

subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

4. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on May 16, 2017. In the Stipulated Settlement Agreement, Respondent stipulates to the violations as set out in the Commission's Penalty Order. Respondent further agrees to pay fines totaling \$3,000. Staff agrees to extend the timeline for total payments due to October 15, 2017, to be repaid as follows: Respondent will make a \$1,000 payment before April 30, 2017. The remaining \$2,000 will be paid in six (6) payments, beginning with five payments of \$333 due on the 15th day of each month starting May 15, 2017. The sixth and final payment of \$335 will be due on or before October 15, 2017. Respondent understands and agrees that failure to make one (1) payment may result in the entire remaining balance becoming due in full at that time, and immediate suspension of its authority without further notice. Further, the Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

5. Respondent further agrees to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order.

6. Respondent further agrees to attend a Commission-sponsored safety seminar within 90 days from the date of this Order. Respondent will provide to Transportation Staff proof of attendance at the safety seminar.

7. In signing the Stipulated Settlement Agreement, the parties agree that the Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.

II. FINDINGS AND CONCLUSIONS

8. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement and the payment agreement of the civil penalty contained therein constitute a reasonable and appropriate final resolution of this matter.

9. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

10. The Commission further concludes that pursuant to K.S.A. 2016 Supp. 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 K.S.A. 2016 Supp. 66-1,108b, 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. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

11. The Commission has reviewed the Stipulated Settlement Agreement attached hereto and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Cauthemoc S. Ortiz, d/b/a Ortiz Trucking and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

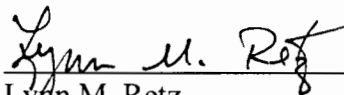
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: **MAY 23 2017**



Lynn M. Retz
Secretary to the Commission

Order Mailed Date
MAY 24 2017

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

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

In the Matter of the Investigation of Cauthemoc)
S. Ortiz, d/b/a Ortiz Trucking, of Garden)
City, Kansas, Regarding the Violation of the) Docket No. 13-TRAM-246-PEN
Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission's Authority to)
Impose Penalties, Sanctions and/or the)
Revocation of Motor Carrier Authority.)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Cauthemoc S. Ortiz, d/b/a Ortiz Trucking, (Respondent). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2015 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2015 Supp. 66-1,108, 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. 2015 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, 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 a party under its jurisdiction.

II. BACKGROUND

1. Under the above jurisdiction and authority, on June 27, 2012, Commission Staff (Staff) Special Investigators Penny Fryback conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigators Fryback identified two (2) violations of the Motor Carrier Safety Regulations.

2. On July 30, 2012, the Commission issued a Penalty Order in this docket assessing a \$3,000 civil penalty against Respondent.

3. To date, Respondent's unpaid balance on the civil penalty assessed in the above Penalty Order is \$3,000.

4. On Tuesday, April 12, 2017, Cauthemoc S. Ortiz, Owner of Ortiz Trucking, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

5. The parties agree that the Commission has jurisdiction and authority over this matter.

6. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

7. Respondent stipulates to the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

8. Respondent stipulates that he has submitted a corrective action plan to bring the motor carrier operation into compliance with both state and federal motor carrier safety regulations and will maintain such compliance into the future.

9. Respondent, therefore, agrees to pay fines totaling \$3,000 for the above violations. Staff agrees to extend the timeline for total payments due to October 15, 2017, to be repaid as follows: Respondent will make a \$1,000 payment before April 30, 2017. The remaining \$2,000 will be paid in six payments, beginning with five payments of \$333.00 due on the 15th day of each month starting May 15, 2017. The sixth and final payment of \$335.00 will be due on or before October 15, 2017. Payments shall be made payable to the Kansas Corporation Commission and mailed to the Kansas Corporation Commission, Legal Division, 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027. *Respondent shall include the docket number of these proceedings (13-TRAM-034-PEN) in the memo field of the payment.* Respondent understands and agrees that failure to make the payment will result in the entire remaining balance becoming due in full at that time, as well as the immediate suspension of the carrier's operating authority (if then applicable) without further notice.

10. Respondent acknowledges that at least one safety compliance review will be conducted within 18 months from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Staff will contact Respondent at a later date to determine an appropriate time for this review.

11. Respondent further agrees to attend a Commission-sponsored safety seminar within the next ninety (90) days from the date this Agreement is approved or amended pursuant to entry of

an order by the Commission. Respondent agrees to provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website at http://www.kcc.state.ks.us/trans/safety_meetings.htm.

12. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶ 9 above, could result in the suspension of its authority without further notice and the Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

13. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 2015 Supp. 77-520, as described in ¶ 12 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

14. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

15. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

16. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently

pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

17. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

18. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

19. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By: _____

Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: _____

Cauthemoc S. Ortiz, Owner
Ortiz Trucking
934 Amy St.
Garden City, Kansas 67846

Respondent

CERTIFICATE OF SERVICE

13-TRAM-034-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on MAY 23 2017.

CUAHTHEMOC S. ORTIZ, OWNER
CUAHTHEMOC S. ORTIZ
D/B/A Ortiz Trucking
934 AMY ST
GARDEN CITY, KS 67846
patriots_patriots@yahoo.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

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date
MAY 24 2017