

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

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Investigation of **Benfer** )  
**Enterprises II LLC of Independence, Missouri,** )  
Pursuant to the Kansas Highway Patrol Issuance of a ) Docket No. 17-GIMM-269-KHP  
Notice of Violation(s) and Invoice for the Violations )  
of the Kansas Motor Carrier Safety Statutes, Rules and )  
Regulations. )

**NOTICE OF FILING OF PROPOSED ORDER**

Staff hereby submits the attached Default Order Affirming Penalty and Assessing Costs

Pursuant to 66-1502.

Respectfully submitted,



Ahsan A. Latif, #24709  
Litigation Counsel  
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For Commission Staff

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Investigation of **Benfer Enterprises II LLC of Independence, Missouri,**  
Pursuant to the Kansas Highway Patrol Issuance of a  
Notice of Violation(s) and Invoice for the Violations  
of the Kansas Motor Carrier Safety Statutes, Rules and  
Regulations.

Docket No. 17-GIMM-269-KHP

**DEFAULT ORDER AFFIRMING PENALTY AND**  
**ASSESSING COSTS PURSUANT TO K.S.A. 66-1502**

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 makes the following findings and conclusions:

1. On September 30, 2016 and October 6, 2016, the Kansas Highway Patrol issued Notices of Violation(s) against Benfer Enterprises II LLC (Respondent), for alleged violations found during three September 27, 2016, routine motor carrier stops and inspections conducted by the Kansas Highway Patrol (KHP). Respondent was assessed \$600.00 in civil fines, comprised of the following violations: a \$150.00 fine for Tire-Other Thread Depth Less Than 2/32 of Inch, citing 49 C.F.R. 393.75C as adopted by K.A.R. 82-4-3i relating to Driver/Vehicle Examination Report No. KSHP02520638, a \$300.00 fine for Failure to Register and Pay UCR Fees, citing 49 C.F.R. 392.2UCR as adopted by K.A.R. 82-4-3h relating to Driver/Vehicle Examination Report No. KSHP01000842, and a \$150.00 fine for No Parking Brake, citing 49 C.F.R. 393.41 as adopted by K.A.R. 82-4-3i relating to Driver/Vehicle Examination Report No. KSHP00531286.
2. Subsequently, Respondent initiated a formal challenge with the KHP.

3. On October 28, 2016, the Kansas Highway Patrol denied Respondent's challenges and advised Respondent of its right to an administrative hearing before the Commission.

4. On November 14, 2016, the Kansas Corporation Commission received Respondent's request for hearing before the Commission, postmarked November 9, 2016. The request for hearing was filed December 28, 2016.

5. On February 16, 2017, the Commission issued its Order Setting Hearing establishing a deadline for the parties' prefiled testimony and scheduling an evidentiary hearing in this matter for April 11, 2017. The Order also stated that "if any party(s) fails to appear and participate in this hearing, the Commission may proceed to hear evidence against the party(s) and enter such order as shall be justified by the evidence."

6. On March 31, 2017, Staff timely submitted pre-filed testimony. However, Respondent failed to pre-file any direct testimony in this matter by its April 1, 2017 deadline. Further, no pre-filed testimony was received by Respondent at any time.

7. On April 11, 2017, the Commission held an evidentiary hearing in this matter at the First Floor Hearing Room in the Commission's Topeka office. At the hearing the Commission called on Respondent to make its appearance, but Respondent failed to appear. The Commission found it had jurisdiction to hear this matter at that time in that place. Staff counsel asked that Respondent be found in default for failure to attend the hearing and also asked for leave to file a motion to assess the costs of the investigation in this matter to Respondent. The Commission granted Staff leave to submit both requests in writing. The pre-filed testimony of Staff's four witnesses, Mike Hoeme, Technical Trooper Nicholas Wright, Technical Trooper Jason Mills and Technical Trooper Robert Beabout, were admitted to the record.

