

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

In the Matter of the Investigation of **Benfer**)
Enterprises II LLC of Independence, Missouri,)
Pursuant to the Kansas Highway Patrol Issuance of a) Docket No. 17-GIMM-269-KHP
Notice of Violation(s) and Invoice for the Violations)
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 Benfer Enterprises II LLC (“Respondent”) in Default, and assessing costs of this proceeding against Respondent.

I. Background

1. On September 30, 2016 and October 6, 2016, the Kansas Highway Patrol issued Notices of Violation(s) against Benfer Enterprises II LLC, for alleged violations found during three September 27, 2016, routine motor carrier stops and inspections conducted by the Kansas Highway Patrol (KHP). Respondent was assessed \$600.00 in civil fines, comprised of the following violations: a \$150.00 fine for Tire-Other Thread Depth Less Than 2/32 of Inch, citing 49 C.F.R. 393.75C as adopted by K.A.R. 82-4-3i relating to Driver/Vehicle Examination Report No. KSHP02520638, a \$300.00 fine for Failure to Register and Pay UCR Fees, citing 49 C.F.R. 392.2UCR as adopted by K.A.R. 82-4-3h relating to Driver/Vehicle Examination Report No. KSHP01000842, and a \$150.00 fine for No Parking Brake, citing 49 C.F.R. 393.41 as adopted by K.A.R. 82-4-3i relating to Driver/Vehicle Examination Report No. KSHP00531286.

2. Subsequently, Respondent initiated a formal challenge with the KHP.

3. On October 28, 2016, the Kansas Highway Patrol denied Respondent's challenges and advised Respondent of its right to an administrative hearing before the Commission.

4. On November 14, 2016, the Kansas Corporation Commission received Respondent's request for hearing before the Commission, postmarked November 9, 2016. The request for hearing was filed December 28, 2016.

5. On February 16, 2017, the Commission issued its Order Setting Hearing, scheduling the hearing in this matter to take place on April 11, 2017 at 1:30 p.m. in the Commission's First Floor Hearing Room.

6. On March 31, 2017, Staff timely submitted pre-filed testimony.¹ Respondent did not submit pre-filed testimony.

7. On April 11, 2017, 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.² Further, the Commission's February 16, 2017, Order Setting Hearing stated that any party who fails to attend the evidentiary hearing may be held in default.³ 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.

¹ See Prefiled Testimony of Mike Hoeme (Mar.. 31, 2017), Prefiled Testimony of Nicholas Wright (Mar.. 31, 2017), Prefiled Testimony of Jason Mills (Mar.. 31, 2017) and Prefiled Testimony of Robert Beabout (Mar.. 31, 2017).

² See K.S.A. 77-520.

³ Order Setting Hearing, ¶9 (Feb. 16, 2017).

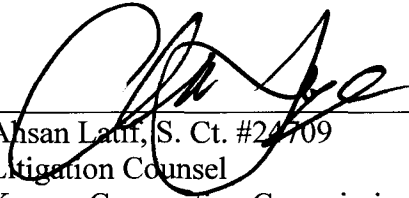
9. Because Respondent specifically requested a hearing on the violations, and Respondent failed to pursue its request, Staff recommends the Commission uphold the violations and the \$600 in civil penalties assessed in Invoice Numbers H000564753, H000564756, and H000564878.

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 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 \$1,167.65 pursuant to K.S.A. 66-1502 (4) for any such further relief as the Commission deems necessary and proper.

Respectfully submitted,



Ahsan Latif, 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
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

ATTACHMENT "A"

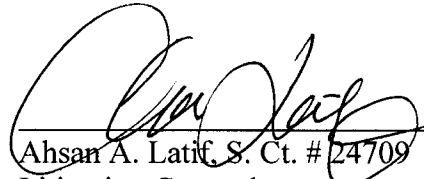
Item	Employee	Hours	Hourly Pay (Incl. Benefits)	Cost
Pre-Filed Testimony Preparation	Ahsan Latif	2.00	28.85	57.70
Hearing Preparation	Ahsan Latif	2.00	28.85	57.70
Motion Preparation	Ahsan Latif	1.00	28.85	28.85
Pre-Filed Testimony Preparation	Mike Hoeme	2.00	38.44	76.88
Hearing Preparation	Mike Hoeme	1.00	38.44	38.44
Attending Hearing, Inc. Waiting for Hearing to Be Called	Mike Hoeme	1.00	38.44	38.44
Pre-Filed Testimony Preparation	Nicholas Wright	2.00	28.31	56.62
Hearing Preparation	Nicholas Wright	2.00	28.31	56.62
Travel to/from Hearing	Nicholas Wright	2.00	28.31	56.62
Attending Hearing, Incl. Waiting for Hearing to Be Called	Nicholas Wright	2.00	28.31	56.62
Pre-Filed Testimony Preparation	Jason Mills	2.00	29.73	59.46
Hearing Preparation	Jason Mills	2.00	29.73	59.46
Travel to/from Hearing	Jason Mills	3.00	29.73	89.19
Attending Hearing, Incl. Waiting for Hearing to Be Called	Jason Mills	2.00	29.73	59.46
Pre-Filed Testimony Preparation	Robert Beabout	2.00	29.73	59.46
Hearing Preparation	Robert Beabout	2.00	29.73	59.46
Travel to/from Hearing	Robert Beabout	2.00	29.73	59.46
Attending Hearing, Incl. Waiting for Hearing to Be Called	Robert Beabout	2.00	29.73	59.46
Court Reporter Services/Transcript Preparation	Denise Haas	n/a	n/a	\$137.75
			GRAND TOTAL:	\$1,167.65

VERIFICATION

17-GIMM-269-KHP

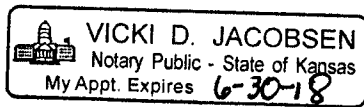
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

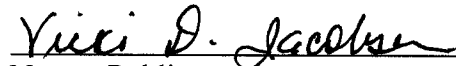
Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Motion for Default Judgment and for Assessment of Costs Pursuant to K.S.A. 66-1502*, and attests that the statements 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 27th day of April, 2017.





Notary Public

My Appointment Expires: June 30, 2018

CERTIFICATE OF SERVICE

I certify that on April 28th, 2017, 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:

Bill Benfer, Managing Member
Benfer Enterprises II LLC
10047 E Wilson Road
Independence, MO 64053

And delivered by email to:

Samuel Feather
KCC Topeka Office



Vicki Jacobsen
Legal Assistant, Kansas Corporation Commission