

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

In the Matter of the Investigation of **Matthias**)
W. Schroeder of Hunter, Kansas, Regarding)
the Violation of the Motor Carrier Safety)
Statutes, Rules and Regulations and the) Docket No. 19-TRAM-051-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

**STAFF'S MOTION TO DISMISS
RESPONDENT'S REQUEST FOR HEARING**

Litigation Counsel for Staff of the State Corporation Commission of the State of Kansas (Litigation Counsel, Staff and Commission, respectively) presents Staff's motion seeking dismissal of Matthias W. Schroeder's (Respondent's) Request for a Hearing, with prejudice. In support of its Motion, Litigation Counsel states as follows:

I. Background

1. On June 21, 2018, Commission Staff (Staff) Special Investigator (SI) Gregory Askren conducted a compliance review of the operations of Matthias W. Schroeder. As a result of this investigation, the special investigator identified seven violations of the Kansas Motor Carrier Safety Statutes, Rules and Regulations.

2. On June 28, 2018, SI Askren sent a copy of Part A and Part B of his review, along with a twenty-seven page document detailing how Mr. Schroeder could remediate his motor carrier operations. The envelope was addressed to Mr. Schroeder's address of record. The envelope was returned to sender marked "Unclaimed" on July 21, 2018.

3. On August 9, 2018, the Commission issued Respondent a Penalty Order that assessed a civil penalty of \$4,100 for the seven violations identified during the compliance review. The Penalty Order was sent via certified mail to Mr. Schroeder's address of record on

August 10, 2018. The Penalty Order was returned to sender marked “Unclaimed” on August 28, 2018. The Penalty Order was then resent via regular U.S. mail on September 17, 2018 and was not returned.

4. Pursuant to K.S.A. 77-531(b), “service by mail is complete upon mailing.” Staff therefore established a service date of September 20, 2018 and payment of the civil fine was due on or before October 22, 2018.

5. The Commission’s August, 9, 2018, Penalty Order advised Mr. Schroeder that “a request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Matthias W. Schroeder must file, within fifteen (15) days from the date of service of this Order, the request for hearing...”

6. The deadline by which Mr. Schroeder was required to submit a Request for Hearing on the Commission’s August 9, 2018, Penalty Order was October 5, 2018. No timely request was received.

7. On October 29, 2018, a collection letter was sent to Mr. Schroeder at his address of record. The collection letter reminded Mr. Schroeder of his obligation to pay the overdue civil penalty and stated that “payment must be made within the next ten days.” The collection letter was not returned.

8. On November 13, 2018, Staff filed its Motion to Suspend Intrastate Motor Carrier Operations, requesting the Commission issue an order suspending Mr. Schroeder’s intrastate motor carrier operations for failure to comply with the requirements of the Commission’s Penalty Order of August 9, 2018.

9. On November 20, 2018, the Commission issued its Order Suspending Intrastate Motor Carrier Operations. The Order immediately suspended “all intrastate commercial motor

carrier operations” of Matthias W. Schroeder and was sent via certified mail to Mr. Schroeder’s address of record.

10. The Commission’s Order Suspending Intrastate Motor Carrier Operations advised Mr. Schroeder that “any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought...within fifteen (15) days of the date of service of this Order.”

11. On December 10, 2018, Staff received Mr. Schroeder’s Request for Hearing dated December 8, 2018. The request for hearing is attached hereto as “Attachment A” and made part hereof by reference. In the request for hearing, Mr. Schroeder specifically references the Out of Service Order stating “Re:...letter received 11/23/19 stating 15 days to request hearing,” and further states “I know nothing about any [expletive] 4600 (sic) fine to the K.C.C.”

12. On January 9, 2019, the Commission received a “Request for Information—Kansas Opens Record Act” request (KORA Request) from Mr. Schroeder dated January 7, 2019. The Kora Request is attached hereto as “Attachment B” and made part hereof by reference. In the request Mr. Schroeder states affirmatively “I did not file a request for hearing on the out of service order.” Additionally, he states, “be advised I only get my mail every two to three weeks, or when I know I have bills coming.”

I. Failure to State a Claim

13. Mr. Schroeder’s Request for Hearing should be dismissed by the Commission for failure to state a claim. Mr. Schroeder’s Request for Hearing was filed on December 10, 2018, in response to the Commission’s November 20, 2018, Order Suspending Intrastate Motor Carrier Operations. However, Mr. Schroeder has subsequently clarified, through his statements in his KORA Request, that “he did not file a request for hearing on the out of service order.”