8. On April 27, 2017, Staff filed its Motion for Default Judgment and for Assessment of Costs Pursuant to K.S.A. 66-1502 (Default Motion). Staff's Motion noted the Kansas Administrative Procedure Act's provision allowing the Commission to hold in default a party who fails to attend or participate in a hearing, as well as Order Setting Hearing which stated that a party's failure to attend the hearing may result in default against that party. Staff argued that because Respondent had specifically requested a hearing and yet failed to attend the hearing, the Commission should affirm the violations alleged and the \$600 in civil penalties assessed against Respondent. Staff noted that Respondent has not paid the civil penalties assessed in this matter at the time of the motion's filing.

9. Staff's Motion also appealed to K.S.A. 66-1502's provision allowing the Commission to order a "common carrier" to pay expenses "reasonably attributable" to an investigation "including both direct and indirect expenses incurred by the commission or its staff." K.S.A. 66-1,110 defines all public motor carriers of property, of household goods or of passengers as "common carriers within the meaning of the public utility laws of this state." Attachment A to Staff's Motion, which is incorporated herein by reference, provides an accounting of such costs and fees included in this penalty docket, totaling \$1,167.65. Staff recommended the Commission order Respondent to pay these costs and fees.

### **FINDINGS AND CONCLUSIONS**

10. The Commission has full power, authority and jurisdiction to supervise and control motor carriers, doing business in Kansas, and is empowered to do all things necessary and convenient to exercise such power, authority and jurisdiction.

11. The Commission may impose sanctions or fines for violations of any provision of Kansas law relating to the regulation of motor carriers and persons, or any order, decisions or regulation of the Commission relating to the regulation of motor carriers and persons.

12. Pursuant to K.S.A. 77-520(a), the Commission finds Respondent's failure to attend the evidentiary hearing in this matter constitutes default. The Commission also finds that Respondent's request for a hearing to contest violations and civil penalties assessed, and subsequent failure to appear and offer any challenge at the hearing, affirms the violations and civil penalties as issued.

13. In addition, the Commission finds that Respondent received the Order Setting Hearing in this matter, and thus, Respondent had notice both of its deadline for pre-filing testimony and the date, place and time scheduled for the evidentiary hearing. Staff incurred significant costs preparing for the hearing, which became necessary in order to collect the assessed civil penalties in this docket. Therefore, pursuant to K.S.A. 66-1502, the Commission finds that Operator should be assessed the \$1,167.65 in costs and fees incurred collecting the penalties in this docket.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Benfer Enterprises II LLC is found in default for its failure to appear at the evidentiary hearing scheduled for April 11, 2017. Pursuant to K.S.A. 66-1,142b(a), the \$600 civil fee assessed against Benfer Enterprises II LLC is upheld.

B. Pursuant to K.S.A. 66-1502, Staff's Motion to assess Benfer Enterprises II LLC the costs and fees incurred in collecting the civil penalties in this docket, in the amount of \$1,167.65, is granted.

C. This order serves as notice to Benfer Enterprises II LLC of the Default Order. Benfer Enterprises II LLC may submit, within seven (7) days, a written motion requesting the Default Order be vacated and stating the grounds in support of its motion.

D. Pursuant to K.S.A. 77-520 this Default Order becomes a final order effective seven days after service, provided Benfer Enterprises II LLC does not file a motion to vacate.

E. The parties have 15 days, plus three days if served by mail, to petition for reconsideration from the date that this Default Order becomes a final order.

F. The Commission retains jurisdiction over the subject matter and the parties for purposes of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

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

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Amy L. Green  
Secretary to the Commission

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**CERTIFICATE OF SERVICE**

17-GIMM-269-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Proposed Order was placed in the United States mail, postage prepaid, or hand-delivered this 3rd day of May, 2017, to the following:

BILL BENFER, MANAGING MEMBER  
BENFER ENTERPRISES II LLC  
10047 E WILSON RD  
INDEPENDENCE, MO 64053

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Vicki Jacobsen