THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

In the Matter of the Investigation of **BMS Transportation Company, Inc. of Platte City, Missouri**, 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. 15-GIMM-212-KHP

DIRECT TESTIMONY

OF

KANSAS HIGHWAY PATROL

TROOPER SHAWN HINES

ON BEHALF OF

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

January 30, 2015

Q. Please state your full name.

A. Shawn D. Hines.

Q. By whom and in what capacity are you employed?

A. Kansas Highway Patrol, MCSAP level 1 inspector.

Q. Where is your employer located?

A. General Headquarters, 122 SW 7th, Topeka, KS 66603.

Q. How long have you been with the Kansas Highway Patrol?

A. 11 years.

Q. Please summarize your educational and professional background.

A. I obtained a Diesel Certificate from Pratt Community College; 15 years of mechanical work on over-the-road and big equipment; 240 hours of training in inspecting commercial motor vehicles (CMV) over the last 10 years. I have inspected between 800-900 CMV in the last 10 years with 100 of them being full level 1 inspections, including measuring brakes. Level 1 inspections cover inspection of the driver, paperwork and all the equipment on the vehicle, including the brakes.

Q. Have you previously testified before this Commission?

A. No.

Q. Please explain the circumstances giving rise to the roadside inspection of the vehicle of BMS Transportation Company, Inc. on June 23, 2014.

A. A truck tractor pulling a cargo tank northbound on US-169 was reported to be leaking black liquid from the back of the trailer onto the roadway. The BMS truck traveling northbound through Garnett, KS fit the description and the timeline of the reported northbound leaking truck.

Q. What was your role in the stop and inspection?

A. I was driving my patrol unit when we observed the above vehicle travel past our location. I stopped the above vehicle and assisted Technical Trooper Jason Mills with a Level 1 inspection. The inspection location was US-59 HWY, milepost 111, in Anderson County, KS.

Q. Are you familiar with the challenge raised by BMS Transportation Company, Inc. in this matter?

A. No.

Q. Did you formally document the June 23, 2014 stop and inspection?

A. The stop time, location and the above vehicle were given to KHP dispatch. Technical Trooper Mills completed a Federal Motor Carrier Safety inspection.

Q. Please describe the vehicle or vehicles involved in this stop.

A. The involved vehicles were a Red 2007 KW truck tractor (GVWR 52,000 lbs.) pulling a 1977 FRUE trailer (GVWR 68,000 lbs.). The June 23, 2014 Driver/Vehicle Examination Report lists the GVWR of the trailer as 6,800 lbs, but that is a typographical error. It should read 68,000 lbs. So there is a total GCWR of 120,000 lbs. Gross vehicle weight rating (GVWR) means the value specified by the

manufacturer as the loaded weight of a single motor vehicle. Gross combination weight rating (GCWR) is the greater of: (1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or (2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

Q. Did this vehicle meet the definition of a commercial motor vehicle? Please explain?

A. Yes. This vehicle meets the definition of a commercial motor vehicle in interstate commerce. "Commercial motor vehicle" means:

> Any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle— (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for

compensation; or (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Q. Please explain the Kansas Highway Patrol's authority as it relates to the stop and inspection of commercial motor vehicles.

A. Here is a list of KSA's, KAR's, and supporting court rulings that give the KHP authority to stop and inspect a Commercial Motor Vehicle (CMV): KSA 74-2108; KSA 66-1319(a); KSA 66-1,131; KSA 66-1,129(a); KAR 82-4-2a; KAR 82-4-3a – k; KAR 82-4-35a; *State v. Williams*, No. 53391; *State v. Bone*, No. 83636.

Q. At the time of the stop, how did you determine that the vehicle and its driver were subject to the Federal Motor Carrier Safety Administration's (FMCSA's) rules and regulations?

A. Technical Trooper Mills made contact with the driver and determined that the truck tractor, trailer and driver were all subject to the regulations.

Q. What type of inspection did you conduct on the vehicle-in-question? Please explain.

A. I assisted Technical Trooper Mills with a CVSA Level 1 inspection, by crawling underneath the truck and checking all wheel ends, all brake components, structure of the tank, and all pushrod travel. I also crawled up on top of the tank to verify all cargo tank regulations.

