

**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 **BMS**      )  
**Transportation Company, Inc. of Platte**      )  
**City, Missouri,** Pursuant to the Kansas      )  
Highway Patrol Issuance of a Notice of      )      Docket No. 15-GIMM-212-KHP  
Violation for Violation(s) of 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 SUSPENDING MOTOR CARRIER OPERATIONS IN THE STATE OF  
KANSAS**

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

**I.      JURISDICTION AND BACKGROUND**

1.      Pursuant to K.S.A. 2015 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2015 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. 2015 Supp. 66-1,129a, 66-1,130, and 66-1,142b, 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. Pursuant to K.S.A. 2015 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

4. K.S.A. 2015 Supp. 66-1,129a(a) states that “[t]he commission, at any time for good cause shown, may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by the commission.” K.S.A. 2015 Supp. 66-1,129 requires public (for-hire) motor carriers of property operating in Kansas to abide by the Commission’s safety rules and regulations and provides no exceptions for interstate motor carriers.

## **II. FINDINGS OF FACTS**

5. BMS Transportation Company, Inc. (Respondent) is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108, that operates commercial motor vehicle(s) in interstate commerce.

6. On July 7, 2014, the Kansas Highway Patrol (KHP) issued a Notice of Violation assessing fines against Respondent for violations found during a June 23, 2014, routine motor carrier stop and inspection.

7. On November 12, 2014, Respondent submitted a Request for Hearing with the Commission.

8. On November 24, 2014, Commission Staff (Staff) filed a Notice of Hearing setting the matter for hearing on January 14, 2015.

9. On December 11, 2014, the Commission issued an Order Granting Continuance, rescheduling the hearing for February 11, 2015.

10. On February 4, 2015, Respondent filed its Motion for Continuance. Staff did not oppose the motion and on February 10, 2015, the Commission granted the Motion for Continuance and rescheduled the hearing for March 18, 2015, in Topeka, Kansas, at 9:00 a.m.

11. On March 18, 2015, the Commission held 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.

12. Upon the conclusion of the hearing, Staff moved for the Commission to issue a default judgment in this matter. The Commission issued a Default Order against Respondent on April 14, 2015, requiring Respondent to pay \$150 in civil penalties assessed against him in the aforementioned KHP Notice of Violation.

13. The Default Order was mailed to Respondent via certified mail on April 15, 2015. The Default Order was not returned to the Commission.

14. As of November 30, 2015, Commission records indicate Respondent has not complied with the requirements of the Default Order, in that Respondent has failed to pay the Commission-ordered civil penalty of \$150.

15. Respondent had fifteen (15) days, plus three (3) days for mailing, to petition the Commission for reconsideration of the Default Order. Respondent has failed to petition for reconsideration.

### **III. CONCLUSIONS OF LAW**

16. The Commission finds it has jurisdiction over Respondent because the Respondent is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.

17. The Commission finds Respondent received sufficient notice of the Commission's Default Order and the requirement to pay the Commission-ordered civil penalty of \$150.

18. The Commission finds Respondent failed to act upon this notice.

19. The Commission finds Respondent's failure to pay the Commission-ordered \$150 civil penalty constitutes good cause to suspend Respondent's motor carrier operations in the State of Kansas.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. BMS Transportation Company, Inc. of Platte City, Missouri is to be immediately suspended from commercial motor carrier operations in the state of Kansas other than such motor carrier operations excepted from the Commission's regulations under K.S.A. 2015 Supp. 66-1,129, until such time as Respondent pays the Commission-ordered civil penalty amount of \$150. The Commission's suspension of motor carrier operations in the state of Kansas may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspending operating authority.

B. Pursuant to K.S.A. 2015 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, return receipt requested, service of this order is complete when Respondent signs the Domestic Return Receipt. If service is by regular U.S. mail, service is complete upon the date of mailing plus three (3) days. Pursuant to K.S.A. 66-1,129a,

hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Respondent's right to a hearing, and this Order will become a Final Order against Respondent, suspending Respondent's motor carrier operations.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2015 Supp. 66-1,142b(e) and amendments thereto.

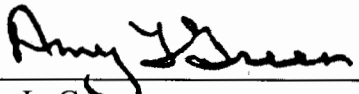
D. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by law, without further notice.

E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: DEC 03 2015

  
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Amy L. Green  
Secretary to the Commission

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**ORDER MAILED DEC 04 2015**

## CERTIFICATE OF SERVICE

15-GIMM-212-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on DEC 03 2015.

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/S/ DeeAnn Shupe  
DeeAnn Shupe

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