

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of Addressing the COVID-19)
pandemic in the State of Kansas.) Docket No. 20-GIMX-393-MIS

SPECIAL ORDER REGARDING TRANSPORTATION MATTERS

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. PROCEDURAL BACKGROUND

1. On March 12, 2020, Governor Laura Kelly issued a State of Disaster Emergency Proclamation (Proclamation), effective upon issuance, and covering the entirety of Kansas. The proclamation suspended the provisions of any statute, order, rules, or regulations applicable to any state agency, if strict compliance would prevent, hinder, or delay necessary action in coping with COVID-19.¹

2. Related to the Proclamation, Governor Kelly has issued a series of executive orders, including but not limited to, temporarily prohibiting mass gatherings;² directing statewide “stay home” requirements;³ directing state agencies to extend renewal deadlines for any licenses, certificates, permits, and registrations issued by state agencies, provided such was in good standing

¹See <https://governor.kansas.gov/wp-content/uploads/2020/03/2020-03-12-Proclamation.pdf>; see also K.S.A. 48-924; K.S.A. 48-925(c).

²See Executive Order No 20-04 (Mar. 17, 2020), Kanas Register at Vol.39, No. 12A, at p. 299 (Mar. 19, 2020). See Executive Order No. 20-14 (Mar. 24, 2020); Executive Order No. 20-18 (Apr. 7, 2020); Executive Order 20-55 (Apr. 18, 2020).

³ See Executive Order No. 20-16 (Mar. 28, 2020). See Executive Order No. 20-24 (Apr. 16, 2020).

as of March 12, 2020;⁴ and granting emergency relief from enforcement of certain motor carrier regulations for those motor carriers providing direct assistance in support of relief efforts related to COVID-19.⁵ Governor Kelly issued a subsequent order extending emergency relief for certain carriers until May 15, 2020.⁶

3. In response to the Governor's Proclamation and executive orders, the Commission, in Docket No. 20-TRAM-392-PEN, issued an order temporarily suspending the requirements of K.S.A. 66-1,115a and K.A.R. 82-4-26 requiring attendance at a motor carrier safety seminar for new motor carrier applicants. The Commission further extended the deadline for existing motor carriers to attend such safety seminars when ordered to do so as part of pending Penalty or Out-of-Service orders.⁷

4. Additionally, March 19, 2020, the Commission, via emergency proceedings pursuant to K.S.A. 77-536(b), generally stayed all open dockets and suspended all deadlines in all Commission dockets.⁸ On April 9, 2020, the Commission modified its March 19, 2020, emergency order, stating that all deadlines will be extended by 30 days.⁹ On April 14, 2020, the Commission clarified its modification, stating that all filing and regulatory deadlines in place on March 23,

⁴See Executive Order No. 20-19 (Apr. 9, 2020).

⁵See Executive Order No. 20-09 (Mar. 20, 2020).

⁶See Executive Order No. 20-22 (Apr. 13, 2020).

⁷See Emergency Order Temporarily Suspending the Requirement to Attend Commission Sponsored Safety Seminars During State of Emergency (Mar. 17, 2020) (20-TRAM-392-PEN).

⁸See Emergency Order Staying All Dockets (Mar. 19, 2020) (issued in this docket).

⁹See Amended Emergency Order Staying All Docket (Apr. 9, 2020).

2020, would be extended an additional 30 days from the lifting of stay-at-home restrictions, or until the Commission directed otherwise.¹⁰

5. The Commission's Transportation Division has unique public interest considerations not fully provided for in the general emergency orders issued on March 19, April 9, and April 14, 2020.

II. JURISDICTION

6. Pursuant to K.S.A 66-1,108a, 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

7. In light of the above referenced orders and the circumstances now prevailing, the Commission finds:

- a. The regulation of motor carriers through its Transportation Division frequently involves time sensitive public safety concerns;¹¹
- b. Consistent, timely motor carrier compliance with regulatory requirements significantly reduces potential danger to the motoring public;
- c. The motor carrier industry provides an essential and ongoing service that by necessity requires ongoing regulation of such activities;
- d. Most Commission statutes and regulations pertaining to regulation of transportation matters may be administered without preventing, hindering, or delaying necessary action in coping with COVID-19; and

¹⁰See Order Clarifying Amended Emergency Order Staying All Dockets (Apr. 14, 2020).

¹¹See, e.g., K.S.A. 66-1,108b.

e. As it pertains to transportation matters, it is no longer apparent that the Commission's emergency orders in this docket prevent or avoid immediate danger to the public health, safety or welfare that justifies the use of emergency proceedings, or remedy a situation for which use of emergency adjudication is otherwise provided by law.¹²

III. CONCLUSIONS OF LAW

8. Given the above, the Commission's general emergency orders in this docket shall no longer apply in matters involving the Transportation Division. This includes any amending or clarifying emergency order, as well as any subsequent-issued emergency order, unless such future order explicitly states otherwise. For clarification, the Commission's *Emergency Order Temporarily Suspending the Requirement to Attend Commission Sponsored Safety Seminars During State of Emergency*, issued in Docket No. 20-TRAM-392-PEN, on March 17, 2020, was entered in response on the Governor mandated social distancing and prohibitions on gathering of ten or more which remain in place, and thus continues to apply. Additionally, the Commission's *Order Temporarily Waiving Notary Requirement*, issued in this docket on April 21, 2020, relies upon the Commission's discretionary authority under K.A.R. 82-1-219(g), and thus is not an emergency order. Accordingly it shall continue to apply to matters involving the Transportation Division.

