

**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 Failure of Patrick Development) Docket No: 18-CONS-3356-CPEN
Corporation (“Operator”) to Comply with K.A.R.)
82-3-407 at the Grandon #NO 9 in Miami County,) CONSERVATION DIVISION
Kansas.)
_____) License No. 6279

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 and concludes as follows:

I. Jurisdiction

1. K.S.A. 77-520 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. 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.

II. Findings of Fact

2. On April 5, 2018, the Commission issued a *Penalty Order*, finding that Patrick Development Corporation (Operator) committed one violation of K.A.R. 82-3-407.¹

3. On April 25, 2018, the Operator filed a request for hearing.

¹ *Penalty Order*, ¶ 13 (Apr. 5, 2018).

4. On May 10, 2018, the Commission issued an *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for July 12, 2018.²

5. On July 12, 2018, a Prehearing Conference was held. Staff appeared at the Prehearing Conference, but the Operator did not.

6. On July 19, 2018, Staff filed a Motion for Default Order, stating that “Staff believes Operator was properly noticed and afforded an opportunity to attend and participate in the July 12, 2018, prehearing conference, but failed to do so. Therefore, Staff requests that a default order be issued against Operator.”³

7. On July 27, 2018, the Operator filed a letter requesting a re-hearing stating that “[t]he only reason that I didn’t attend the Hearing was due to the Fact that I suffered a Tear and/or Dissection of the Aorta of my Heart on June 1 and that for with the various complications from it, I spent most of the month in the Cardio-Thoracic ICU.”⁴ The Operator further stated that “[o]n the date of the Hearing, I was in KU Med and I was in no Medical Condition to attend the Hearing.”⁵

8. On August 23, 2018, the Prehearing Officer scheduled a Status Conference for September 27, 2018.⁶ A Status Conference was held on that date, wherein the parties agreed to a procedural schedule.

9. On October 2, 2018, the Commission issued a procedural schedule, setting this matter for hearing on December 20, 2018.⁷

² *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (May 10, 2018).

³ Motion for Default Order, ¶ 5. (Jul. 19, 2018).

⁴ Letter Requesting a Re-hearing, p. 1 (July 26, 2018).

⁵ Letter Requesting a Re-hearing, p. 1.

⁶ *Prehearing Officer Order Scheduling Status Conference*, Ordering Clause A (Aug. 23, 2018).

⁷ *Order Setting Procedural Schedule*, ¶ 7 (Oct. 2, 2018).

10. On October 25, 2018, the Operator requested a continuance of this proceeding, stating that Kerry Patrick would be undergoing a serious medical procedure on November 27, 2018, and was unsure of when he might be able to attend a hearing in Wichita, although it was “believed that for sure that I will be able to come down sometime in January.”⁸

11. On November 15, 2018, the Commission issued an *Order Continuing Proceeding and Setting Status Conference*, cancelling the previous procedural schedule, setting a January 10, 2019, status conference, and stating that any party that fails to attend may be held in default.⁹

12. On January 10, 2019, a Prehearing Conference was held. Staff appeared at the Prehearing Conference, but the Operator did not.

13. On January 16, 2019, Staff filed its second Motion for Default Order in this docket, stating that “Staff believes Operator was properly noticed and afforded the opportunity to participate in the January 10, 2019, prehearing conference, but failed to do so. This is the second prehearing conference the Operator has failed to attend. Therefore, Staff requests that a default order be issued against Operator.”¹⁰

III. Conclusions of Law

14. Pursuant to K.S.A. 77-520(a), the Commission finds the Operator’s failure to attend the January 10, 2019, Prehearing Conference constitutes default. Thus, Staff’s Motion for Default Order is granted.

⁸ Request for Additional Continuance by Kerry Patrick (Oct. 25, 2018). On October 30, 2018, the Operator filed an identical document, except entitled “Request for Continuance Due to November 27 Kidney Surgery, 3rd One.”

⁹ Order Continuing Proceeding and Setting Status Conference, ¶ 11, Ordering Clauses A & B (Nov. 15, 2018).

¹⁰ Motion for Default Order, ¶ 13 (Jan. 16, 2019).

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Motion for Default Order is granted.

B. Pursuant to 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 by mail.

C. 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; Emler, Commissioner

Dated: 02/05/2019



Lynn M. Retz
Secretary to the Commission

Mailed Date: 02/06/2019

JRM

CERTIFICATE OF SERVICE

18-CONS-3356-CPEN

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 02/05/2019.

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