

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

Before Commissioners:                   Dwight D. Keen, Chair  
  Susan K. Duffy  
  Andrew J. French

In the matter of the application of Ace )   Docket No: 23-CONS-3143-CMSC  
Energy, LLC (Operator) for an Operator's )  
License Renewal.                            )   CONSERVATION DIVISION  
  )  
\_\_\_\_\_ )   License No: 34998

**ORDER DESIGNATING PRESIDING OFFICER  
AND SETTING PREHEARING CONFERENCE**

The Commission rules as follows:

1.       On November 28, 2022, Operator submitted a license renewal application, which has been neither granted nor denied. On November 30, 2022, Commission Staff motioned for the designation of a presiding officer and the setting of a prehearing conference.<sup>1</sup> On December 7, 2022, Operator filed an objection and asked to have until January 13, 2022, to respond to Staff's motion. Staff's motion is granted; Operator's request is denied.<sup>2</sup>

2.       Although K.A.R. 82-3-120(h) provides Commission conservation division staff the authority to approve license renewal applications, under K.S.A. 55-155 such authority ultimately resides with the Commission. Staff states both that it does not believe it would be appropriate to issue a license to Operator without Commission input, and that Operator's license renewal application should be denied.<sup>3</sup> That Operator disagrees with Staff simply highlights the need to get this matter

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<sup>1</sup> Staff cited concerns "based on Operator's long history of non-compliance with Commission rules and regulations, a potential relationship between Operator and [a different operator] with a suspended and expired license [and...] the findings of a jury that Operator committed fraud and breach of contract against another Kansas operator." *See* Mot., ¶ 1.

<sup>2</sup> The Commission, however, declines "hold Operator's license as unexpired." *See* Mot., ¶ 10. Parties are directed to review K.S.A. 77-511(d) for any applicability it may have regarding the present situation. ("If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the state agency has taken final action upon the application for renewal...").

<sup>3</sup> *See* Mot., ¶ 9.

before the Commission, and the designation of a presiding officer and the setting of a prehearing conference is an appropriate way to do so.

3. The purpose of this docket shall be to consider and render a decision upon Operator's license renewal application. Under K.S.A. 77-551(c), the Commission finds a Presiding Officer should be designated in this proceeding to determine procedural matters that may arise prior to a hearing on the merits, including but not limited to conducting prehearing conferences.<sup>4</sup> The Commission also finds a Prehearing Conference should be scheduled.

4. Under K.A.R. 82-1-228(d)(1), any party may either "appear before the Commission and be heard in person on that party's own behalf," or appear before the Commission through a licensed attorney. Because Operator is an artificial entity, it cannot appear in person.<sup>5</sup> Thus, Commission regulations require artificial entities such as Operator to appear before the Commission via counsel. Even if Commission regulations did not require counsel in this matter, the Commission finds it would be in the public interest to require counsel via order.<sup>6</sup>

**THEREFORE, THE COMMISSION ORDERS:**

A. The Presiding Officer for prehearing matters in this proceeding shall be Jonathan R. Myers, Assistant General Counsel, Kansas Corporation Commission, 266 N. Main Street, Suite 220, Wichita, Kansas, 67202-1513, telephone number (316) 337-6245, email address j.myers@kcc.ks.gov. The Commission may designate other persons to serve in this capacity.

B. A Prehearing Conference is scheduled for **Thursday, January 5, 2023, at 2:30 p.m.** by telephone. The conference call information is: telephone number (913) 227-1201, passcode 417418. **Operator must appear via a licensed attorney.**

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<sup>4</sup> See also K.S.A. 77-516 and K.S.A. 77-517.

<sup>5</sup> See *State ex rel. Stephan v. Williams*, 246 Kan. 681, 691 (1990).

<sup>6</sup> The administration of justice is efficiently furthered by requiring persons licensed to practice law and familiar with procedure to represent artificial entities. See *In re Arnold*, 274 Kan. 761, 770 (2002). See also K.S.A. 77-515(c) ("A state agency may require a corporation or other artificial person to participate by counsel.").

C. At the Prehearing Conference, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, scheduling of a hearing with the Commission, and any other issues that will promote the orderly and prompt resolution of this proceeding. At the Prehearing Conference, without further notice, this proceeding may be converted into a conference hearing or a summary proceeding for disposition of this matter as provided by the Kansas Administrative Procedure Act (KAPA). 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.<sup>7</sup>


D. Although a Presiding Officer is designated, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room. Any filing received after 5:00 p.m. shall be considered filed the next business day. In addition, any late filing shall be accompanied by a Motion to File Out-of-Time. **The Commission directs electronic service of all filings in the docket to include service on the Presiding Officer and mailed service of all filings to be directed to the Presiding Officer's attention.**

E. The attorney designated to appear on behalf of the agency in this proceeding is Tristan Kimbrell, Litigation Counsel, telephone number (316) 337-6200, t.kimbrell@kcc.ks.gov.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 12/20/2022

  
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Lynn M. Retz  
Executive Director

Mailed Date: 12/20/2022

JRM

<sup>7</sup> K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

**CERTIFICATE OF SERVICE**

23-CONS-3143-CMSC

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 12/20/2022.

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/S/ KCC Docket Room  
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