Q. Did you identify any violations during the June 23, 2014, stop and inspection?

A. Yes

Q. The issue in contention in this matter is the out-of-service determination for defective brakes. Describe in detail how you determined that three of the vehicle-in-question's brakes were out of adjustment beyond acceptable limits?

A. I made sure all the brakes were released, and then ensured the system air pressure was between 90 and 100 psi. After the system had reached the appropriate air pressure, we had the driver turn off the engine. I explained to the driver that when requested he should apply the brakes fully. I would then have him release and apply them a couple different times, so I could measure the distance of pushrod travel (stroke) with the service brakes applied. Axle number 4, driver and passenger side pushrod travel was measured with a tape measure at 2 ¼ inches of travel. Axle number 5, driver's side pushrod travel was measured with a tape measure at 2 ¼ inches of travel.

Q. Why does 2 ¼ inches of pushrod travel, on this truck in particular, constitute a violation?

A. The brakes in question are on the trailer axles #4 and #5. The brake type is called a Clamp Type Brake, and this type 30 clamp type brake has an outside diameter of 8 3/32 or 206 mm with a brake adjustment limit of 2 inches. All brake measurements shall be made in 1/8 inch increments. If the type 30 clamp pushrod measures 2 1/8 inches it counts as .05 or ½ a brake towards out-of-service. If it measures 2 ¼ inches it counts as a full brake towards out-of-service. When 2 or more of the 10 working

brakes that are measured at 2 ¼ inches are out of adjustment it meets out-of-service criteria.

Q. On this particular truck, how many brakes must be found to be out of adjustment in order to render the truck out-of-service (OOS)?

A. Two. The North American standard Out-Of-Service Criteria uses a defective brake chart in determining when a vehicle/combination is to be declared out–of-service. This truck tractor and trailer has 10 brakes; the total number of defective brakes necessary is two defective brakes to place the truck and trailer while in combination or just the trailer out of service.

Q. Please explain the rule relevant to putting a vehicle out-of-service for defective brakes.

A. The type and size of a brake chamber determines the allowable pushrod travel specification. Larger chambers result in more allowable pushrod travel. We use the tables in 49 C.F.R. §393.47(e) to determine the readjustment limits for the type and size of chamber inspected. We compare the numbers in the tables with our measurement to determine violations. Any defective brake is a violation. Defective brakes are defined in the OOSC. The CVSA 20% Defective Brake Chart must be used to assist in determining when a vehicle/combination is to be declared OOS. We determine the number of defective brakes required to declare a vehicle or combination OOS by using 20% of the total number of brakes on the vehicle or combination. All brake measurements shall be made in $^{1}/_{8}$ inch (3.2 mm) increments. One brake at ¼ inch (6.5 mm) or more beyond the adjustment limit. For example, a

type 30 clamp type air chamber pushrod measured at 2 ¼ inches (57.15 mm) would be one defective brake. Brakes found in violation shall be documented in accordance with CVSA Operations Policy 14.

Q. Regarding other violations, how did you determine that there was oil leaking on the vehicle's outer wheel on the driver's side?

A. There was black liquid (OIL) on the outside of the wheel hub indicating that oil was leaking from inside the hub. The oil was tacky to the touch and had a shiny reflection indicating that the oil was fresh.

Q. Were there other oil and/or grease leaks that you found on the vehicle?

A. Yes, I observed oil completely covering the underneath of the truck from the motor area back covering axle # 2 and # 3. This oil was coming from the crank case through the blow by tube. Oil was leaking from around axle # 2 where the inspection plate bolts to the rear end. Other spots were up under the motor, and the oil pan gasket was leaking in several places. The oil was leaking down the side of the oil pan and onto the leaf springs and down onto the ground.

Q. Please explain the rule that applies to oil and grease leaks.

A. 49 C.F.R. § 396.5; Every motor carrier shall ensure that each motor vehicle subject to its control is: (a) Properly lubricated; and (b) Free of oil and grease leaks. If there is oil outside the part where the oil is contained, that is considered an oil leak. Example: Oil on the outside of an oil pan leaking from the oil pan gasket; oil leaking from the blow by tube; oil coming from inside the engine; oil on the outside of the hub on the

wheels. This area should be completely dry (free from oil, free from dirt sticking to oil).

