20200109145444 Kansas Corporation Commission

Kansas Corporation Commission

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Phone: 785-271-3100 Fax: 785-271-3354 http://kcc.ks.gov/

Laura Kelly, Governor

1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner

January 9, 2020

### NOTICE OF PENALTY ASSESSMENT 20-TRAM-282-PEN

Robert Spilman, Managing Member RWS Trucking LLC PO Box 51 Erie, KS 66733

This is a notice of a penalty assessment against RWS Trucking LLC (RWS Trucking) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on December 20, 2019, by Kansas Corporation Commission Special Investigator Verna Jackson. Penalties are assessed in accordance with the FY 2020 Uniform Penalty Assessment Matrix, approved by the Commission on July 16, 2019. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** RWS Trucking has been assessed a \$250 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$250, through your personal account with the Kansas Corporation Commission's KTRAN system located at https://puc.kcc.ks.gov/ktran/. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of RWS Trucking to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website <u>http://www.kcc.state.ks.us/trans/safety\_meetings.htm</u>. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

**IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing.** A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. RWS Trucking must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at https://puc.kcc.ks.gov/e-filing/e-express/, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2018 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$250 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully

Ahsan A. Latif Litigation Counsel (785) 271-3118

### THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:	Dwight D. Keen, Chain Shari Feist Albrecht Susan K. Duffy	
In the Matter of the Inve Trucking LLC, of Erie, Violation(s) of the Motor Ca Rules and Regulations and Authority to Impose Penalti the Revocation of Motor Car	KS, Regarding the ) rrier Safety Statutes, ) I the Commission's ) es, Sanctions and/or )	

### PENALTY ORDER

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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. JURISDICTION

1. Pursuant to K.S.A 2018 Supp. 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.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard

to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

### II. BACKGROUND

4. RWS Trucking LLC (RWS Trucking) has private and common operating authority with the Commission and further operates under USDOT number 2274835.

5. Roberta Sellers attended the Procedures for Safety Compliance Seminar presented by the Kansas Corporation Commission, on May 27, 2016, on behalf of RWS Trucking.

6. RWS Trucking is a private and common motor carrier which primarily hauls general freight, metal, sheets, coils, rolls, logs, poles, beams, lumber, building materials, grain, feed, hay, livestock, oilfield equipment paper products, farm supplies and construction.

### III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on December 20, 2019, Commission Staff (Staff) Special Investigator Verna Jackson conducted a safety compliance review of the operations of RWS Trucking. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

> a. On November 13, 2019, RWS Trucking required or permitted its driver, Dusty Spilman, to operate a CDL-required commercial motor vehicle, a

2005 Peterbilt, VIN ending in 832615, GVWR 45,000 lbs., in intrastate commerce from Erie, Kansas to Parsons, Kansas. This trip is evidenced by Driver's Log, dated November 13, 2019, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, RWS Trucking failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The special investigator discovered two (2) violations of this type. The carrier's failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,112. Staff recommends a fine of \$250.

### IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds RWS Trucking committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$250 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from RWS Trucking be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this

Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety\_meetings.htm.

11. Finally, Staff recommends that RWS Trucking submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

### V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over RWS Trucking because it is a motor carrier as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f.

13. The Commission finds RWS Trucking committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

### THE COMMISSION THEREFORE ORDERS THAT:

A. RWS Trucking LLC, of Erie, KS is hereby assessed a \$250 civil penalty for one (1) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. RWS Trucking is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order.

D. RWS Trucking is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

E. Pursuant to K.S.A. 2018 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at https://puc.kcc.ks.gov/e-filing/e-express/, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of RWS Trucking's right to a hearing, and this Penalty Order will become a Final Order assessing a \$250 civil penalty against RWS Trucking, and ordering a representative from RWS Trucking to attend a Commissionsponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

F. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil

penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2018 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$250 is due in thirty (30) days from the date of service of this Order. Payment of \$250 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <u>https://puc.kcc.ks.gov/ktran/</u>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$250 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of RWS Trucking's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

I. 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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: \_\_\_\_\_

Lynn M. Reg

Lynn M. Retz Executive Director

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# **ATTACHMENT "A"**

## · UNITED STATES DEPARTMENT OF TRANSPORTATION

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Arrowhead Rd

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## Violations

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1 Drimonur 201 51(b)(4)		Violations Discovered			
<b>1. Primary: 391.51(b)(4)</b> Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).	Fed	State	Total		
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RWS Trucking LLC failed to maintain the responses of the annual MVR at least once every 12 months. The MVRs were dated 4/23/2018 and 12/4/2019.	L			_ !	

