

**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 Violation(s) and Invoice for the Violations of the Kansas Motor Carrier Safety Statutes, Rules and Regulations.)
Docket No. 17-GIMM-408-KHP)

STAFF'S RESPONSE TO RESPONDENT'S PETITION FOR RECONSIDERATION

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), by and through its counsel, Ahsan A. Latif, hereby files its Response to Danny G. Lambeth, d/b/a Truck Wholesale of Wellsville, Kansas's (Respondent's) Petition for Reconsideration of Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding, Staff states as follows:

I. BACKGROUND

1. On January 29, 2018, Staff filed its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding.
2. On February 27, 2018, the Commission issued its Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding finding that Respondent's hearing request was filed out of time and should be dismissed.
3. On March 12, 2018, Respondent filed its Petition for Reconsideration of Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding, arguing: 1) Respondent timely "mailed" its Request for Hearing to the KHP and 2) that Respondent is

neither a private or public motor carrier and therefore previous impoundments of its vehicles were unlawful.¹

II. DISCUSSION

A. Respondent was required to ensure its Request for Hearing was “received” within fifteen days of the issuance of the KHP’s letter denying its challenge. Respondent’s failure to do so appropriately resulted in dismissal.

4. The Kansas Highway Patrol (KHP) sent a challenge denial letter to Respondent on February 27, 2017, stating that its challenge was denied informing it of the proper procedure for requesting a hearing before the Commission. The letter advised “hearing requests shall be sent to the Kansas Highway Patrol at the address listed above and must be received within fifteen days from the date of this letter.”²

5. The Commission notes in its order that Respondent’s request featured a handwritten date, but “the *filing* date on Mr. Lambeth’s hearing request is the date on which the Commission officially stamped it filed, which was March 15, 2017. Because his request was not filed with the Commission until March 15, 2017, which is sixteen (16) days after the KHP’s February 27, 2017, denial letter, Mr. Lambeth’s request for hearing was not timely.”³

6. Respondent argues that it properly followed the instructions in the KHP’s challenge denial letter. However, the letter states a hearing request “must be received” within fifteen days.

7. The Commission refers to a handwritten date of March 10, 2017, on the first page of Respondent’s Request for Hearing.⁴ It is also of note that on the second page of Respondent’s

¹ Petition for Reconsideration of Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding, p.1-3 (March 12, 2018).

² KHP Challenge Denial Letter (Feb. 27, 2017).

³ Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding, ¶ 5 (Feb. 27, 2018).

⁴ *Ibid.*

request is another handwritten date of March 14, 2017.⁵ In any event, neither handwritten date on the request for hearing is indicative of when Respondent's request was received.

8. The only evidence in the record of when Respondent's Request for Hearing was received is the date it was filed with the Commission, on March 15, 2017, which is beyond the fifteen days set forth in the KHP's challenge denial letter. The Commission properly dismissed Respondent's Request for Hearing for failure to ensure its request was received in the proper time period.

B. Respondent's efforts to request a hearing on vehicles previously impounded by the Commission are improperly filed.

9. In Respondent's Petition for Reconsideration it argues that because it is neither a public or private motor carrier, actions by the Commission in previous years to impound its vehicles were unlawful. This is consistent with Respondent's stated grounds for requesting a hearing before the Commission which included a request for "time a [sic] the hearing to discuss the \$7500.00 the KCC owes me for the sale of my two trucks IHC and Kenworth."

10. This appears to be a reference to two vehicles the Commission impounded and sold pursuant to its January 16, 2013 Order in 12-TRAM-816-PEN. The Commission directed Staff to "dispose of one or both of the trucks described above either by selling them as salvage materials or selling them as motor vehicles" if Respondent failed to establish a payment plan in compliance with the Commission's order.⁶

11. Respondent had fifteen days to file a Petition for Reconsideration on the Commission's January 16, 2013 Order and, in fact, did so on February 1, 2013. The Commission denied Respondent's Petition for Reconsideration in its Order on Petition for Reconsideration filed February 27, 2013.

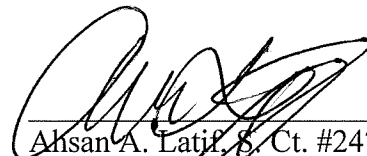
⁵ Lambeth Request for Hearing, p. 2.

⁶ Commission's Order in 12-TRAM-816-PEN, ¶ 17 (Jan. 16, 2013).

12. In light of the Commission's successive orders in the 12-TRAM-816-PEN docket denying Respondent's requests to return the vehicles in question, Respondent's current attempt to "discuss" those sales is out of time and improperly filed.

WHEREFORE, Staff respectfully requests the Commission uphold its February 27, 2018, Order, and deny Respondent's Petition for Reconsideration for the reasons cited herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Respondent's Petition For Reconsideration was served by electronic service on this 21st day of March, 2018, to the following, along with a courtesy copy placed in the U.S. mail to Danny G. Lambeth.

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