

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

In the Matter of the Investigation of **Eric B. Smith of**)
Paola, Kansas, Pursuant to the Kansas Highway)
Patrol Issuance of a Notice of Violation(s) and Invoice) Docket No. 17-GIMM-404-KHP
for the Violations of the Kansas Motor Carrier Safety)
Statutes, Rules and Regulations.)
)

DIRECT TESTIMONY

OF

GARY DAVENPORT

ON BEHALF OF

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

August 11, 2017

1 **Q. Please state your name.**

2 A. Gary Davenport.

3 **Q. Are you employed?**

4 A. Yes.

5 **Q. Who is your employer?**

6 A. The Kansas Corporation Commission.

7 **Q. Where is your employer located?**

8 A. 1500 Southwest Arrowhead Road, Topeka, Kansas 66604.

9 **Q. How long have you been employed at the Kansas Corporation Commission?**

10 A. Nine years.

11 **Q. What is your current position with the Kansas Corporation Commission?**

12 A. I am the Deputy Director of the Commission's Transportation Division.

13 **Q. Please summarize your educational and professional background.**

14 A. I have a Bachelor of Arts degree in education from Wichita State University. I
15 worked as a professional over-the-road truck driver for nine years delivering
16 goods throughout the lower 48 states. Prior to coming to the Commission in May
17 2008, I worked for the Kansas Motor Carriers Association (KMCA) for 19 years
18 as the Director of Safety and Risk Management.

19 While at KMCA, I was responsible for all motor carrier safety compliance
20 training for the members, including: commercial driver's license (CDL); drug and
21 alcohol testing, including supervisor and collector training; driver qualification
22 requirements; general safety requirements; hours of service requirements;
23 maintenance requirements, including daily inspection and annual inspection;

1 vehicle and load securement requirements; and all aspects of compliance with the
2 U.S. Department of Transportation (USDOT) Pipeline and Hazardous Materials
3 Administration (PHMSA) hazardous materials regulations. I also performed
4 cursory compliance reviews on motor carriers who wanted to check their
5 compliance with the Federal Motor Carrier Safety Regulations (FMCSRs).

6 I also received my Certified Director of Safety (CDS) from the North
7 American Transportation Management Institute (NATMI) and am a certified
8 instructor for NATMI certification courses.

9 **Q. Have you previously testified before this Commission?**

10 A. Yes.

11 **Q. What is the purpose of your testimony in this proceeding?**

12 A. The purpose of my testimony is to explain the Commission's jurisdiction as it
13 pertains to Eric B. Smith of Paola, Kansas.

14 **Q. Please explain this Commission's jurisdiction as it generally relates to motor**
15 **carriers.**

16 A. Pursuant to K.S.A. 2016 Supp. 66-1,108b, the Commission is given full power,
17 authority and jurisdiction to supervise and control motor carriers doing business
18 or procuring business in Kansas, and is empowered to do all things necessary and
19 convenient for the exercise of such power, authority and jurisdiction. Through
20 K.S.A. 2016 Supp. 66-1,112, the Commission is vested with broad power and
21 authority in its duty to license, supervise and regulate every public motor carrier
22 of property, household goods, or passengers in Kansas.
23 Furthermore, K.S.A. 2016 Supp. 66-1,111 provides that:

1 “[N]o public motor carrier of property or passengers or private motor
2 carrier of property or local cartage carrier shall operate any motor
3 vehicle for the transportation of either persons or property on any
4 public highway in this state except in accordance with the provisions
5 of this act, and amendments thereto, and other applicable laws.”

6 K.S.A. 2016 Supp. 66-1,108(f) defines a “motor carrier” as any person operating
7 as a for-hire motor carrier or a private motor carrier, and any of that person’s
8 agents, officers, representatives, and employees.

9 **Q. How does the Commission’s statutes and regulations apply to Eric B. Smith?**

10 With specific respect to Eric B. Smith, K.S.A. 2016 Supp. 66-1,108(m) defines
11 “public motor carrier of property” as any person who undertakes for hire to
12 transport the property of others by commercial motor vehicle. Likewise, “private
13 motor carrier” is defined by K.S.A. 2016 Supp. 66-1,108(i) as, “a person who
14 provides transportation of property or passengers by commercial motor vehicle
15 and is not a for-hire motor carrier.”

16 “Commercial motor vehicle” is defined in K.A.R. 82-4-1(f) as:

- 17 (1) A vehicle that has a gross vehicle weight rating or gross
18 combination weight rating, or a gross vehicle weight or gross
19 combination weight, of 4,536 kg (10,001 pounds) or more,
20 whichever is greater;
21 (2) a vehicle designed or used to transport more than eight passengers,
22 including the driver, for compensation;
23 (3) a vehicle that is designed or used to transport more than 15
24 passengers, including the driver, and is not used to transport
25 passengers for compensation; or
26 (4) a vehicle used in transporting material found by the secretary of
27 transportation to be hazardous under 49 U.S.C. 5103 and
28 transported in a quantity requiring placarding according to
29 regulations prescribed by the secretary under 49 C.F.R. Part 172 as
30 adopted in K.A.R. 82-4-20.

