

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

In the Matter of the Investigation of **Danny G.**)
Lambeth, d/b/a Truck Wholesale of)
Wellsville, Kansas, Pursuant to the Kansas)
Highway Patrol Issuance of a Notice of) Docket No. 17-GIMM-408-KHP
Violation(s) and Invoice for the Violations of)
the Kansas Motor Carrier Safety Statutes, Rules)
and Regulations.)

**STAFF'S MOTION TO CONVERT REQUEST FOR HEARING TO
EMERGENCY OUT OF SERVICE PROCEEDING**

The Staff of the State Corporation Commission of the State of Kansas (Staff) presents the above-captioned matter to the Commission seeking to convert this docket to an Emergency Suspension of All Intrastate Motor Carrier Operations Proceeding against Danny G. Lambeth d/b/a Truck Wholesale of Wellsville, Kansas (“Respondent”), for the purpose of obtaining a Commission order directing Respondent to cease and desist motor carrier operations and to assess civil fines and sanctions against Respondent, for the violation of Kansas motor carrier safety rules and regulations. In support of its Motion, Staff states as follows:

1. Respondent operates as a public motor carrier of property in the State of Kansas as defined in K.S.A. 66-1,108(f).
2. Respondent primarily operates a salvage yard for industrial equipment and over-the-road tractor trailers. The Commission has general authority over all motor carriers operating in the state of Kansas, and is required to inquire into any neglect or violations of the laws

pertaining to the regulation of motor carriers.¹ The Commission has found repeatedly that it has jurisdiction over Respondent with regard to the regulation of safety matters.²

3. Respondent does not appear to be registered as a motor carrier with the U.S. Department of Transportation (USDOT) and does not operate under any known USDOT Number.

4. Respondent's filing of a Request for Hearing challenging a recent motor carrier inspection as well as previous impoundments of Respondent's vehicles lead Staff to review Respondent's long history of noncompliance as a motor carrier and examine Respondent's present operations.

I. 06-DGLM-197-SHO

5. On September 1, 2005, a Show Cause Order was issued to Respondent in 06-DGLM-197-SHO for violations of the Motor Carrier Safety Statutes and Regulations for not allowing a compliance review to take place. Special Investigators Lance Jones and Larry Baumchen were prevented from entering the property after Respondent blocked his driveway with a fork-lift and a truck.

6. On October 19, 2005, an evidentiary hearing was held after which Staff filed a motion to dismiss its initial Show Cause in order to protect Respondent's rights due to a clerical error in the order. Staff's Motion was granted on December 19, 2005.

II. 06-DGLM-908-SHO

7. On February 17, 2006, a Show Cause Order was filed in 06-DGLM-908-SHO in regards to Respondent's failure to permit a compliance review. An evidentiary hearing was held on May 15, 2006. The Commission issued an order on July 26, 2006, finding on Count I that

¹ K.S.A. 66-1,108b.

² 06-DGLM-908-SHO Order, Paragraph 28; 12-GIMM-246-KHP Order, Paragraph 45; 12-TRAM-816-Pen Order, Paragraph 10; K.S.A. 66-1,108b; 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto.

Respondent improperly displayed a dealer tag during operation of a commercial motor vehicle without authority and on Count II that Respondent intentionally avoided a compliance review. The order included a fine for \$5,000, but stayed the fine for 30 days so Respondent could make efforts to reach compliance and avoid the fine.

8. On September 15, 2006, Staff filed a Report and Recommendation advising the Commission stay the \$5,000 fine after Respondent declared he did not operate over twenty-five miles from his principal place of business and therefore did not require authority to operate. The Commission issued an order on October 19, 2006, staying the fine of \$5,000, but remained “greatly concerned” that Respondent “may still be operating despite his representations to the contrary.”³ As a result, the Commission ordered that “the maximum fine of \$5,000 will be assessed *per incident for every day* pursuant to a finding of intentional violations,”⁴ should Respondent fail to comply with the Commission’s regulations. Additionally, the Commission reiterated that K.S.A. 66-1,129a(b) authorizes the Director of Transportation to exercise his discretion in impoundment of Respondent’s vehicles for failure to comply with a Commission order.

III. Impoundment Letter of October 7, 2007

9. On October 7, 2007, Transportation Director Mike Hoeme (“Director Hoeme”) directed the Kansas Highway Patrol (KHP) to impound “any vehicles” of Respondent for violations of Commission’s Order of October 19, 2006 in 06-DGLM-908-SHO.

