

**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 Application of Joe Brake dba    ) Docket No: 18-CONS-3262-CMSC  
Brake Inc. (“Operator”) for an Operator’s        )  
License Renewal.    ) CONSERVATION DIVISION  
   )  
\_\_\_\_\_) License No. 31074

**ORDER GRANTING DEFAULT MOTION AND  
ASSESSING COSTS PURSUANT TO K.S.A. 55-164(d)**

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 and concludes as follows:

1.        On January 18, 2018, the Commission issued its *Order Denying Application for License*, finding that Joe Brake dba Brake Inc.’s (Operator) Application for a license renewal did not meet the requirements of K.S.A. 55-155 and K.A.R. 82-3-120.<sup>1</sup> Specifically, the Commission found that the Operator’s “application does not satisfy K.S.A. 55-155(c)(4) as available records demonstrate Operator’s license is currently suspended due to non-compliance with the Commission’s Penalty Order in Docket 16-CONS-4117-CPEN” (16-4117 Docket).<sup>2</sup>

2.        On February 1, 2018, the Operator requested a hearing.

3.        On April 26, 2018, the Commission designated a Prehearing Officer and scheduled a Prehearing Conference for May 10, 2018.<sup>3</sup> The Operator did not appear at the Prehearing Conference.

4.        On June 12, 2018, the Commission issued a *Default Order*, finding the Operator’s failure to attend the May 10, 2018 Prehearing Conference constituted default.<sup>4</sup>

---

<sup>1</sup> *Order Denying Application for License*, ¶¶ 3-4 (Jan. 18, 2018) (Order).

<sup>2</sup> *Id.* at ¶ 4.

<sup>3</sup> *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clauses A & B (Apr. 26, 2018).

<sup>4</sup> *Default Order*, ¶ 7 (June 12, 2018).

5. On June 21, 2018, the Operator filed a Motion to Vacate the *Default Order*. The Commission subsequently vacated its *Default Order* and scheduled a Prehearing Conference for August 9, 2018.<sup>5</sup>

6. On August 9, 2018, a Prehearing Conference was held where the parties agreed to a procedural schedule, including a deadline for the Operator to pre-file direct testimony and a date for the evidentiary hearing requested by the Operator.

7. On August 14, 2018, the Commission issued an *Order Setting Procedural Schedule*, requiring the Operator to pre-file direct testimony by October 1, 2018 and setting an evidentiary hearing for October 18, 2018, at the Commission's Wichita Office.<sup>6</sup> The Order stated: "Any party who fails to attend or participate in the evidentiary hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act."<sup>7</sup>

8. On September 24, 2018, Commission Conservation Staff (Staff) witness, Nancy Borst, pre-filed direct testimony in this docket.

9. On October 18, 2018, the Commission convened the evidentiary hearing in accordance with the aforementioned *Order Setting Procedural Schedule*. The Commission found that notice of the hearing was proper.<sup>8</sup> When addressing preliminary matters at the hearing, Staff stated that the Operator itself requested the hearing, did not file any testimony, and failed to appear at the hearing.<sup>9</sup> Thus, Staff verbally requested the Commission find the Operator to be in default.<sup>10</sup> Based on the facts recounted by Staff, the Commission granted Staff's default motion.<sup>11</sup>

---

<sup>5</sup> *Order Vacating Default Order and Scheduling Prehearing Conference*, Ordering Clauses A & B (July 17, 2018).

<sup>6</sup> *Order Setting Procedural Schedule*, ¶ 6 (Aug. 14, 2018).

<sup>7</sup> *Id.* at ¶ 10.

<sup>8</sup> Hearing Transcript, p. 5 (Oct. 29, 2018) (Tr.).

<sup>9</sup> Tr. at p. 6.

<sup>10</sup> *Id.*

<sup>11</sup> Tr. at p. 12.

10. 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.”

11. Pursuant to K.S.A. 77-520, the Commission finds the Operator’s failure to attend the evidentiary hearing constitutes default. Thus, Staff’s motion requesting the Operator be found in default is granted.

12. In addition, the Commission finds that the Operator participated in the August 9, 2018, Prehearing Conference in this matter, and thus, the Operator agreed to and had notice of both its deadline for pre-filing testimony and the date, place and time scheduled for the evidentiary hearing.<sup>12</sup> The Commission finds that the Operator’s willing participation in the Prehearing Conference gave every indication that the Operator intended to participate in the hearing. The Commission incurred costs in convening the hearing. Moreover, the hearing was related to the fact that in order to obtain approval of its license Application, “[t]he Operator would have to pay the \$100 penalty [from the 16-4117 Docket] and also [either] plug the [subject] well, put the well back into production, transfer the well to another licensed operator or obtain temporary abandonment (“TA”) status.”<sup>13</sup> Having failed to pay the penalty and to show up for the hearing, the Commission finds that under K.S.A. 55-164(d), the Operator should be assessed the \$115.75 in court reporter costs incurred by holding the evidentiary hearing in this proceeding.

---

<sup>12</sup> See *Order Setting Procedural Schedule* at ¶ 6 and Ordering Clause A.

<sup>13</sup> Pre-filed Testimony of Nancy Borst, p. 3 (Sept. 24, 2018).

**THEREFORE, THE COMMISSION ORDERS:**

A. The Operator is in default.

B. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting that this Order Granting Default Motion 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.

C. The Operator shall pay the \$115.75 in court reporter costs in this proceeding. These costs shall be made payable to the Kansas Corporation Commission and submitted to the Conservation Division of the Kansas Corporation Commission, 266 N. Main St., Suite 220, Wichita, Kansas 67202. A credit card payment may be made by calling the Conservation Division at (316) 337-6200.

D. 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.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/01/2018



Lynn M. Retz  
Secretary to the Commission

Mailed Date: 11/02/2018

MJD

**CERTIFICATE OF SERVICE**

18-CONS-3262-CMSC

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 11/01/2018.

JOE BRAKE  
D/B/A JOE BRAKE INC.  
RT 1 BOX 84  
33527 2ND ROAD  
LATHAM, KS 67072

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
m.duenes@kcc.ks.gov

LAUREN WRIGHT, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
Conservation Division  
266 N. Main St. Ste. 220  
WICHITA, KS 67202-1513  
Fax: 316-337-6211  
l.wright@kcc.ks.gov

/s/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe