such past actions.⁵⁷ Mr. Lambeth argued at length that he is innocent of the violations alleged in Invoice # H000566219.⁵⁸

⁴⁹ PFR # 2, p. 14.

⁵⁰ PFR # 2, ¶ 1.

⁵¹ PFR # 2, ¶ 6.

⁵² PFR # 2, ¶ 1.

⁵³ PFR # 2, ¶ 2.

⁵⁴ PFR # 2, ¶ 2.

⁵⁵ PFR # 2, ¶¶ 2-7.

⁵⁶ PFR # 2, ¶ 8.

⁵⁷ PFR # 2, ¶ 8.

⁵⁸ PFR # 2, ¶ 9.

22. Mr. Lambeth concluded that the Commission’s February 27, 2018, and April 10, 2018, Orders “failed to address . . . the legal basis [he] provided that proves the Commission’s authority is limited to the regulation of motor carriers.”⁵⁹ Mr. Lambeth faulted the Commission for granting him reconsideration on his March 10, 2017, request for hearing, alleging the Commission provided no legal basis to require his participation in a hearing or to pursue this matter any further.⁶⁰ Mr. Lambeth stated that he “did not ask for reconsideration of my March 10, 2017 Hearing Request, particularly in light of the fact that the Commission has found no legal basis for jurisdiction over me.”⁶¹

23. On May 10, 2018, Staff responded to Mr. Lambeth’s PFR # 2 (Staff Response to PFR # 2), asking the Commission to uphold the April 10, 2018 Order and deny Respondent’s petition for reconsideration.⁶² Staff argued that granting the hearing preserves Mr. Lambeth’s due process rights.⁶³ Staff also argued that Mr. Lambeth has misapplied and misinterpreted various Kansas motor carrier statutes.⁶⁴

24. Regarding K.S.A. 77-511’s procedures, Staff asserted that Mr. Lambeth has not demonstrated he “was prejudiced due to the delay in acknowledgment of [his] request,”⁶⁵ nor that he was prejudiced “by the time taken for a thorough review of the record before the Commission.”⁶⁶ Staff argued that K.S.A. 77-621(e)’s “harmless error rule” applies in this case,⁶⁷ and a hearing, not dismissal, is the proper remedy for Mr. Lambeth’s complaints.⁶⁸

⁵⁹ PFR # 2, ¶ 10.

⁶⁰ PFR # 2, ¶ 10.

⁶¹ PFR # 2, ¶ 10.

⁶² Staff’s Response to Respondent’s Petition for Reconsideration of Order Granting in Part and Denying in Part Danny Lambeth’s Petition for Reconsideration, p. 8 (May 10, 2018).

⁶³ Staff Response to PFR # 2, ¶ 5.

⁶⁴ Staff Response to PFR # 2, ¶¶ 8-10.

⁶⁵ Staff Response to PFR # 2, ¶ 11.

⁶⁶ Staff Response to PFR # 2, ¶ 12.

⁶⁷ Staff Response to PFR # 2, ¶ 13.

⁶⁸ Staff Response to PFR # 2, ¶ 14.

25. Staff argued that “Respondent’s factual disputes regarding the scope of its operations as well as the KHP’s application of the rules and regulations to Respondent’s vehicles are more properly argued at an evidentiary hearing where both parties present facts and the Commission issues a ruling.”⁶⁹ Further, Staff asserted that a summary disposition of this proceeding, pursuant to K.S.A. 77-537, is not applicable, given the “factual disputes between the parties as to the nature of Respondent’s operations as well as to the validity of the alleged violations.”⁷⁰

26. Finally, Staff argued that the 12-816 Docket should not be re-opened because Mr. Lambeth “exhausted [his] administrative remedies in that docket and chose not to pursue a timely appeal of the Commission’s decision.”⁷¹

27. On May 18, 2018, Mr. Lambeth filed a Response to Staff’s Response to Respondent’s Petition for Reconsideration of Order Granting in Part and Denying in Part Danny Lambeth’s Petition for Reconsideration.

FINDINGS AND CONCLUSIONS:

28. A petition for reconsideration must state the specific grounds upon which relief is requested.⁷² The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission “where mistakes of law and fact were made in the order.”⁷³ An order is lawful if it is within the statutory authority of the Commission and if the statutory rules are followed.⁷⁴ An order is reasonable if it is based on substantial competent evidence.⁷⁵ All actions of an administrative agency have a rebuttable presumption of validity.⁷⁶ As

⁶⁹ Staff Response to PFR # 2, ¶ 15.

⁷⁰ Staff Response to PFR # 2, ¶ 16.

⁷¹ Staff Response to PFR # 2, ¶ 22. *See Id.*, ¶¶ 17-21.

⁷² K.S.A. 77-529(a).

⁷³ *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 525 (1982)).

⁷⁴ *Kan. Gas & Elec. Co v. State Corp. Comm’n*, 239 Kan. 483, 496 (1986).

