

**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

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**ORDER VACATING DEFAULT ORDER AND SCHEDULING  
PREHEARING CONFERENCE**

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:

**Background**

1. On January 18, 2018, the Commission issued its *Order Denying Application for License* in this matter.
2. On February 1, 2018, Joe Brake dba Brake Inc. (Operator) requested a hearing.
3. On April 26, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for May 10, 2018.<sup>1</sup>
4. On May 10, 2018, Commission Conservation Staff (Staff) appeared at the Prehearing Conference, but the Operator did not.
5. On June 4, 2018, Staff filed a Motion for Default Order (Motion for Default), stating that "Staff verbally motioned [at the Prehearing Conference] for a default order to be issued, but upon the [P]rehearing [O]fficer's request agreed to file a written motion for a default order."<sup>2</sup> Staff stated

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<sup>1</sup> *Order Designating a Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Apr. 26, 2018).

<sup>2</sup> Motion for Default, ¶ 4 (June 4, 2018).

its belief that the “Operator was properly noticed and afforded an opportunity to attend and participate in the May 10, 2018, prehearing conference, but failed to do so.”<sup>3</sup>

6. On June 12, 2018, the Commission issued a *Default Order*, finding that the Operator’s failure to attend the May 10, 2018 Prehearing Conference constituted default.<sup>4</sup> The *Default Order* stated that “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.”<sup>5</sup>

7. On June 21, 2018, the Operator filed a written Motion to Vacate the Commission’s *Default Order*, asserting that it failed to receive notice of a Prehearing Conference.<sup>6</sup> The Operator alleged that it made numerous unsuccessful attempts to communicate with various Commission Staff members and asserted that the Commission has cashed or redeemed the Operator’s payment for a license.<sup>7</sup>

### **Findings and Conclusions**

8. Pursuant to K.S.A. 77-520(c), and based upon the Operator’s prima facie allegations in its Motion to Vacate, the Commission vacates its June 12, 2018 *Default Order*. The Commission finds that a new Prehearing Conference shall be scheduled.

### **THEREFORE, THE COMMISSION ORDERS:**

- A. The Operator’s Motion to Vacate the Commission’s *Default Order* is granted.
- B. A Prehearing Conference is scheduled for **Thursday, August 9, 2018, at 9:30 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#.

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<sup>3</sup> Motion for Default, ¶ 5.

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

<sup>5</sup> *Default Order*, Ordering Clause B.

<sup>6</sup> Motion to Vacate, p. 1 (June 21, 2018).

<sup>7</sup> Motion to Vacate, p. 1.

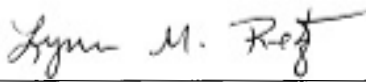
C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>8</sup>

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: 07/17/2018 \_\_\_\_\_

  
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Lynn M. Retz  
Secretary to the Commission

07/18/2018  
Mailed Date: \_\_\_\_\_

MJD

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<sup>8</sup> K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

## 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 07/17/2018.

JOE BRAKE  
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/S/ DeeAnn Shupe  
DeeAnn Shupe