Q. How did you determine that the vehicle-in-question had placarding violations?

A. The rear placard was hard to see due to the hot oil that was dripping down, and the wind would catch it and fling up onto the back of the tank. The passenger placard was broken on one corner. The driver's side placard's top corner was folded down so that one could not see the flame. The placard on the front of the tank was faded and the bottom corner was folded up so that one could not see the number 3.

49 C.F.R. § 172.516; Visibility and display of placards:

> (a) Each placard on a motor vehicle and each placard on a rail car must be clearly visible from the direction it faces, except from the direction of another transport vehicle or rail car to which the motor vehicle or rail car is coupled. This requirement may be met by the placards displayed on the freight containers or portable tanks loaded on a motor vehicle or rail car.
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> (b) The required placarding of the front of a motor vehicle may be on the front of a truck-tractor instead of or in addition to the placarding on the front of the cargo body to which a truck-tractor is attached.
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> (c) Each placard on a transport vehicle, bulk packaging, freight container or aircraft unit load device must—(1) Be securely

attached or affixed thereto or placed in a holder thereon. (See appendix C to this part.); (2) Be located clear of appurtenances and devices such as ladders, pipes, doors, and tarpaulins; (3) So far as practicable, be located so that dirt or water is not directed to it from the wheels of the transport vehicle; (4) Be located away from any marking (such as advertising) that could substantially reduce its effectiveness, and in any case at least 3 inches (76.0 mm.) away from such marking; (5) Have the words or identification number (when authorized) printed on it displayed horizontally, reading from left to right; (6) Be maintained by the carrier in a condition so that the format, legibility, color, and visibility of the placard will not be substantially reduced due to damage, deterioration, or obscurement by dirt or other matter; (7) Be affixed to a background of contrasting color, or must have a dotted or solid line outer border which contrasts with the background color.

(d) Recommended specifications for a placard holder are set forth in appendix C of this part. Except for a placard holder similar to that contained in appendix C to this part, the means used to attach a placard may not obscure any part of its surface other than the borders.

(e) A placard or placard holder may be hinged provided the required format, color, and legibility of the placard are maintained.

Q. Please explain the rules relevant to these placarding violations.

A. We look at 49 C.F.R. 172.516(a). Then we look in the North American Standard Out-of-Service Criteria (OOS Criteria).

Q. Was the vehicle-in-question hauling hazardous materials? Please explain.

A. The vehicle was hauling 46,860 lbs. of elevated temperature HOT Asphalt. Cutback UN 1999 states that any substance that is at a temperature of 212 degrees or above is defined as an elevated substance and would require the marking HOT in a white square on point with the word HOT.

Q. How did you determine that the vehicle-in-question had a violation for leaking these hazardous materials?

A. Asphalt was leaking from a valve at the rear of the trailer. 49 C.F.R. § 173.24; General requirements for packaging and packages. (b) Each package used for the shipment of hazardous materials under this subchapter shall be designed, constructed, maintained, filled, its contents so limited and closed, so that under conditions normally incident to transportation—(1) Except as otherwise provided in this subchapter, there will be no identifiable (without the use of instruments) release of hazardous materials to the environment;

Q. Please explain the rule that applies to the leaking of hazardous materials.

A. See Part III of the North American Standard Hazardous Materials Out-of-Service Criteria regarding "bulk packages. Bulk Package Integrity: HM/DG leaking from a bulk package (including associated piping) constitutes an out-of-service condition.

The tank's capacity was greater than 119 gallons. This would be a "bulk package" under the definition. Integrity means that the package has to be made so that whatever is inside cannot escape. This also would require any piping or valves to be free from any leak.

Q. During your inspection, did you discover any other hazardous materials related violations?

A. Yes. There were 9 total hazardous material violations.

Q. Please explain the rules that apply to these violations.

A. Please refer to Technical Trooper Jason Mills' testimony in response to this question.

Q. Is there anything further you wish to add to aid the Commission in its decision?

A. No.

Q. Does this conclude your testimony?

A. Yes.

CERTIFICATE OF SERVICE

15-GIMM-212-KHP

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing docket was placed in the United States mail, postage prepaid, or hand-delivered this 30th day of January, 2015, to the following:

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