## **Safety Fitness Rating**

### This Investigation is Not Rated

You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

This was an offsite investigation. An offsite investigation allows FMCSA to evaluate your safety compliance with minimal disruption to your business. An offsite investigation will not result in a safety rating.

DataQs. If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to https://dataqs.fmcsa.dot.gov.

## BASIC: Driver Fitness Process Breakdown: Monitoring and Tracking

RWS Trucking LLC failed to maintain the annual inquiry of the driver's motor vehicle report in the driver's DQ file. When the annual inquiry is not accomplished, the motor carrier is not doing their due diligence to verify if the driver continues to maintain a valid operator's license. With different regulations causing CDL licenses to be revoked, it is for the best interest of the motor carrier to verify the driver has a valid license.

### **Specific Recommended Remedies**

# To implement Safety Improvement Practices, the following list are recommended practices related to Monitoring and Tracking:

1. Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, Federal regulations, and State and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.

## Recommendations

### 1. Additional Information

Please visit the CSA outreach site for additional guidance: https://csa.fmcsa dot.gov.

### 2. If you have any questions concerning this report, contact KCC.

If you have any questions concerning this report, please contact the Kansas Corporation Commission, 1500 SW Arrowhead Rd, Topeka, KS 66604 or call 785-271-3104.

### 3. SMS website

You are encouraged to review your company's SMS results and take action to make the roads safer for everyone. Your public safety records are available at the following website: http://ai.fmcsa.dot.gov/sms. Also visit https://portal.fmcsa.dot.gov which provides real time data and the opportunity to review you safety data. You will need to use your PIN number that has been provided by FMCSA. Registration and access is free.

### 4. Obtain a copy of each driver's driving record and review it.

Obtain a copy of each driver's driving record and review it annually

### 5 Drug and Alcohol Clearinghouse

Find out your responsibilities and requirements for FMCSA's Drug and Alcohol Clearinghouse by visiting https://clearinghouse.fmcsa.dot.gov . Implementation begins January 6, 2020.

### 6. CAP Requirement

The KCC requires that you prepare a corrective action plan, addressing the measures taken to correct all the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Submit the letter along with copies of your supporting evidence to:

Email: g.davenport@kcc.ks.gov FAX: 785-271-3124

or mail. Kansas Corporation Commission Attn: Gary Davenport 1500 SW Arrowhead Rd Topeka, KS 66604-4027

#### 7. CAP Penalty

Motor carriers are responsible for complying with all tasks ordered by the Commission. You are required to prepare a corrective action plan (CAP), addressing the measures taken to correct all the violations identified within this report. Failure to fulfill this requirement may lead to the issuance of further penalties or other repercussions, including revocation of authority to operate intrastate in Kansas.

### 8. Acknowledgement Stmt - Offsite

I acknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of [motor carrier's] operating authority and/or the impoundment of [motor carrier's] commercial motor vehicles.

**Carrier Representative** 

Date

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax

#### 785-271-3124.

### \* 9. Monetary Penalties

I understand that monetary penalties will be assessed as a result of violations found in this compliance investigation. The penalty schedule can be found at this web site: http://kcc.ks.gov/trans.penalty\_assessment\_table.htm

Carrier Name

Carrier Official

### 10. Safety Seminar Requirement

Motor carriers are responsible for complying with all tasks ordered by the Commission in its Penalty Order. In addition to paying any civil fines issued, carriers are also required to attend a Commission sponsored safety seminar Failure to fulfill this requirement may lead to the issuance of further penalties or other repercussions, including revocation of authority to operate intrastate in Kansas.

# **ATTACHMENT "B"**

RWS Trucking LLC DRIVER'S LOG NOTE: All entitides must be neatly printed in blocks.			
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### **CERTIFICATE OF SERVICE**

20-TRAM-282-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail/hand delivered on \_\_\_\_01/10/2020

AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov ROBERT W. SPILMAN, MEMBER RWS TRUCKING LLC PO BOX 51 ERIE, KS 66733 rws.truckingllc@yahoo.com

/S/ DeeAnn Shupe DeeAnn Shupe