14. Based on Mr. Schroeder's clear statement, his Request for Hearing is not in reference to the Commission's November 20, 2018, Order Suspending Intrastate Motor Carrier Operations. The Request for Hearing makes reference to Mr. Schroeder not being aware of the Commission's August 9, 2018, Penalty Order. However, Mr. Schroeder is well beyond the deadline to Request a Hearing on the Penalty Order. Pursuant to K.S.A. 77-531(b), "service by mail is complete upon mailing." The Penalty Order was mailed to Mr. Schroeder twice, once through Certified Mail on August 10, 2018 and a second time through regular U.S mail on September 20, 2018. Even when using the later of those two dates for the date of service, Mr. Schroeder was required to file a Request for Hearing on the Penalty Order by October 5, 2018 at the latest. Mr. Schroeder's December 10, 2018, Request for Hearing is at least seventy-one days out of time.

15. Mr. Schroeder claims to have no knowledge of the Commission's August 9, 2018, Penalty Order. However, in his KORA Request, Mr. Schroeder provides his own explanation for his ignorance, stating "be advised I only get my mail every two to three weeks, or when I know I have bills coming." Staff sent multiple mailings to Mr. Schroeder over a six month period. Mailings sent by certified mail were returned as "unclaimed" and others were sent and never returned. All mailings were sent to the same address, but only upon the sixth mailing did Mr. Schroeder respond. The record clearly demonstrates that Mr. Schroeder either willfully ignored the Commission's correspondence or goes several months without retrieving his mail.

16. Mr. Schroeder's inattentiveness to the arrival of his mail does not toll the deadline by which he is required to request a hearing from the Commission. Pursuant to K.S.A. 77-531(b), "service by mail is complete upon mailing," not when Mr. Schroeder decides to check or acknowledge his mail.

17. Kansas courts have long held there is a presumption that a letter properly addressed and mailed was received. *Shriver v. National Bank*, 117 Kan. 638, 649, 232 Pac. 1062 (1925). See also, e.g., *State v. Thrash*, 267 Kan. 715, Syl. ¶ 4, 987 P.2d 345 (1999) (Kansas Department of Revenue is entitled to rely upon presumption that letters sent by ordinary mail postage prepaid are received by the addressee in ordinary course of mail).

18. In *Owen Lumber Co. v. Chartrand*, 283 Kan. 911, 918, 157 P.3d 1109, 1115 (2007) the Kansas Supreme Court restated that the theory of presumptive receipt of legal service by mail is complete “when the summons or writ is deposited in the post office, properly addressed, with the proper amount of postage.” The Court further stated that:

“generally “service by mail is complete upon mailing, [therefore] nonreceipt of the papers does not affect the validity of the service.” 62B Am.Jur.2d, Process § 212, p. 784. However, “[i]f service by mail is to be effective, the statute or rule authorizing such kind of service must be complied with.” 62B Am.Jur. 2d, Process § 211, p. 783.”

19. In the present case, Staff complied with the applicable statute, K.S.A. 77-531(b), by providing service by mail to the last known address of Mr. Schroeder. Staff’s attempts to serve Mr. Schroeder through certified mail actually met a higher standard than that required by the applicable law. Out of the utmost caution, when the copy of the Penalty Order sent by certified mail was returned, Staff resent the August 9, 2018, Penalty Order through regular mail in compliance with the statute.

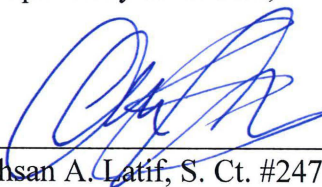
20. That Mr. Schroeder now claims he is unaware of the Penalty Order does not obviate his responsibility to comply with the properly served and pending order of the Commission. His responsibility for his own ignorance is obvious, given he, by his own admission, checks his mail “every two to three weeks” and based on his failure to retrieve repeated mailings sent by certified mail goes much longer without visiting his mailbox.

21. To the extent that Mr. Schroeder would like further documentation or clarification of the evidence of the violations alleged in the August 9, 2018, Penalty Order, Staff is more than happy to provide it to him whether informally or through compliance with KORA requests. Substantial testimony, documents and confidential copies of his review have been made available to him thus far. However, the deadline for contesting such violations has long past and Mr. Schroeder has an existing responsibility to comply with the dictates of the August 9, 2018, Penalty Order. Additionally, his motor carrier operations remain out-of-service to this date.

22. Because Mr. Schroeder states unequivocally that he “did not file a request for a hearing on the out of service order” and because he is not entitled to a hearing on the Commission’s August 9, 2018, Penalty Order, Mr. Schroeder fails to state a claim for which relief can be granted by the Commission. Due to that failure, Mr. Schroeder’s Request for Hearing should be dismissed.

WHEREFORE, for the reasons set forth above, Litigation Counsel for Staff respectfully requests the Commission find that Respondent’s Request for Hearing should be dismissed.