1 **Q. Mr. Davenport, based on the information in this docket, do you believe that**
2 **Eric B. Smith is a motor carrier subject to this Commission’s jurisdiction**
3 **and authority?**

4 A. Yes. Based upon the information in this docket, I have concluded that Eric B.
5 Smith is a public motor carrier of property that operates commercial motor
6 vehicles in interstate commerce.

7 **Q. Why do you believe Eric B. Smith is a public motor carrier of property and**
8 **therefore subject to this Commission’s jurisdiction and authority?**

9 A. Eric B. Smith is a public motor carrier because he utilizes commercial motor
10 vehicles to transport property for compensation. According to the Kansas
11 Highway Patrol Driver/Vehicle Inspection Report KSHP02550950 attached to
12 Trooper Weber’s testimony, the commercial motor vehicle operated by Eric B.
13 Smith had a Gross Combined Vehicle Weight Rating (GCVWR) of at least
14 24,002 pounds. The combined vehicle weight rating exceeds the 10,001 pound
15 threshold to be classified as a commercial motor vehicle as defined in K.A.R. 82-
16 4-1(d)(1). In Trooper Weber’s testimony, he stated that the owner of the shooting
17 range told him Mr. Smith was compensated with free membership at the range.
18 The fact that Mr. Smith was compensated confirms this is a commercial trip.

19 **Q. Please list the elements necessary for a person or business to be classified as a**
20 **motor carrier.**

21 A. A “motor carrier” is defined by K.A.R. 82-4-1(y) as any corporation, limited
22 liability company, partnership, limited liability partnership, or individual subject
23 to the provisions of the motor carrier laws of Kansas and under the jurisdiction of

1 the Kansas Corporation Commission. They must use motor vehicles that meet the
2 definition of a commercial motor vehicle in the furtherance of a commercial
3 enterprise; meaning they must conduct or procure business in Kansas. The
4 specific definition and elements of a public motor carrier are detailed in my
5 testimony, above.

6 **Q. Does Eric B. Smith satisfy those elements?**

7 A. Yes. Eric B. Smith provides transportation of property for compensation by
8 commercial motor vehicle.

9 Prior to being subject to the Kansas Corporation Commission's
10 jurisdiction, a business entity must be a motor carrier. As evidenced in Kansas
11 Highway Patrol Troopers Weber's testimony, Eric B. Smith was the carrier of
12 responsibility for the vehicle inspected. Mr. Smith was hauling several pallets of
13 clay pigeons from Webb City, Missouri to Hillsdale, Kansas using a 2002 Chevy
14 truck with a GVWR of 14,001 pounds in combination with a 1990 Eagle straight
15 trailer with a GVWR of 10,001 pounds. K.A.R. 82-4-1(f)(1) defines a
16 commercial motor vehicle in part as "[A] vehicle that has a gross vehicle weight
17 rating or gross combination weight rating, or a gross vehicle weight or gross
18 combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater."
19 As evidenced by Trooper Weber's testimony and evidence, and as described in
20 my testimony, the combined weight of the vehicle inspected meets the regulatory
21 definition of a commercial motor vehicle. Therefore, Eric B. Smith was operating
22 a commercial motor vehicle.

1 In Kansas, motor carriers are subject to the Kansas Corporation
2 Commission's jurisdiction if they are engaged in a commercial enterprise. K.S.A.
3 2016 Supp. 66-1,108b gives the Commission the authority and jurisdiction to
4 supervise and control motor carriers doing business or procuring business in
5 Kansas. Eric B. Smith was transporting goods interstate from Webb City,
6 Missouri to Hillsdale, Kansas. He was compensated for this trip with free
7 membership at the gun range. The commercial motor vehicle is: (1) necessary to
8 physically transport the load, (2) engage in successful commercial operations, and
9 (3) are clearly used in furtherance of their commercial enterprise. Therefore, Eric
10 B. Smith satisfies every element necessary to be considered a private motor
11 carrier.

12 **Q. Can you explain the differences between a public motor carrier, a for-hire**
13 **motor carrier, and a private motor carrier?**

14 A. A public motor carrier and a for-hire motor carrier is a person or business that
15 holds itself out to transport the property of others for compensation. "Public" and
16 "for-hire" denote the same type of operation, and the classification is used
17 interchangeably. A private motor carrier only transports their *own* property or
18 supplies, and does not hold themselves out for-hire. Aside from those differences,
19 they remain subject to identical commercial motor vehicle and commerce
20 requirements described above.

