

THE 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 **JP Welch**)
Fencing LLC of Leavenworth, Kansas,)
Regarding the Violation of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 17-TRAM-428-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

ORDER AMENDING PENALTY ORDER

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

BACKGROUND

1. On April 4, 2017, this Commission issued a Penalty Order to JP Welch Fencing LLC (hereinafter JP Welch Fencing), assessing it a civil penalty of \$1,700, in accordance with the FY 2017 Uniform Penalty Assessment Matrix. The penalty(s) was for four (4) 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.

2. JP Welch Fencing was advised in the Penalty Order that it was a New Entrant motor carrier being reviewed for the first time, and it was eligible for a reduced penalty of fifty-percent (50%) less than what is normally assessed motor carriers in accordance with the FY 2017 Uniform Penalty Assessment Matrix, as long as it complies with the terms and obligations described in the Notice of Penalty Assessment and the Reduced Penalty Agreement.

3. On May 2, 2017, Staff filed a Motion to Amend Penalty Order, recommending the Commission assess JP Welch Fencing with a fifty-percent (50%) reduced penalty of \$850, and set out specific terms and obligations for JP Welch Fencing's compliance.

4. Staff states that on April 14, 2017, JP Welch Fencing submitted the signed Reduced Penalty Agreement. The carrier submitted a Corrective Action Plan, which has been approved by Transportation Staff. A copy of the Reduced Penalty Agreement was attached to Staff's Motion.

FINDINGS OF FACT

5. The Penalty Order issued on April 4, 2017, assessed JP Welch Fencing a civil penalty(s) of \$1,700 for four (4) violation(s) of the motor carrier safety statutes, rules and regulations.

6. Staff recommended in its Motion that due to JP Welch Fencing's agreement to comply with the terms and obligations for a fifty-percent (50%) reduction in the penalty assessed and approval of its CAP, an Amended Penalty Order be issued by the Commission assessing it a reduced penalty of \$850, and setting out the terms and obligations as stated in its motion.

7. K.S.A. 66-1,142c authorizes the Commission to determine the amount of civil penalty and states in pertinent part:

"Any civil penalty may be compromised by the state corporation commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation and the good faith of the person charged in attempting to achieve compliance, shall be considered."
(emphasis added)

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The civil penalty of \$1,700 assessed to JP Welch Fencing LLC in the Penalty Order dated April 4, 2017, is hereby amended to \$850, which is fifty-percent (50%) less than what is assessed to motor carriers pursuant to the FY 2017 Uniform Penalty Assessment Matrix.

(B) This Amended Penalty Order was mailed on May 11, 2017, via certified mail, return receipt requested, Certified Receipt No. 70161970000105740860. Service is complete upon the date the carrier signs the Domestic Return Receipt. Payment of the reduced amount is due within thirty (30) days from the date of service of this Amended Penalty Order. A check shall be made payable to the Kansas Corporation Commission and submitted for payment. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payment shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding (17-TRAM-428-PEN).*

(C) JP Welch Fencing is ordered to, within thirty (30) days from the date of the Penalty Order dated April 4, 2017, send an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and submit proof of attendance to the Transportation Division.

(D) JP Welch Fencing must submit to a follow-up compliance review within eighteen (18) months from the date of the Penalty Order dated April 4, 2017. Transportation Staff will contact JP Welch Fencing to schedule the review.

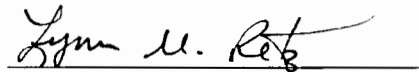
(E) If JP Welch Fencing fails to pay the reduced fine of \$850 and/or fails to comply with the terms and conditions ordered above, the Commission may order JP Welch Fencing additional sanctions, including enforcement of an out-of-service order, revoking its authority or any further sanctions as the Commission deems necessary.

(F) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAY 11 2017



Lynn M. Retz
Secretary to the Commission

AAL

Order Mailed Date

MAY 12 2017

CERTIFICATE OF SERVICE

17-TRAM-428-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 11 2017**.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

MAY 12 2017