

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

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

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 for Violation(s) of) Docket No. 17-GIMM-408-KHP
the Kansas Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission’s Authority to)
Impose Penalties, Sanctions and/or the Revocation)
of Motor Carrier Authority.)

**ORDER DISMISSING REQUEST FOR HEARING AND DENYING MOTION TO
CONVERT PROCEEDING**

The above-captioned 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 finds and concludes as follows:

BACKGROUND

1. On January 5, 2017, the Commission issued a Notice of Violation(s) to Danny G. Lambeth stemming from a January 3, 2017, Kansas Highway Patrol (KHP) roadside inspection.¹ The Notice of Violation(s) assessed a \$700 penalty against Mr. Lambeth for having “[n]o/Improper safety chains for towbar, [f]lat tire or fabric exposed, [i]noperative turn signal, and [n]o drivers record of duty status.”² The Notice of Violation(s) also informed Mr. Lambeth he could submit a challenge to the violations to the KHP, and if he was not satisfied with the outcome of his KHP challenge, he had “the right to an administrative hearing with the Kansas Corporation

¹ See Notice of Violation(s), Invoice Number H000566219, p. 1 (Jan. 5, 2017). See also KHP Driver/Vehicle Examination Report No. KSHP02550894.

² Notice of Violation(s), p. 2.

Commission. The hearing request must be in writing and received within 15 days of the close of the challenge.”³

2. On January 24, 2017, another “Notice of Violation” was issued to Mr. Lambeth, reiterating the above violations and the penalty issued in the January 5, 2017, Notice of Violation(s).⁴

3. Mr. Lambeth subsequently challenged the Notice of Violation(s) with the KHP.⁵

4. On February 27, 2017, the KHP issued Mr. Lambeth a challenge denial letter, stating that his challenge to the above violations was denied and informing him that “[t]he violation will remain on your carrier profile” and that the Notice of Violation(s) “remains valid and provides information for payment of the fines due.”⁶ The denial letter also stated:

“If you are dissatisfied with this outcome, please be advised that you have a right to an administrative hearing with the Kansas Corporation Commission. Your request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. 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.”⁷

5. Subsequent to the KHP’s denial of his challenge, Mr. Lambeth filed a handwritten request for a Commission hearing, with a handwritten date of March 10, 2017, on it.⁸ However, 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 Notice of Violation(s), p. 1.

⁴ See Notice of Violation, p. 2 (Jan. 24, 2017).

⁵ See handwritten letter from Danny Lambeth, dated Feb. 22 by Mr. Lambeth, but filed with the Commission on March 29, 2017.

⁶ KHP Challenge Denial Letter (Feb. 27, 2017).

⁷ *Id.* (words underlined in original).

⁸ Lambeth Request for Hearing, p. 1.

6. On January 29, 2018, Staff filed a Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, “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.”⁹

7. On February 6, 2018, Danny Lambeth filed an Objection to Staff’s Motion to Convert the proceeding, asking that Staff’s Motion be denied and requesting dismissal of all the fines assessed against him by the Notice of Violation(s).¹⁰

8. On February 12, 2018, Staff made a filing in support of its Motion to Convert the proceeding, reiterating its request to have the hearing request converted to an Emergency Out of Service proceeding, but also making the alternative suggestion that “the Commission may order a hearing on Respondent’s request and order Respondent to be placed out of service for admitted continued unsafe operation twenty-five miles beyond its principal place of business.”¹¹

9. On February 23, 2018, Mr. Lambeth filed an Objection to Staff’s Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal. Among other assertions, Mr. Lambeth stated: “As directed by Captain Turner in his February 27, 2017 letter, I timely filed a Request for Hearing on March 10, 2017.”¹²

ANALYSIS

10. The Commission finds there are two essentially separate matters at issue here: (1) Is Mr. Lambeth entitled to a Commission hearing on the KHP denial of his challenge to the

⁹ Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 8 (Jan. 29, 2018) (Staff’s Motion to Convert).

¹⁰ Danny Lambeth’s Objection to Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal, p. 3 (Feb. 6, 2018) (Objection to Staff’s Motion).

¹¹ Staff’s Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 7 (Feb. 12, 2018) (Staff’s Filing in Support).

¹² Danny Lambeth’s Objection to Staff’s Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal, ¶ 3 (Feb. 23, 2018).

violations enumerated in the January 24, 2017, Notice of Violation, Invoice Number: H000566219? (2) Should the Commission grant Staff's Motion to Convert [Mr. Lambeth's] Request for Hearing to [an] Emergency Out of Service Proceeding?

(1) Mr. Lambeth's Request for Hearing

11. The Commission finds Mr. Lambeth's request for a hearing subsequent to his KHP challenge denial was not timely.¹³ Although Mr. Lambeth asserted that he "filed" his hearing request on March 10, 2017,¹⁴ he provided no evidence that it was actually "filed" on that date.¹⁵ The handwritten date on Mr. Lambeth's handwritten hearing request does not constitute a filing date. The only evidence that Mr. Lambeth's hearing request was filed with the Commission is the official file stamp on the hearing request letter, which indicates a date of March 15, 2017. March 15, 2017, is sixteen (16) days after February 27, 2017, the date of the KHP challenge denial. Mr. Lambeth was required to file his hearing request within fifteen (15) days of the KHP challenge denial.¹⁶ Thus, the Commission dismisses Mr. Lambeth's request for a hearing. The \$700 penalty assessed against Mr. Lambeth in the Commission's January 24, 2017, Notice of Violation remains due and payable.