Respectfully submitted,



Ahsan A. Latif, S. Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
(785) 271-3181 (Telephone)
(785) 271-3124 (Facsimile)
Email: a.latif@kcc.ks.gov

For Commission Staff

ATTACHMENT "A"

Docket No. 19-TRAM-051-PEN

Fax Cover Sheet

TO:

K.C.C.

FROM:

Matt Scroeder

COMPANY:

DATE:

12/8/15

FAX NUMBER:

TOTAL NUMBER OF PAGES
INCLUDING COVER

785-271-3124

2

PHONE NUMBER:

SENDER'S PHONE NUMBER:

785 271 3145

*785-545-5445 - cell
Sender - Fax 785-528-3595*

RE:

corrected letter

2016 1970 0001 0574 3397

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

NOTES/COMMENTS:

forward page - 2

From Matt Schroeder

Re: ↑ certified # 7016 1970 COD/05743300
letter received 11/23/18

Stating 15 days to request
hearing.

2) I know nothing about
any Trucking 4600 fuel
to the R.C.C.

3) I have never received any
papers stating any dollar amount
is owed and for what.

4) I need a hearing to be
set probably in the middle
of January 2019. I won't be ~~there~~
available in December of 2018.

5) I'm going to need more info
about this B.S.

THE MATTS.

ATTACHMENT "B"

Fax Cover Sheet

TO: *K.C.C.*

FROM: *Matt Scroeder*

COMPANY:

DATE: *1/7/19*

FAX NUMBER:

785-271-3124

TOTAL NUMBER OF PAGES INCLUDING COVER

2

PHONE NUMBER:

785-271-3145

SENDER'S PHONE NUMBER:

785-545-5448 cell
Sender Fax 785-524-3595

RE:

KCC CoSett 19-Team-ost per

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

NOTES/COMMENTS:

Real page - 2

DOT# 2508525

REQUEST FOR INFORMATION – KANSAS OPEN RECORDS ACT

Comes now, Matt Schroeder, purported defendant (respondant) to the course of this action before the unconstitutional Kansas Corporation Commission and do hereby claim and assert my constitutional rights both federal (United States Constitution) and Kansas State Constitution and do not waive any of my rights including my God given right to time. God meaning the one true God creator of all.

I cannot fully prepare for a hearing on January 17, 2019, unless I have the following information and possibly more information.

I realize it will take the paper shufflers time to get all of this information that I need to properly be ready for any such hearing and request a two week extension so that the commission can copy and mail to me, Matt Schroeder, the following information this two weeks would be from the date that I receive said documents.

I did not file a request for a hearing on the out of service order.

I did ask for a hearing because I had no paperwork, no claims that are made against me, Matt Schroeder.

I did ask for the hearing to be set "probably in the middle of January 2019".

I did state that I needed more information about these accusations.

Need copies of any and all letters of communications from Kansas Highway Patrol, sheriff officers, voice and or audio communications complete with dates, times, lawyers, pictures, police reports and investigators reports.

Need copies of all federal laws and state laws mentioned in letter allegedly mailed on November second of 2018 in so called case #(Docket # -19-Tram-051-Pen) I have no way of researching these laws.

Need copies of Oath of office for any and all people working for the KCC of the State of Kansas. This means everyone that is employed and chairpersons, commission members, lawyers, investigators, secretaries and any person working for the so-called Kansas Corporation Commission.

What branch of corporate law is the so-called Kansas Corporation Commission a branch of.

Copies of what designated the fictitious amount of \$4,100 in fines, levies and penalties.

Names of any and all witnesses and addresses to the alleged wrong doing of any laws of the state of Kansas, so that subpoena's may be served if need be.

Copies of any and all sworn complaints.

Copies of any and all traffic citations.

I am not a lawyer nor do I hire any lawyers to deal with these things, if you do send a letter that is fine but be advised I only get my mail every two to three weeks, or when I know I have bills coming. I will be checking my mail weekly for any correspondence from, you people, when I am home.

Waiting for your response,


Matt Schroeder
Matt Schroeder

Do Bell
Hunter
67452

STATE OF KANSAS)
) ss.
COUNTY OF Shawnee)

VERIFICATION

Ahsan A. Latif, being of lawful age, being duly sworn upon his oath deposes and says that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Motion to Dismiss Respondent's Request for Hearing* and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Ahsan A. Latif, S. Ct. # 24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

Subscribed and sworn to before me this 25th day of January, 2019.



Notary Public

My Appointment Expires: 4-28-21



CERTIFICATE OF SERVICE

19-TRAM-051-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Motion to Dismiss Respondent's Request For Hearing was served via electronic service and first class U.S. mail this 25th day of January, 2019, to the following:

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

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

MATTHIAS W. SCHROEDER, OWNER
MATTHIAS W. SCHROEDER
PO BOX 1
HUNTER, KS 67452
schroeder74j@gmail.com


Ann M. Murphy