

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the matter of the failure of Michael L. Smith) Docket No: 20-CONS-3160-CPEN
("Operator") to comply with K.A.R. 82-3-120.)
) CONSERVATION DIVISION
)
_____) License No: 35520

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. 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 December 17, 2019, the Commission issued a *Penalty Order* against Michael L. Smith (Operator) for one violation of K.A.R. 82-3-120 because an unplugged well, for which Operator is responsible, remained on Operator's expired license.¹

3. On January 21, 2020, Operator requested a hearing.²

¹ See Penalty Order, ¶¶ 6-8, 10, Exhibit A (Dec. 17, 2019).

² See Letter Requesting Hearing (Jan. 21, 2020).

4. On January 28, 2020, the Commission issued an order designating a prehearing officer and setting a February 11, 2020, prehearing conference. The order stated “Any 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.”³

5. On February 11, 2020, Commission Staff appeared at the scheduled prehearing conference, but Operator did not. The next day, Staff filed a Motion for Default Order, stating “Staff believes Operator was properly noticed and afforded an opportunity to attend and participate in the February 11, 2020, prehearing conference, but failed to do so. Therefore, Staff requests that a default order be issued against Operator.”⁴ Operator has not responded to Staff’s motion.

6. The Commission takes administrative notice of its records,⁵ which indicate that Operator has renewed his license but has not paid the penalty assessed in this matter.

III. Conclusions of Law

7. Pursuant to K.S.A. 77-520(a), the Commission concludes that Operator’s failure to attend the February 11, 2020, Prehearing Conference constitutes default. Thus, Staff’s *Motion for Default Order* may be granted.

THEREFORE, THE COMMISSION ORDERS:

A. Staff’s *Motion for Default Order* is granted. Operator is found to be in default in this proceeding.

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.

³ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause D (Jan. 28, 2020).

⁴ Motion for Default Order, ¶ 6. (Feb. 12, 2020).

⁵ See K.A.R. 82-1-230(h).

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).⁶

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 03/03/2020



Lynn M. Retz
Executive Director

Mailed Date: 03/03/2020

JRM

⁶ 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

20-CONS-3160-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail and electronic service on 03/03/2020.

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/S/ DeeAnn Shupe

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