

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

In the Matter of the Investigation of **Mid-America** )  
**Road Builders, Inc. of Platte City, Missouri,** )  
Pursuant to the Kansas Highway Patrol Issuance of a )  
Notice of Violation(s) and Invoice for the Violations ) Docket No. 19-GIMM-167-KHP  
of the Kansas Motor Carrier Safety Statutes, Rules and )  
Regulations. )  
)

**MOTION FOR DEFAULT JUDGMENT**  
**AND FOR ASSESSMENT OF COSTS PURSUANT TO K.S.A. 66-1502**

The Staff of the State Corporation Commission of the State of Kansas (“Staff” and  
“Commission,” respectively) moves the Commission for an Order finding Mid-America Road  
Builders, Inc (“Respondent”) in Default, and assessing costs of this proceeding against  
Respondent.

**I. Background**

1. On August 29, 2018, the Kansas Highway Patrol issued two Notices of  
Violation(s) to Mid-America Road Builders, Inc. (Respondent), stemming from motor carrier  
vehicle inspections which took place on August 27, 2018.<sup>1</sup> The Notices of Violations informed  
Respondent it could submit a challenge to the Kansas Highway Patrol (KHP), and depending on  
the outcome of the KHP challenge, it had “the right to an administrative hearing with the Kansas  
Corporation Commission.”<sup>2</sup>
2. On October 2, 2018, Respondent initiated formal challenges on both invoices with  
the KHP.<sup>3</sup>
3. On October 9, 2018, the KHP denied Respondent’s challenge.<sup>4</sup>

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<sup>1</sup> Notices of Violation and Invoice, p. 1 (Aug. 29, 2018) – filed in the docket on October 26, 2018.

<sup>2</sup> *Id.* at ¶ 3.

<sup>3</sup> Challenge Letters to KHP (Oct. 2, 2018) – filed in the docket on Oct. 26, 2018

4. On October 25, 2019, the Commission received a Request for Hearing,<sup>5</sup> dated October 23, 2019, from Respondent.

5. On May 14, 2019, the Commission issued its Order Setting Procedural Schedule which, among other things, scheduling the hearing in this matter to take place on July 9, 2019 at 10:30 a.m. in the Commission's First Floor Hearing Room.

6. On May 24, 2019, Staff timely submitted pre-filed testimony.<sup>6</sup> Respondent e-mailed testimony to Staff's counsel, but did not file any pre-filed testimony with the Commission.

7. On July 9, 2019, the Commission commenced the evidentiary hearing. No representative for Respondent appeared. Pursuant to K.S.A. 77-520(b), the Commission conducted the proceeding in Respondent's absence.

## **II. Motion for Default**

8. Under the Kansas Administrative Procedures Act, if a party fails to attend or participate in a hearing, the absent party may be found in default.<sup>7</sup> Further, the Commission's May 14, 2019, Order Setting Hearing stated that any party who fails to attend the evidentiary hearing may be held in default.<sup>8</sup> Respondent failed to attend and participate in the April 11, 2017 evidentiary hearing, and therefore should be held in default in accordance with the Kansas Administrative Procedures Act.

9. Because Respondent specifically requested a hearing on the violations, and Respondent failed to pursue its request, Staff recommends the Commission uphold the violations and the \$300 in civil penalties assessed in Invoice Numbers H000576294 and H000576335.

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<sup>4</sup> KHP Denial Letter (Oct. 9, 2018) – filed in the docket on Oct. 26, 2018.

<sup>5</sup> Request for Hearing (Oct. 23, 2018) – filed in the docket on Oct. 26, 2018.

<sup>6</sup> See Prefiled Testimony of Mike Hoeme (May. 24, 2019), Prefiled Testimony of David S. Bales (May. 24, 2019).

<sup>7</sup> See K.S.A. 77-520.

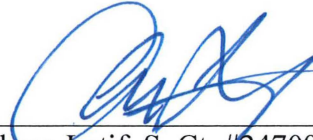
<sup>8</sup> Order Setting Hearing, ¶10 (May 14, 2019).

