

**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 Emergency Suspension of Authority of)
PERFORMANCE ELECTRIC LLC, of OTTAWA KS, for) 18-TRAM-5152-TRA
Failure to Maintain Insurance Coverage as Required by the)
Motor Carrier Safety Statutes, Rules and Regulations.)

**EMERGENCY ORDER SUSPENDING AUTHORITY
FOR FAILURE TO MAINTAIN INSURANCE COVERAGE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed the pleadings and record, and being fully advised in the premises, the Commission finds the following:

I. BACKGROUND

1. The Commission received notice from the insurance provider of PERFORMANCE ELECTRIC LLC that insurance would expire on May 12, 2018.
2. On April 16, 2018, the Commission's Transportation Division mailed a "notice of Insurance Cancellation" letter to PERFORMANCE ELECTRIC LLC's address of record. The Notice of Cancellation provided PERFORMANCE ELECTRIC LLC with direction on how to submit proof of insurance coverage and supplied the carrier with Commission contact information to assist the carrier in resolving any questions or concerns.
3. PERFORMANCE ELECTRIC LLC has not provided the Commission with proof of insurance coverage as required by K.S.A. 66-1,128 and K.A.R. 82-4-22(d).

II. DISCUSSION

4. K.S.A. 77-536 governs the use of emergency proceedings. The statute provides, in part, as follows:

- (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.
- (b) The state agency may take only such action as is necessary:
 - (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

5. K.S.A. 66-1,129a(a) provides: "The Commission, at any time for good cause shown, may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by the Commission."

6. K.A.R. 82-4-22 governs insurance requirements for public and private motor carriers. K.A.R. 82-4-22(e) provides:

Operation by a motor carrier without compliance with this regulation shall result in emergency proceedings pursuant to K.S.A. 77-536, and amendments thereto, to suspend the certificate, permit, or license issued to the carrier.

7. The failure of PERFORMANCE ELECTRIC LLC to maintain the appropriate insurance coverage constitutes grounds for an emergency proceeding, as provided for in K.S.A. 77-536, K.S.A. 66-1,129a(a) and K.A.R. 82-4-22.

8. The Commission orders the immediate suspension of PERFORMANCE ELECTRIC LLC's certificate, permit or license.

9. PERFORMANCE ELECTRIC LLC may not operate with a suspended authority. Any such operation is considered an intentional and willful violation of the motor carrier statutes,

orders, and regulations, and is subject to a fine of up to \$5,000 per day, pursuant to K.S.A. 66-1,142b.

10. Pursuant to K.S.A. 77-536, K.S.A. 66-1,129a, K.S.A. 66-118b and K.A.R. 82-4-22, and amendments thereto, PERFORMANCE ELECTRIC LLC may submit a written request for a hearing within 15 days of the date the Order is served. The hearing will be held within 10 days from the date of receipt of the written hearing request. Written requests for a hearing shall be served on the Transportation Division at 1500 SW Arrowhead Road, Topeka, Kansas 66604.

11. PERFORMANCE ELECTRIC LLC may resolve this matter by submitting proof of insurance to the Commission within 15 days of the date of this Order in one of two ways: (1) request insurance provider to forward the update electronically through the National Online Registry (NOR); or, (2) in writing addressed to the Kansas Corporation Commission, Attention Transportation Division, 1500 SW Arrowhead, Topeka, Kansas 66604.

12. Submission of proof of insurance coverage shall be in the form of the standard insurance forms as established in 49 C.F.R. 387 and adopted by K.S.A. 66-1,128 and K.A.R. 82-4-24a. Pursuant to K.A.R. 82-4-24a, the Commission will accept the Form E for motor carrier bodily injury.

13. **Failure either to request a hearing or to provide adequate proof of coverage prior to the close of the fifteenth (15th) day after this Order is served will result in the automatic revocation of PERFORMANCE ELECTRIC LLC's operating authority.**

14. If PERFORMANCE ELECTRIC LLC's authority is revoked, it must submit a new application for authority in compliance with Commission rules and regulations.

THEREFORE, THE COMMISSION ORDERS:

(A) The foregoing statements, discussion and analysis are hereby adopted as findings and conclusions of the Commission.

(B) Pursuant to K.S.A. 77-536, K.S.A. 66-1,129a(a) and K.A.R. 82-4-22, the

Commission immediately suspends PERFORMANCE ELECTRIC LLC's certificate, permit or license that is necessary to carry on the business of a private or public motor carrier.

(C) The Commission will automatically reinstate PERFORMANCE ELECTRIC LLC's operating authority if proof of coverage in compliance with K.A.R. 82-4-22, and amendments thereto, is received by the Commission on or before the close of business on the fifteenth (15th) day following the date stamp of this Order.

(D) Pursuant to K.S.A. 77-529, K.S.A. 66-118b, and amendments thereto, a party may request a hearing on the above issues by serving the request on the Commission's Transportation Division at 1500 SW Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days of the date of service of this Order. If service is by mail, service is complete upon mailing, but three (3) days shall be added to the allowed time. Hearings will be scheduled upon written request. Failure to timely request a hearing will result in a waiver of PERFORMANCE ELECTRIC LLC's right to a hearing, and this Order will become a Final Order resulting in the revocation of PERFORMANCE ELECTRIC LLC's authority to operate commercial motor vehicles in the State of Kansas.

(E) Pursuant to K.S.A. 66-1,129a a hearing requested in this matter shall be held within 10 days from the receipt of PERFORMANCE ELECTRIC LLC's written request.

(F) A corporation shall appear before the Commission by a Kansas licensed attorney.¹

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

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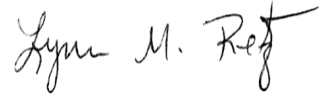
¹ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

MAY 17 2018

Dated: _____

A handwritten signature in black ink, reading "Lynn M. Retz". The signature is written in a cursive style with a prominent "L" and "R".

Lynn M. Retz
Secretary to the Commission