³ Order, October 19, 2006, Paragraph 3.

⁴ *Ibid.*

IV. Impoundment Letter of March 22, 2008

10. On March 22, 2008, Director Hoeme authorized the impoundment of Respondent's 1982 International truck and a 1993 Ford L800 Semi-tractor truck, due to violations found during a KHP commercial motor vehicle inspection.

V. Impoundment Letter of February 15, 2009

11. On February 15, 2009, Director Hoeme authorized the impoundment of Respondent's 1969 Kenworth truck and a 1993 Freightliner tractor, due to violations found during a KHP commercial motor vehicle inspection.

VI. Impoundment Letter of March 27, 2009

12. On March 27, 2009, Director Hoeme authorized the impoundment of Respondent's 1982 International truck and a 1985 Peterbilt tractor, due to violations found during a KHP commercial motor vehicle inspection.

VII. 09-TRAM-884-PEN

13. On May 20, 2009, Respondent was issued a Penalty Order in 09-TRAM-884-PEN reinstating the \$5,000 fine issued in 06-DGLM-908-SHO as well as an additional \$20,000 in fines for the violations documented by the impound letters issued on October 7, 2007, March 22, 2008, February 15, 2009 and March 27, 2009. Additionally the order required Respondent attend a safety seminar, complete a compliance review and authorized Staff to assess \$5,000 fines per incident of operations thereafter.

14. On June 1, 2009, Respondent requested a jury trial in federal court. The United States District Court remanded the case back to the Commission on October 13, 2009. No Request for Hearing was filed by Respondent with the Kansas Corporation Commission and the \$25,000 fine and conditions remained in effect.

VIII. 12-GIMM-246-KHP

15. On October 4, 2011, Director Hoeme authorized the impoundment of Respondent's 1970 Kenworth tow truck with a missing VIN plate after being found operating in violation of the Commission's order of October 19, 2006 in 06-DGLM-908-SHO. Respondent requested a hearing which was held on October 10, 2011.

16. On November 21, 2011, the Commission issued an order in docket number 12-GIMM-246-KHP finding Respondent subject to the Commission's jurisdiction and assessing a fine of \$5,000. The total fines due at the time of this order was \$30,000.

IX. Impoundment Letter of March 28, 2012

17. On March 28, 2012, Director Hoeme authorized the impoundment of Respondent's 1996 International truck after being found operating in violation of the Commission's order of October 19, 2006, in 06-DGLM-908-SHO.

X. 12-TRAM-816-PEN

18. On May 9, 2012, Staff filed its Report & Recommendation, recommending a \$5,000 penalty due to the March 28, 2012 impoundment wherein Respondent was found operating without Commission authority beyond twenty-five miles of his principal place of business.

19. On May 22, 2012, Respondent filed a Request for Hearing and Kurt S. Brack entered his appearance on behalf of Respondent. Mr. Brack withdrew as Respondent's attorney on December 3, 2012. On December 18, 2012, an evidentiary hearing took place.

20. On January 16, 2013, the Commission issued an order which, among other things, waived \$30,000 of Respondent's previously assessed fines as part of terms and conditions agreed to in a joint motion filed by Staff and Respondent, although Respondent "stated at the

Evidentiary Hearing that while his prior counsel jointly proposed the terms to the Commission, he personally did not agree to them.”⁵ The Order also removed the Out of Service designation in place since the 06-DGLM-908-SHO Order, and waived an additional \$4,000 in fines if Respondent agreed to a payment plan to pay the remaining \$2,500.

XI. 13-TRAM-626-CPL

21. On, April 11, 2013, Staff filed Staff’s Status Report in 13-TRAM-626-CPL stating that Respondent had not set up a payment plan or otherwise complied with the Commission’s Order or more generally with the relevant motor carrier statutes and regulations. As a result Staff moved forward with the sale of Respondent’s 1996 Kenworth tow truck and 1996 International truck.

22. No order was issued by the Commission in 12-TRAM-816-PEN or 13-TRAM-626-CPL reinstating the \$5,000 fine for Respondent’s failure to pursue compliance as stipulated in the Commission’s January 16, 2013 Order.

23. No order reinstating the Out-of-Service designation or the \$5,000 fine per incident per day penalty from the 06-DGLM-908-SHO docket was issued.

