

**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 Virgil)	Docket No.: 18-CONS-3348-CEXC
Stuber (“Operator”) for an Exception to K.A.R.)	
82-3-120(k) to Allow Issuance of an)	CONSERVATION DIVISION
Operator’s License Less Than One Year)	
Subsequent to Revocation of Previous License.)	License No.: 3930
In the Matter of the Application of Virgil)	
Stuber (“Operator”) for an Operator’s License)	Docket No.: 18-CONS-3263-CMSC
Renewal.)	

ORDER CONSOLIDATING AND RESCINDING DENIAL

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 22, 2015, in the *Matter of the Failure of Virgil Stuber (“Operator”) to report activity that occurred during the 2013 calendar year in compliance with K.A.R. 82-3-409*, Docket No. 15-CONS-571-CPEN (Jan. 22, 2015) [*hereinafter* Docket 15-571], the Commission issued a Penalty Order against the Operator for failure to file required annual fluid injection reports and assessing the Operator a \$100 fine.¹ Therein, the Commission notified the Operator that failure to comply with the Penalty Order would result in the suspension of the Operator’s license without further notice.²

2. On January 18, 2018, in the *Matter of the Application of Virgil Stuber (“Operator”) for an Operator’s License Renewal*, Docket No. 18-CONS-3263-CMSC (Jan. 18,

¹ Penalty Order at 2, Docket 15-571.

² *Id.* at 3.

2018) [hereinafter Docket 18-3263], the Commission denied the Operator's November 16, 2017 Application for license renewal due to the Operator's license suspension for non-compliance with the Penalty Order in Docket 15-571.³

3. On March 20, 2018, in the *Matter of the Application of Virgil Stuber ("Operator") for an Exception to K.A.R. 82-3-120(k) to Allow Issuance of an Operator's License Less Than One Year Subsequent to Revocation of Previous License*, Docket No. 18-CONS-3348-CEXC (Mar. 20, 2018) [hereinafter Docket 18-3348], the Operator filed an Application for an exception to K.A.R. 82-3-120(k) requesting that the Operator be issued an operator's license less than one year after revocation.⁴ The Operator alleged that he had complied with the Penalty Order in Docket 15-571 and there was no intention on behalf of the Operator to violate Commission regulations but Mr. Stuber's wife, who suffers from dementia, had presumably lost or hidden the notices and orders from the Commission requiring attention to these matters.⁵ The Operator stated that he contacted Commission Staff (Staff) and Staff did not oppose granting the Operator's license.⁶ The Operator specifically requested an exemption from K.A.R. 82-3-120(k).⁷ However, both the Application and publication notice also cited to K.A.R. 82-3-120(j), with the latter stating that exception is specifically pursuant to subsection (j).⁸ The Operator's proof of publication also cited Docket 18-3263 as the relevant docket.⁹

4. On June 22, 2018, Staff filed a Motion for Designation of a Prehearing Officer and the Scheduling of a Prehearing Conference. Staff confirmed that the Operator was in

³ Order Denying Application for License at 2, Docket 18-3263.

⁴ Application at 1-2, Docket 18-3348.

⁵ *Id.* at 1.

⁶ *Id.* at 2.

⁷ *Id.* at 1-2; Legal Proof of Publication, Docket 18-3348 (Mar. 28, 2018).

⁸ Application at 1, Docket 18-3348; Legal Proof of Publication, Docket 18-3348.

⁹ Legal Proof of Publication, Docket 18-3348.

compliance with Docket 15-571 as of February 23, 2018.¹⁰ Staff pointed out two legal deficiencies with the Operator's Application for exception and publication. First, Staff noted that the Operator's request for exemption pursuant to K.S.A. 82-3-120(k) was erroneous because that provision contains a penalty for failure to obtain or renew a license prior to operating which was inapplicable here.¹¹ Secondly, Staff noted that the Operator cannot be exempted from K.A.R. 82-3-120(j), forbidding re-licensure sooner than one year from a revocation, because the same provision appears in statute at K.S.A. 55-155(e), which the Commission cannot waive.¹² Staff provided that it may be appropriate to interpret the Operator's Application to request an exception from K.A.R. 82-3-120(i), the provision that deems a denial equivalent to revocation.¹³

5. On July 17, 2018, the Commission issued an Order granting Staff's motion and setting the Prehearing Conference for August 9, 2018.¹⁴

Finding and Conclusions:

6. To effectuate the most economical and efficient resolution, the Commission addresses, *sua sponte*, the question of whether Dockets 18-3263 and 18-3348 should be consolidated. Pursuant to K.A.R. 82-1-224(a), "[f]or good cause shown, the joinder of any proceeding with another proceeding may be permitted by the commission [but] . . . issues that are not germane to each other and that require separate and distinct proof shall not be joined in the same proceeding." Additionally, "[t]wo or more dockets may be consolidated by the commission for hearing on a common record if the commission deems it to be in the public interest to do so."¹⁵

¹⁰ Motion for Designation of a Prehearing Officer and the Scheduling of a Prehearing Conference at 1, Docket 18-3348 (Jun. 22, 2018).

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ Order Designating Prehearing Officer and Setting Prehearing Conference at 2 (Jul. 17, 2018).

¹⁵ K.A.R. 82-1-224(b).

7. The Commission finds that the Commission's license denial in Docket 18-3263 prompted the Operator's request for exception to Commission regulations in Docket 18-3348. Therefore, the Commission finds the issues raised in both Dockets to be germane and it is in the public interest to consolidate the two dockets for resolution upon a common record.

8. Turning to the Application for an exception to Commission regulations; while the Commission finds the Operator's Application is defective on its face, the inference drawn therefrom, as noted by Staff, would indicate that the Operator seeks an exception from the provision mandating that the Operator's license denial constitutes a license revocation under K.A.R. 82-3-120(i). Therefore, the Commission finds that the Operator's Application for exception and notice of publication is not fatally defective.

9. However, the Commission finds it is not prudent to retroactively waive a regulation that has taken effect pursuant to a lawful order of the Commission without rescinding the related order. Therefore, in order to efficiently resolve this matter, the Commission will consider the Operator's Application for exception as a motion to rescind the license denial in Docket 18-3263.

10. The Commission's Order Denying Application for License in Docket 18-3263 cites non-compliance with Docket 15-571 as the sole reason for denial. Staff has confirmed that the Operator has demonstrated compliance with Docket 15-571. The Commission finds that the Operator has acted in good faith in working with Staff to achieve such compliance. Therefore, due to the Operator's good faith approach and Staff's non-objection to granting licensure, the Commission finds and concludes good cause exists to grant the Operator's request, as reinterpreted. The Commission therefore rescinds its January 18, 2018 Order Denying Application for License in Docket 18-3263 and directs Staff to process the Operator's License Renewal Application accordingly.

THEREFORE, THE COMMISSION ORDERS:

A. Docket Nos. 18-CONS-3348-CEXC and 18-CONS-3263-CMSC shall be consolidated. Docket No. 18-CONS-3348-CEXC shall be the lead docket.

B. The Commission's January 18, 2018 Order Denying Application for License in Docket 18-3263 is rescinded and Staff shall process the Operator's Application for license renewal accordingly.

C. The August 9, 2018 Prehearing Conference is cancelled.

D. 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).¹⁶

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/26/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 07/27/2018

DLK/sc

¹⁶ 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-3348-CEXC

18-CONS-3263-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 07/26/2018.

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