21 **Q. Despite those differences, are public motor carriers, for-hire motor carriers,**
22 **and private motor carriers subject to the Commission's authority and**
23 **jurisdiction?**

1 A. Yes.

2 **Q. What is your understanding of Eric B. Smith's reasons for requesting this**
3 **hearing?**

4 A. It appears that Eric B. Smith is contesting violations that were identified during
5 the February 15th, 2017, routine motor carrier inspection, in addition to civil
6 penalties that were assessed as a result of that inspection. The following civil
7 penalties were documented in the Kansas Corporation Commission's Invoice No.
8 H000567014:

- 9 1. 393.43 – No/improper breakaway or emergency braking - \$150.00;
10 2. 393.9TS – Inoperative turn signal - \$150.00;
11 3. 395.8A – No drivers record of duty status - \$250.00;

12 A true and correct copy of the Kansas Corporation Commission's Invoice No.
13 H000567014 is attached to this testimony as Davenport Attachment "A."

14 **Q. Does this conclude your testimony?**

15 A. Yes

Davenport Attachment “A”



Shari Feist Albrecht, Chair
Jay Scott Emmer, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

NOTICE OF VIOLATION(S)

February 17, 2017

ERIC B. SMITH
1406 N PEARL
PAOLA, KS 66071

Re: Roadside Driver/Vehicle Examination Report No. KSHP02550950

This is a Notice of Violation(s) of Kansas Motor Carrier Safety Statutes and/or Rules and Regulations discovered during a roadside inspection conducted by the Kansas Highway Patrol.

The Kansas Highway Patrol inspected vehicle 3GBKC34F72M103050, on February 15, 2017, and discovered violation(s) of the Federal Motor Carrier Safety Regulations, as adopted by K.S.A. 66-1,129 and K.A.R. 82-4-3 et seq. The civilly assessed violation(s) are set out in the attached invoice along with the fine(s) assessed.

You have thirty (30) days from the date of this letter to pay the fine amount as indicated in the enclosed invoice or thirty (30) days from the date of this letter to submit a challenge as described below. Failure to address this matter may negatively impact your KCC operating authority or result in the issuance of an Out-of-Service Order in the State of Kansas. You have the following options:

1. Pay the fine amount shown on the enclosed invoice: H000567014.
2. If you contest the violation(s) and/or fine(s) you may first submit a challenge to:

Kansas Highway Patrol
Motor Carrier Safety Assistance Program (MCSAP)
700 SW Jackson, Suite 704
Topeka, Kansas 66603
(785) 296-8157 fax (785) 296-2858

In your "challenge", please specifically describe your contested issues. The KHP will review your issues and either grant, modify or dismiss your challenge.

3. If you are not satisfied with the outcome of your challenge by the KHP, you have the right to an administrative hearing with the Kansas Corporation Commission. The hearing request must be in writing and received within 15 days of the close of the challenge, and forwarded to the Kansas Highway patrol at the above address.

Failure to pay will result in the carrier being in default. Default status prohibits changes to KCC authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

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KANSAS CORPORATION COMMISSION

Kansas Corporation Commission
Transportation Division
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027
(785) 271-3145
FEIN: 48-1124839

INVOICE

ERIC B. SMITH
1406 N PEARL
PAOLA, KS 66071

Invoice Date: February 17, 2017
Invoice Number: H000567014
Due Date: March 19, 2017

Unit #	Unit Make	Unit License	Power Unit Identification at Time of Inspection:		
			VIN	License Number	Company ID
2	EAGLE	815EMF	3GBKC34F72M103050	NONE	1

Unit	Violation	Violation Description	Penalty
2	393.43	No/Improper breakaway or emergency braking	150.00
2	393.9TS	Inoperative turn signal	150.00
	395.8A	No drivers record of duty status	250.00
Total Due:			\$550.00

Please return this invoice with your payment, payable to the
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
Fax: (785) 271-3124

Failure to pay as provided in the Notice of Violation will result in the carrier being in default. Default status will prohibit carriers from making changes to KCC authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

Payment options: check, money order or credit card

Circle type of credit card: Visa, MasterCard, Discover or American Express

Card Holder Name _____

Credit card number: _____ Expires: Date ____/____/____

Please direct questions regarding the violation(s) and/or assessment to the
Kansas Highway Patrol, MCSAP at (785) 296-8167.

KANSAS CORPORATION COMMISSION



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1406 N PEARL
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Topeka, KS 66604-4027
Fax: (785) 271-3124

CERTIFICATE OF SERVICE

17-GIMM-404-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Gary Davenport was served via electronic service this 11th day of August, 2017, to the following:

ERIC B. SMITH, OWNER/OPERATOR
ERIC B. SMITH
1406 N PEARL LOT 1
PAOLA, KS 66071
erictheredgerkin@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



Vicki Jacobsen