⁷⁵ *Id.*

⁷⁶ *Trees Oil Co. v. State Corp. Comm’n*, 279 Kan. 209, 226, 105 P.3d 1269 (2005).

the party challenging the legality of the Commission's Order, Mr. Lambeth bears the burden of proving the Commission's action was invalid.⁷⁷

29. Mr. Lambeth's arguments in PFR # 2 can be succinctly stated as follows: Mr. Lambeth should not be required to collaboratively develop a procedural schedule nor participate in a hearing, and the \$700 penalty assessed against him should be dismissed, because, (1) the Commission failed to follow the proper procedure in K.S.A. 77-511(b)(1)-(2);⁷⁸ (2) the Commission's April 10, 2018 Order cited no legal basis to require Mr. Lambeth to participate in a hearing;⁷⁹ (3) Mr. Lambeth did not ask for reconsideration of his March 10, 2017, hearing request;⁸⁰ and (4) the Commission has found no legal basis for jurisdiction over Mr. Lambeth.⁸¹ In addition, Mr. Lambeth argued that Docket No. 12-TRAM-816-PEN should be re-opened for hearing because allegedly the Commission, and the Kansas Department of Revenue (KDOR), improperly applied the Kansas statutes in that proceeding.⁸² The Commission addresses each of these arguments in turn.

30. The Commission concedes that, with respect to Mr. Lambeth's original hearing request, dated March 10, 2017, the deadlines provided in K.S.A. 77-511(b)(1)-(2) were not met. However, the Commission finds the failure to meet those deadlines does not warrant dismissal in this case. The Commission notes that Mr. Lambeth did not raise the issue of the failure to meet K.S.A. 77-511(b)'s deadlines in his PFR of the Commission's February 27, 2018 Order, wherein the Commission denied Mr. Lambeth's request for dismissal. Thus, because Mr. Lambeth did not raise this issue in his PFR of the Commission's February 27, 2018 Order, he cannot now claim that the Commission's April 10, 2018 Order *addressing that PFR* contained an error of law or fact on

⁷⁷ K.S.A. 77-621(a)(1). *See Trees Oil Co.*, 279 Kan. at 226.

⁷⁸ PFR # 2, ¶¶ 1, 6, 10.

⁷⁹ PFR # 2, ¶¶ 5, 10.

⁸⁰ PFR # 2, ¶ 10.

⁸¹ PFR # 2, ¶¶ 2-5, 7, 10.

⁸² PFR # 2, ¶ 8.

this point. The Commission's April 10, 2018 Order properly addressed only the issues raised by Mr. Lambeth in his PFR.

31. Further, the Commission finds that nothing in K.S.A. 77-511, nor in any other statute of which the Commission is aware, provides dismissal of a proceeding as the exclusive remedy for a state agency's failure to meet the deadlines provided in K.S.A. 77-511. Mr. Lambeth has not cited to any such remedy. Moreover, Mr. Lambeth did not argue he was denied due process by the Commission's oversight. Indeed, the Commission's April 10, 2018 Order afforded Mr. Lambeth notice and an opportunity to be heard, which are the basic elements of due process.⁸³

32. Although Mr. Lambeth's PFR # 2 quoted K.S.A. 77-511(b)(2), Mr. Lambeth did not explicitly argue that the Commission's oversight warranted dismissal or that it prejudiced him. Mr. Lambeth's assertion in his May 18, 2018, Response to Staff's Response that he has been prejudiced failed to provide any legal definition of "prejudice," and therefore, failed to provide any basis for his assertion that his expense of time and money on this case amounts to prejudice.⁸⁴ Mr. Lambeth has not claimed that he has paid the \$700 penalty at this point, and the hearing granted to him allows him to contest that penalty. Moreover, as Staff has noted, Mr. Lambeth has had notice of Staff's actions and has responded accordingly.⁸⁵ Thus, Mr. Lambeth has not shown that, absent the Commission's delay in acknowledging his request for hearing and in granting him a hearing, the outcome of this proceeding would have been different.⁸⁶ Because Mr. Lambeth has not demonstrated prejudice, any effect of the Commission's delay is harmless error. While the Commission failed to meet the prescribed deadlines, the Commission finds that granting Mr. Lambeth a hearing, not dismissal, is the proper remedy on this point. The Commission further finds that an agency's failure

⁸³ *Matter of Harrington*, 305 Kan. 643, 657, 385 P.3d 905, 916 (2016).

⁸⁴ See Response to Staff's Response, p. 6 (May 18, 2018).

⁸⁵ See Staff Response to PFR # 2, ¶ 12.

⁸⁶ See Staff Response to PFR # 2, ¶ 13.

to meet the procedural deadlines in K.S.A. 77-511(b) does not deprive the Commission of jurisdiction to adjudicate matters within the Commission's regulatory purview.

33. The Commission agrees with Mr. Lambeth that he is not *required* to participate in a hearing.⁸⁷ The Commission granted Mr. Lambeth a hearing because, (1) Mr. Lambeth twice requested a hearing, dated March 10, 2017, and March 14, 2017, respectively; (2) Mr. Lambeth argued he had timely requested a hearing;⁸⁸ and (3) Mr. Lambeth complained he has "been prejudiced by not being allowed to have a hearing with the" Commission.⁸⁹ If Mr. Lambeth has now determined he does not want a hearing, it is his choice whether or not to participate. Should Mr. Lambeth choose not to participate in the hearing, the Commission may rule against him.

