

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Failure of Patrick Development) Docket No: 19-CONS-3045-CPEN
Corporation (“Operator”) to report activity that)
occurred during the 2017 calendar year in) CONSERVATION DIVISION
compliance with K.A.R. 82-3-409.)
_____) License No. 6279

SECOND 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. Within seven days 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 August 9, 2018, the Commission issued a *Penalty Order*, finding that Patrick Development Corporation (Operator) committed one violation of K.A.R. 82-3-409.¹

3. On August 16, 2018, the Operator requested a hearing.

4. On September 6, 2018, the Commission issued its *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for October 11, 2018.²

¹ *Penalty Order*, ¶ 8 (Aug. 9, 2018).

² *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Sept. 6, 2018).

5. On October 11, 2018, a Prehearing Conference was held. Staff appeared at the Prehearing Conference, but the Operator did not.

6. On October 19, 2018, Staff filed a Motion for Default Order, stating that “Staff believes Operator was properly noticed and afforded the opportunity to attend and participate in the October 11, 2018, prehearing conference, but failed to do so. Therefore, Staff requests that a default order be issued against Operator.”³

7. On October 30, 2018, the Commission issued a *Default Order* against the Operator. The same day, the Operator filed an appeal of the *Default Order*, citing Kerry Patrick’s “serious health problems,” an “error in the U3C computer program,” and that Mr. Patrick “simply forgot.”⁴

8. On November 29, 2018, the Commission issued an *Order on Appeal of Default Order*, in which the Commission vacated its October 30, 2018, *Default Order* and scheduled a January 30, 2019, prehearing conference.⁵

9 On January 10, 2019, a Prehearing Conference was held. Staff appeared at the Prehearing Conference, but the Operator did not.

10. On January 16, 2019, Staff filed its second Motion for Default Order in this docket, stating that “Staff believes Operator was properly noticed and afforded the opportunity to participate in the January 10, 2019, prehearing conference, but failed to do so. This is the second prehearing conference the Operator has failed to attend. Therefore, Staff requests that a default order be issued against Operator.”⁶

³ Motion for Default Order, ¶ 5 (Oct. 19, 2018).

⁴ See filing entitled “Patrick Development Corporation to Appeal the Default Order” (Oct. 30, 2018).

⁵ *Order on Appeal of Default Order*, ¶8 and Ordering Clause B (Nov. 29, 2018).

⁶ Motion for Default Order, ¶10 (Jan. 16, 2019).

III. Conclusions of Law

11. Pursuant to K.S.A. 77-520(a), the Commission finds the Operator's failure to attend the January 10, 2019, Prehearing Conference constitutes default. Thus, Staff's Motion for Default Order is granted.

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Motion for Default Order is granted.


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.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 02/05/2019



Lynn M. Retz
Secretary to the Commission

Mailed Date: 02/06/2019

JRM

CERTIFICATE OF SERVICE

19-CONS-3045-CPEN

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 02/05/2019.

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