### **III. Motion for Assessment of Costs**

10. K.S.A. 66-1502 states that the Commission may 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.” The civil penalties assessed against Respondent in this matter remain unpaid. Staff’s preparation for the hearing to defend the violations, which Respondent requested but failed to attend, resulted in Staff incurring significant costs to collect the assessed penalty. Additionally, Staff incurred the costs of employing a court reporter and preparing a transcript for the hearing. An accounting of these costs and fees is attached hereto as Attachment A. Staff respectfully requests the Commission find the fees and costs incurred to collect the assessed civil penalties to be reasonable, and issue an order requiring the Respondent to pay the same.

WHEREFORE, for the reasons more fully described above, Staff respectfully moves the Commission for an Order: (1) finding Respondent in default for failing to appear and participate in the evidentiary hearing in this matter; (2) affirming the violations and the \$300.00 in civil penalties assessed against Respondent; (3) assessing Respondent with the costs and fees incurred imposing and collecting the penalty in this matter in the amount of \$667.09 pursuant to K.S.A. 66-1502 (4) for any such further relief as the Commission deems necessary and proper.

Respectfully submitted,



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Ahsan Latif, S. Ct. #24709  
Litigation Counsel  
Kansas Corporation Commission  
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Topeka, Kansas 66604-4027  
Phone: 785-271-3118  
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Attorney for Commission Staff

# ATTACHMENT "A"

Item	Employee	Hours	Hourly Pay (Incl. Benefits)	Cost
Pre-Filed Testimony Preparation	Ahsan Latif	3.00	28.85	86.55
Hearing Preparation	Ahsan Latif	2.00	28.85	57.70
Motion Preparation	Ahsan Latif	1.00	28.85	28.85
Pre-Filed Testimony Preparation	Mike Hoeme	2.00	38.44	76.88
Hearing Preparation	Mike Hoeme	1.00	38.44	38.44
Attending Hearing, Inc. Waiting for Hearing to Be Called	Mike Hoeme	0.50	38.44	19.22
Pre-Filed Testimony Preparation	David S. Bales	2.00	28.31	56.62
Hearing Preparation	David S. Bales	2.00	28.31	56.62
Travel to/from Hearing	David S. Bales	5.00	28.31	141.55
Attending Hearing, Incl. Waiting for Hearing to Be Called	David S. Bales	0.50	28.31	14.16
Court Reporter Services/Transcript Preparation	Denise Haas	n/a	n/a	\$90.50
			GRAND TOTAL:	\$667.09

COUNTY OF Shawnee

## VERIFICATION

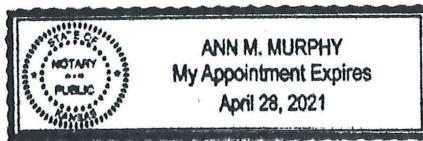
Ahsan A. Latif, being of lawful age, being duly sworn upon his oath deposes and says that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Motion for Default Judgment and For Assessment of Costs Pursuant to K.S.A. 66-1502* and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.

  
Ahsan A. Latif, S. Ct. # 24709  
Litigation Counsel  
The State Corporation Commission  
of the State of Kansas

Subscribed and sworn to before me this 19<sup>th</sup> day of July, 2019.

  
Notary Public

My Appointment Expires: 4-28-21



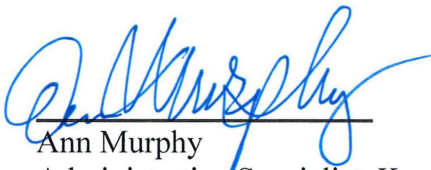
**CERTIFICATE OF SERVICE**

I certify that on 7-19-19, I caused a complete and accurate copy of this Motion to be served via United States mail, with the postage prepaid and properly addressed to the following:

Ken Pratt, President  
Mid-America Road Builders, Inc.  
P.O. Box 2336  
Platte City, MO 64079

And delivered by email to:

Michael Duenes, Assistant General Counsel  
KCC Topeka Office



Ann Murphy  
Administrative Specialist, Kansas Corporation Commission