

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the General Investigation)
of **PWD, Inc. of Newton, Kansas,**)
Pursuant to the Kansas Highway Patrol) Docket No. 20-GIMM-255-KHP
Issuance of a Notice of Violation(s) and)
Invoice for the Violations of the Kansas)
Motor Carrier Safety Statutes, Rules and)
Regulations.)

ORDER APPROVING STIPULATED SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On November 12, 2019, the Kansas Highway Patrol issued a Notice of Violation(s) against PWD, Inc. (Respondent), for an alleged violation found during a November 6, 2019, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).

2. As a result of this inspection, Respondent was assessed \$150 in civil fines, comprised of the following violation: a \$150.00 fine for Operating a CMV without a CDL, citing 383.23A2.

3. On November 20, 2019, Respondent initiated a formal challenge with the KHP.

4. On December 2, 2019, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

5. On December 5, 2019, Respondent requested a hearing before the Commission.

6. On December 19, 2019, Russell G. Rucker, CEO of PWD, Inc., Gary Davenport, Deputy Director of the Transportation Division and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement via electronic correspondence. During this and subsequent informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

7. On December 20, 2019, Staff filed a Joint Motion for Approval of Stipulated Settlement Agreement. The Stipulated Settlement Agreement is attached to this Order.

8. Respondent agrees to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

9. In signing the Stipulated Settlement Agreement, the parties agree that the Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.

II. FINDINGS AND CONCLUSIONS

10. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement constitute a reasonable and appropriate final resolution of this matter.

11. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

12. The Commission further concludes that pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 66-1,108b, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

13. The Commission has reviewed the Stipulated Settlement Agreement attached hereto and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion for Approval the Stipulated Settlement Agreement entered into between PWD, Inc. and Transportation Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹

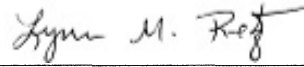
C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 12/31/2019

A handwritten signature in cursive script, reading "Lynn M. Retz", positioned above a horizontal line.

Lynn M. Retz
Executive Director

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**BEFORE THE STATE CORPORATION COMMISSION
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STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and PWD, Inc. (Respondent). Its effective date will be the date the Commission enters an Order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2017 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate a party under its jurisdiction.

4. Pursuant to K.S.A. 2018 Supp. 74-2108, the Kansas Highway Patrol may require the driver of any motor vehicle operated by any motor carrier to stop and submit to an inspection to determine compliance with the laws, rules and regulations relating to motor carriers.

Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine motor carrier equipment operating on the highways in Kansas, and examine the manner of the motor carrier's conduct as it relates to the public safety and the operation of commercial motor vehicles in Kansas.

5. Pursuant to K.S.A. 2018 Supp. 66-1,129(a), sanctions imposed against motor carriers must be done in accordance with the Kansas Administrative Procedure Act.

6. Pursuant to K.S.A. 2018 Supp. 77-505, nothing in the Kansas Administrative Procedure Act shall preclude the informal settlement of matters that may make other proceedings unnecessary.

7. Pursuant to K.S.A. 2018 Supp. 66-1,142c, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

8. On November 12, 2019, the Kansas Highway Patrol issued a Notice of Violation(s) against PWD, Inc. (Respondent), for an alleged violation found during a November 6, 2019, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).

9. As a result of this inspection, Respondent was assessed \$150 in civil fines, comprised of the following violation: a \$150.00 fine for Operating a CMV without a CDL, citing 383.23A2.

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12. On December 5, 2019, Respondent requested a hearing before the Commission.

13. On December 19, 2019, Russell G. Rucker, CEO of PWD, Inc., Gary Davenport, Deputy Director of the Transportation Division and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and subsequent informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

14. The parties agree that the Commission has jurisdiction and authority over this matter.

15. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

16. Respondent agrees to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

17. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

18. Pursuant to K.S.A. 77-504, the Respondent waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

19. Pursuant to K.S.A. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

20. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Respondent waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF EXAMINATION AND INVOICE

21. Staff agrees to reduce the \$150.00 civil fine alleging Operating a CMV without a CDL identified in the Commission's Notice of Violation and Invoice No. H000583378 to \$0.00.

22. Staff's Recommendation for dismissal of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Respondent's efforts to remediate the violation and attempts to ensure compliance.

23. Respondent agrees to withdraw its Request for Hearing before the Commission.

V. DUTIES OF THE RESPONDENT

24. Respondent shall, when applicable, comply with Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

VI. RESERVATIONS

25. This Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

26. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve

the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

27. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

28. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court. If the Commission approves this Agreement in its entirety and incorporates the same into a Final Order in this docket, the parties agree to be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order.

29. This Agreement shall be binding on all parties upon signing.

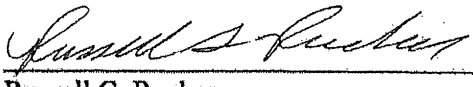
IN WITNESS WHERETO, Staff and PWD, Inc. hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By:


Ahsan A. Latif, KS S. Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3167
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Attorney for Commission Staff

By:


Russell G. Rucker
CEO
PWD, Inc.
1214 Cow Palace Road
Newton, KS 67114
Phone: 316-283-0335
Fax: 316-283-2334
Email: rrucker@PWDks.com

CEO of PWD, Inc.

CERTIFICATE OF SERVICE

20-GIMM-255-KHP

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
first class mail/hand delivered on 01/02/2020.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
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RUSSELL G. RUCKER, PRESIDENT
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PO BOX 603
NEWTON, KS 67114-0603
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rrucker@pwdks.com

/S/ DeeAnn Shupe
DeeAnn Shupe