(2) Staff's Motion to Convert Mr. Lambeth's Request for Hearing to an Emergency Out of Service Proceeding

12. The Commission finds it cannot grant Staff's Motion to Convert the proceedings because Staff's Motion was conclusory in nature and did not provide a proper evidentiary and legal basis upon which the Commission may make such a conversion.

¹³ See ¶ 5 of this Order, *supra*.

¹⁴ See Danny Lambeth's Objection to Staff's Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal, ¶ 3.

¹⁵ Staff, too, provided no evidentiary support for its assertion that it received Respondent's request for hearing on March 10, 2017. See Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, ¶ 27.

¹⁶ See ¶ 4 of this Order, *supra*.

13. Staff's Motion asserted that Mr. Lambeth "operates as a public motor carrier of property in the State of Kansas as defined in K.S.A. 66-1,108(f)."¹⁷ However, Staff provided no legal analysis of what constitutes a "public motor carrier of property" under K.S.A. 66-1,108(f), nor any facts that might demonstrate Mr. Lambeth meets the elements of such an entity. Thus, Staff has provided the Commission no basis for finding that Mr. Lambeth is a public motor carrier of property.

14. Staff stated that "[t]he Commission has found repeatedly that it has jurisdiction over Respondent with regard to regulation of safety matters," and cited to previous Commission orders and Kansas statutes for support.¹⁸ However, findings of Commission jurisdiction in past dockets do not demonstrate Commission jurisdiction in the current matter, for the facts have not been shown to be the same over time. Moreover, the statutes cited in support of the Commission's jurisdiction over Mr. Lambeth do not provide a basis for Commission jurisdiction unless Mr. Lambeth has been shown to be a public or private motor carrier. Staff has not shown this.¹⁹

15. Staff stated that Mr. Lambeth "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,"²⁰ but provided no analysis demonstrating that this violates Kansas law or that Mr. Lambeth required a USDOT Number.

16. Staff argued that the KHP inspection evidenced that Mr. Lambeth "is operating as a motor carrier in the state of Kansas."²¹ However, Staff has provided no legal analysis of what

¹⁷ Staff's Motion to Convert, ¶ 1.

¹⁸ Staff's Motion to Convert, ¶ 2 and fn. 2.

¹⁹ See previous paragraph, *supra*.

²⁰ Staff's Motion to Convert, ¶ 3.

²¹ Staff's Motion to Convert, ¶ 32.

constitutes a “motor carrier in the state of Kansas,” and therefore, no basis for a Commission finding that Mr. Lambeth is such an entity.²²

17. Staff stated that, per the KHP inspection report, Mr. Lambeth “had no markings on the vehicle, no license plate visible, and operated the vehicle without adequate safety precautions,”²³ yet Staff provided no legal analysis showing the absence of markings and a visible license plate to be violative of Kansas law. The failure to take “adequate safety precautions” has already been penalized by the Notice of Violation(s). Staff argued that Mr. Lambeth is operating “without appropriate authority,” but has not demonstrated that Mr. Lambeth requires Commission authority.²⁴ Moreover, Staff has not explained why Mr. Lambeth would need to participate in a drug and alcohol program.²⁵

18. Staff’s February 12, 2018, Filing in Support does no better in providing the Commission with a basis for converting this proceeding. Staff still has not shown that Mr. Lambeth is a “motor carrier.”²⁶ Staff provided no legal basis for explaining how the Commission might convert the *current proceeding* “based on the Commission’s *history* with Respondent.”²⁷

19. Finally, if Mr. Lambeth “poses a potential immediate threat to the safety and welfare of the public of the state of Kansas,” as Staff has asserted,²⁸ the Commission is troubled by the fact that it has taken Staff almost a year to bring the case for shutting down Mr. Lambeth’s operation.²⁹

²² K.A.R. 82-4-1(z) defines a “motor carrier” as “any corporation, limited liability company, partnership, limited liability partnership, or individual subject to the provisions of the motor carrier laws of Kansas and under the jurisdiction of the Kansas corporation commission.” Staff does not cite to this regulation, and as stated above, has not provided a basis for finding that Mr. Lambeth is currently under Commission jurisdiction.

²³ Staff’s Motion to Convert, ¶ 32.

²⁴ Staff’s Motion to Convert, ¶ 32.

²⁵ See Staff’s Motion to Convert, ¶ 32.

²⁶ Staff’s Filing in Support, ¶¶ 1, 9.

²⁷ Staff’s Filing in Support, ¶ 7. (Italics added).

²⁸ See Staff’s Filing in Support, ¶ 17.

²⁹ Staff’s explanation in ¶ 13 that its review of Mr. Lambeth’s history took longer than expected does not explain why it took almost a year.

CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

FEB 27 2018

Electronic Service on _____.

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/S/ DeeAnn Shupe

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