

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the matter of the failure of ANR Pipeline) Docket No: 25-CONS-3329-CPEN
Company (Operator) to comply with K.A.R 82-)
3-701 and K.A.R. 82-3-702 at two cathodic) CONSERVATION DIVISION
protection boreholes in Meade County, Kansas.)
_____) License No: 32953

**ORDER ON PETITION FOR RECONSIDERATION
AND REQUEST FOR STAY**

Operator has filed an untimely petition for reconsideration of the Commission’s Penalty Order in this docket, alleging jurisdictional issues and service issues, and contesting factual matters. Operator seeks a stay of the suspension of its license while reconsideration is pending. As described below, the Commission grants reconsideration – limited to questions regarding whether the Commission has jurisdiction and whether service was sufficient – and stays suspension.

1. On April 1, 2025, the Commission issued a Penalty Order in this docket against Operator for violation of K.A.R. 82-3-701 and K.A.R. 82-3-702.

2. The Commission’s Penalty Order was issued pursuant to K.S.A. 55-164, which provides 30 days for a person “to make written request to the Commission for a hearing.”¹ Accordingly, upon initial calculation, Operator’s request for hearing was due Thursday, May 1, 2025. But the Penalty Order was also an order in summary proceedings under the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.*,² which means that under K.S.A. 77-531(b), three days must be added to the deadline. This pushes the calculation of Operator’s deadline to Sunday, May 4, 2025. But under K.S.A. 77-503(c), deadlines falling on a Sunday run until the end of the next day that

¹ See K.S.A. 55-164(b).

² See K.S.A. 55-162, K.S.A. 55-164, K.S.A. 77-503, K.S.A. 77-537

is not a Saturday, Sunday, or legal holiday. So, Operator's final deadline to submit a written request for hearing in this matter was Monday, May 5, 2025.

3. Operator did not request a hearing.

4. The Commission's Penalty Order was an initial order under the KAPA, and under K.S.A. 77-530(b), once the 30-day deadline to request a hearing on an initial order elapses, the order becomes a final order. A party may petition for reconsideration of a final order pursuant to K.S.A. 77-529(a)(1), which provides 15 days to file a petition for reconsideration. Thus, upon initial calculation, any petition for reconsideration of this matter was due by Tuesday, May 20, 2025. Adding three days, as required by K.S.A. 77-531(b), pushes the final deadline for a petition for reconsideration to Friday, May 23, 2025.

5. On May 30, 2025, Commission Staff suspended Operator's license pursuant to the Penalty Order, due to Operator's non-compliance with the Penalty Order.³

6. On June 30, 2025, Operator petitioned for reconsideration and requested a stay of the license suspension while reconsideration is pending. Since Operator's petition for reconsideration was filed after May 23, 2025, it was untimely. Commission Staff did not respond to the petition.

7. Operator makes three main arguments in support of its petition for reconsideration. First, it alleges it never received the Penalty Order, and so its time limit for requesting a hearing and/or seeking reconsideration did not begin to run.⁴ Operator is mistaken on the general point of law; K.S.A. 77-531(b) states "Service by mail is complete upon mailing" – in other words, regardless of receipt. Nevertheless, given the specific allegations made by Operator, the Commission finds it acceptable to grant reconsideration on the question of whether service was made.

³ To reach this finding, the Commission takes administrative notice of its records. *See* K.A.R. 82-1-230(h).

⁴ *See* Petition for Reconsideration, ¶ 5 (Jun. 30, 2025).

8. Second, Operator argues the Commission lacks jurisdiction regarding this matter because the federal Pipeline Safety Act preempts enforcement of K.A.R. 82-3-701 and 702.⁵ In many arenas, the timeframe for contesting subject matter jurisdiction is more flexible than the timeframe for raising other issues; the Commission finds it practical to consider this jurisdictional question here and now, rather than potentially needing to do so elsewhere. Thus, the Commission finds it acceptable to grant reconsideration on the question of whether it has jurisdiction regarding this matter.

9. Third, Operator alleges the Penalty Order contains misstatements of fact and incomplete statements of fact regarding the cathodic boreholes at issue.⁶ If the Commission has jurisdiction and service was effective, then these allegations are statutorily untimely. The Commission, however, shall hold the question of whether to reconsider these issues in abeyance until the more fundamental questions regarding jurisdiction and service are resolved.

10. The Commission finds it reasonable to stay suspension of Operator's license while jurisdiction and service are reconsidered.

11. 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 of what is being reconsidered, including but not limited to conducting prehearing conferences.⁷ The Commission also finds that a prehearing conference should be scheduled.

12. 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.⁸ Thus, Commission regulations require artificial entities such as Operator to appear before the Commission

⁵ See *id.* at ¶ 9.

⁶ See *id.* at ¶¶ 10-11.

⁷ See also K.S.A. 77-516 and K.S.A. 77-517.

⁸ See *State ex rel. Stephan v. Williams*, 246 Kan. 681, 691 (1990).

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.⁹

THEREFORE, THE COMMISSION ORDERS:

A. Operator's petition for reconsideration is granted, but only on the questions of whether service was made and whether the Commission has subject matter jurisdiction.

B. The suspension of Operator's license for non-compliance with the Penalty Order is stayed until those matters have been reconsidered.

C. 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 jon.myers@ks.gov. The Commission may designate others to serve in this capacity.

D. A prehearing conference is scheduled for **Friday, August 15, 2025, at 3:00 p.m.** by telephone. The conference call information is: telephone number (253) 205-0468, Meeting ID 5248125436.¹⁰ **Operator must appear via a licensed attorney.**

E. 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.¹¹

⁹ 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.").

¹⁰ If prompted, there is no Participant ID; just press pound to continue.

¹¹ K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

F. 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.**

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

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 07/29/2025



Celeste Chaney-Tucker
Executive Director

Mailed Date: 07/29/2025
JRM

CERTIFICATE OF SERVICE

25-CONS-3329-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 07/29/2025.

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