9. To the extent any person reasonably believes that statutes, orders, rules, or regulations pertaining to transportation matters obligate such person to take an action pertaining to such matters that would (1) prevent, hinder, or delay necessary action in coping with COVID-19; (2) violate any executive order; or (3) put such individual, or any other individual, at

¹²See K.S.A. 77-536(b).

meaningful risk of contracting COVID-19, then such person is directed to **NOT TAKE such action** and to notify Transportation Division staff of the nature of the issue and how it relates to COVID-19. The Commission will take up such issues as necessary, on a case-by-case basis, and intends to error on the side of public health and safety, rather than on the side of strict compliance with motor carrier statutes, orders, rules or regulations.

10. Regarding dockets involving the Transportation Division that were open as of March 19, 2020, which was the date the Commission stayed all dockets, or have been opened since then:

- a. In dockets where a final order had been issued but the deadline for filing a petition for reconsideration of the final order had not elapsed as of March 16, to the extent it is legally permissible the Commission intends to consider any petition for reconsideration as timely if it is filed within 30 days of this special order being issued.
- b. In dockets where no evidentiary hearing has been held, but a prehearing officer has been assigned, a new prehearing conference will be set to establish or re-establish deadlines. Please note that evidentiary hearings might not be scheduled during these conferences due to uncertainty surrounding COVID-19.
- c. In dockets where a request for hearing has already been submitted, but no prehearing officer has been assigned, a prehearing officer will soon be assigned, and a prehearing conference will be scheduled.
- d. In penalty dockets where no request for hearing was submitted, but as of March 19, the time for requesting a hearing had not elapsed, the Commission intends to recognize any request as timely as long as it is submitted within 30 days of this

special order being issued. The penalty order will become final if no timely request for hearing is submitted.

11. Regarding settlement agreements, the provisions of paragraph 10 shall not apply. Motor carriers that are party to settlement agreements approved by the Commission before March 19 shall have 45 days from the date this special order is issued to become current in their obligations under the agreement. Any settlement agreements approved by the Commission subsequent to this special order shall be subject to the dates in the original settlement agreement.

12. No filings pertaining to this special order will be accepted in this docket. Any person taking issue with any aspect of this special order is directed to file such complaint in the docket in which the consequences of this order would apply.

13. The Special Order shall be served on all parties to open dockets involving the Transportation Division. This Special Order shall also be posted on the commission's website, as well as on the Kansas Public Square website.¹³

THEREFORE THE COMMISSION ORDERS:

A. All Commission March 19, April 9, and April 14, 2020 emergency orders in this docket shall no longer apply in matters involving the Transportation Division. This includes any amending or clarifying emergency order, as well as any subsequent-issued emergency order, unless such future order explicitly states otherwise. The Commission's March 17, 2020, *Emergency Order Temporarily Suspending the Requirement to Attend Commission Sponsored Safety Seminars During State of Emergency*, issued in Docket No. 20-TRAM-392-PEN, and the Commission's April 21, 2020, *Order Temporarily Waiving Notary Requirement*, issued in this

¹³The Kansas Public Square website is: <http://publicsquare.ks.gov>.

docket on April 21, 2020, however, shall continue to apply to matters involving the Transportation Division.

B. To the extent any person reasonably believes that statutes, orders, rules, or regulations pertaining to transportation matters obligate such person to take an action pertaining to such matters that would (1) prevent, hinder, or delay necessary action in coping with COVID-19; (2) violate any executive order; or (3) put such individual, or any other individual, at meaningful risk of contracting COVID-19, then such person is directed to **NOT TAKE such action** and to notify Transportation Division staff of the nature of the issue and how it relates to COVID-19. The Commission will take up such issues as necessary, on a case-by-case basis, and intends to err on the side of public health and safety, rather than on the side of strict compliance with motor carrier statutes, orders, rules or regulations.

C. Regarding dockets involving the Transportation Division that were open as of March 19, 2020, which was the date the Commission stayed all dockets, or have been opened since then:

- a. In dockets where a final order had been issued but the deadline for filing a petition for reconsideration of the final order had not elapsed as of March 16, to the extent it is legally permissible the Commission intends to consider any petition for reconsideration as timely if it is filed within 30 days of this special order being issued.
- b. In dockets where an evidentiary hearing has already been held but no final order been issued, the Commission will issue such an order as soon as practicable.
- c. In dockets where no evidentiary hearing has been held, but a prehearing officer has been assigned, a new prehearing conference will be set to establish or re-

establish deadlines. The Commission's ability to schedule evidentiary hearings will be clarified in a future order.

- d. In dockets where a request for hearing has already been submitted, but no prehearing officer has been assigned, a prehearing officer will be assigned, and a prehearing conference will be scheduled.
- e. In penalty dockets where no request for hearing was submitted, but as of March 19, the time for requesting a hearing had not elapsed, the Commission recognizes any request as timely as long as it is submitted within 30 days of this special order being issued. The penalty order will become final if no timely request for hearing is submitted.

D. Regarding settlement agreements, the provisions of Ordering Clause C shall not apply. Motor carriers that are party to settlement agreements approved by the Commission before March 19 shall have 45 days from the date this special order is issued to become current in their obligations under the agreement. Any settlement agreements approved by the Commission subsequent to this special order shall be subject to the dates in the original settlement agreement.

E. No filings pertaining to this special order will be accepted in this docket. Any person taking issue with any aspect of this special order is directed to file such complaint in the docket in which the consequences of this order would apply.

F. The Special Order shall be served on all parties to open dockets involving the Transportation Division. This Special Order shall also be posted on the commission's website, as well as on the Kansas Public Square website.¹⁴

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 04/28/2020



Lynn M. Retz
Executive Director

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¹⁴The Kansas Public Square website is: <http://publicsquare.ks.gov>.

CERTIFICATE OF SERVICE

20-GIMX-393-MIS

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 04/28/2020.

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