34. The Commission rejects Mr. Lambeth's allegation that a hearing is unnecessary because the Commission has already determined it has no jurisdiction over him.⁹⁰

35. Mr. Lambeth's argument that the Commission determined it has no jurisdiction over him as a motor carrier is not new, and is rejected for the same reasons provided in paragraph 22 of the Commission's April 10, 2018 Order. Mr. Lambeth errs in arguing that "the Commission has found no legal basis for jurisdiction over me."⁹¹ The Commission has *never* stated or determined in this proceeding that the Commission, in fact, has no jurisdiction over Mr. Lambeth's operations. The Commission has only made a very narrow determination that *Staff did not show* the Commission has jurisdiction *such that* the Commission could grant Staff's Motion to Convert.⁹² Mr. Lambeth has failed to grasp the crucial difference between a finding that Staff's Motion to Convert did not successfully *show* Commission jurisdiction, and a finding that the Commission *actually lacks* jurisdiction, the latter of which the Commission has not found in this matter. Instead, the

⁸⁷ See PFR # 2, ¶ 10.

⁸⁸ See PFR, ¶ 1; Lambeth Response to Staff's Response, ¶¶ 1-4.

⁸⁹ Lambeth Objection, ¶¶ 14-15.

⁹⁰ See Lambeth Response to Staff's Response, ¶ 5.

⁹¹ PFR # 2, ¶ 10. See Lambeth Response to Staff's Response, ¶ 5.

⁹² See April 10, 2018 Order, ¶ 22.

Commission has made clear that it is an open factual question, yet to be determined, whether the Commission actually has jurisdiction over Mr. Lambeth's operations. The Commission granted Mr. Lambeth's original hearing request for the very purpose of allowing and obtaining a proper record on the jurisdictional question.

36. Mr. Lambeth requested, and is entitled to, a hearing to determine the validity of the alleged violations and attendant fines. The Commission has granted him such a hearing. What Mr. Lambeth has *not* shown is that the Commission, in fact, lacks jurisdiction over him as a motor carrier or that the Commission has made any such determination. The Commission agrees with Staff that "[i]n this case there are factual disputes between the parties as to the nature of Respondent's operations as well as to the validity of the alleged violations. Therefore, summary disposition of this docket is not applicable and instead both parties should be allowed to present evidence before the Commission."⁹³

37. The Commission rejects Mr. Lambeth's claim that the Commission's April 10, 2018 Order was unreasonable, arbitrary or capricious because Mr. Lambeth has provided no analysis or definition of these terms which could support his claim, nor has he provided any basis, beyond bald assertion, for the validity of his claim.

38. The Commission rejects Mr. Lambeth's request to re-open and re-litigate Docket No. 12-TRAM-816-PEN because Mr. Lambeth's February 1, 2013, petition for reconsideration of the Commission's final Order in that docket was denied, Mr. Lambeth failed to appeal the Commission's Order, and Mr. Lambeth's PFR #2 in the instant docket provided no reasonable basis for re-opening the docket.⁹⁴

⁹³ Staff's Response to PFR # 2, ¶ 16.

⁹⁴ See PFR # 2, ¶ 8.

39. Mr. Lambeth's May 18, 2018, Response to Staff's Response did not add anything which the above analysis fails to address, and therefore, the Commission provides no further response to it here.

40. Based on the above, the Commission denies Danny Lambeth's Petition for Reconsideration of Order Granting in Part and Denying in Part Danny Lambeth's Petition for Reconsideration. The Commission denies Mr. Lambeth's request for dismissal at this time. The Commission reiterates that there are significant factual matters in dispute in this case, including a determination of whether Mr. Lambeth is a motor carrier subject to Commission jurisdiction and whether dismissal is ultimately warranted. The Commission finds that moving forward with this proceeding, including holding a hearing, is the only way to sort out the factual disputes and arrive at a determination. Thus, the Commission grants Mr. Lambeth's original request for hearing and will schedule a hearing in this matter, along with pre-filed testimony deadlines.

41. In order to schedule pre-filed testimony deadlines and a hearing date, the Commission directs the Prehearing Officer to hold a status conference with Staff and Mr. Lambeth on **Thursday, June 21, 2018, at 9:00 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#. A party's failure to attend the status conference means that a procedural schedule will be set without that party's input.

THEREFORE, THE COMMISSION ORDERS:

A. Danny Lambeth's Petition for Reconsideration of Order Granting in Part and Denying in Part Danny Lambeth's Petition for Reconsideration is denied.

B. Mr. Lambeth's original request for hearing, dated March 10, 2017, is granted, and a status conference shall be held with the parties on June 21, 2018, at 9:00 a.m. by telephone in order to work out a procedural schedule.

C. This Order constitutes final agency action as defined by K.S.A. 77-607(b)(1). Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review on behalf of the agency.⁹⁵

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/24/2018



Lynn M. Retz
Secretary to the Commission

MJD

⁹⁵ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 05/24/2018.

DANNY G. LAMBETH
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/S/ DeeAnn Shupe

DeeAnn Shupe