XII. 17-GIMM-408-KHP

24. On January 5, 2017, the KHP issued a Notice of Violation(s) against Danny G. Lambeth d/b/a Truck Wholesale of Wellsville, Kansas for alleged violations found during a January 3, 2017, routine motor carrier stop and inspection conducted by the KHP. Respondent was assessed \$650.00 in civil fines, comprised of the following violations: a \$150.00 fine for No or Improper Safety Chains for Towbar, citing 393.71H10, a \$150.00 fine for Flat tire or Fabric Exposed, citing 393.75A, a \$150.00 fine for Inoperative Turn Signal, citing 393.9TS and a \$250.00 fine for No Drivers Record of Duty Status, citing 395.8A.

⁵ Paragraph 15, Order, January 16, 2003.

25. On February 22, 2017, Respondent initiated a formal challenge with the KHP. This challenge was initiated 18 days out of time. A properly filed challenge would have been due within 30 days of receipt of the Notice of Violation(s), or February 4, 2017.

26. On February 27, 2017, the KHP denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

27. On March 10, 2017, the Kansas Corporation Commission received Respondent's request for hearing before the Commission on the Notice of Violation(s) issued by the KHP on January 5, 2017, and also requested "time at the hearing to discuss the \$7,500.00 the KCC owes me for the sale of my two trucks IHC and Kenworth."

28. Respondent is not entitled to a Hearing on the sale of any previous trucks as the Commission impounded and sold the vehicles pursuant to its January 16, 2013 order in 12-TRAM-816-PEN after Respondent's failure to set up a payment plan or otherwise comply with the Commission's requirements.

XIII. Staff's Motion to Convert

29. Respondent's Request for hearing was filed out of time and in reference to vehicles impounded and sold pursuant to a previous Commission order for which no Petition for Reconsideration was filed. Staff instead seeks to convert the docket to an Emergency Suspension of All Intrastate Motor Carrier Operations Proceeding.

30. Pursuant to K.S.A. 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 regulations of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

31. 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.

32. As evidenced by the inspection which led to Respondent's Request for Hearing, Respondent is operating as a motor carrier in the state of Kansas. In line with previous Commission records, the inspection notes that Respondent had no markings on the vehicle, no license plate visible, and operated the vehicle without adequate safety precautions.⁶ Despite Respondent's long record of non-compliance with the Commission's Rules and Regulations, including Respondent's continued operation without appropriate authority, failure to follow adequate safety procedures, failure to provide evidence of participation in a drug and alcohol program or other applicable requirements, there is currently no out of service order pending.

33. Respondent's continued operation poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

WHEREFORE, for the reasons set forth herein, Staff respectfully requests that the Commission grant this Motion to Convert Request for Hearing to Emergency Out of Service Proceeding against Danny G. Lambeth d/b/a Truck Wholesale of Wellsville, Kansas ("Respondent"), for the purpose of obtaining a Commission order directing Respondent to cease and desist motor carrier operations and to assess civil fines and sanctions against Respondent, for the violations of Kansas motor carrier safety rules and regulations.

⁶ Driver/Vehicle Examination Report No. KSHP02550894

Respectfully submitted,



Ahsan A. Latif, S.Ct. #24709

Litigation Counsel

Kansas Corporation Commission

1500 SW Arrowhead Road

Topeka, Kansas 66604

(785) 271-3181 (Telephone)

(785) 271-3118 (Facsimile)

For Commission Staff

VERIFICATION

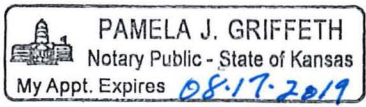
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)


Ahsan A. Latif, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding* and believes that the statements therein are true to the best of her knowledge, information and belief.



Ahsan A. Latif, S.Ct. #24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 29th day of January, 2018.





Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Motion to Convert Request For Hearing to Emergency Out of Service Proceeding was served by electronic service and a copy placed in the United States mail, postage prepaid, or hand-delivered this 29th day of January, 2018, to the following:

DANNY G. LAMBETH
D/B/A TRUCK WHOLESale
PO BOX 501
22640 PLEASANT VALLEY RD
WELLSVILLE, KS 66092
Fax: 913-262-8155
truckwholesale@gmail.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov



Pamela Griffeth
Administrative Specialist