

**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) Docket No. 15-GIMM-212-KHP
Notice of 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.)

**MOTION TO SUSPEND MOTOR CARRIER OPERATIONS IN THE STATE OF
KANSAS**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), by and through its counsel, files its motion requesting the Commission suspend BMS Transportation Company, Inc. of Platte City, Missouri (Respondent) from commercial motor carrier operations in the state of Kansas. In support of its Motion, Staff states as follows:

1. 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.
2. 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.
3. On November 12, 2014, Respondent submitted a Request for Hearing with the Commission.
4. On November 24, 2014, Commission Staff (Staff) filed a Notice of Hearing setting the matter for hearing on January 14, 2015.

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

6. 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.

7. 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.

8. 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. The Default Order is attached hereto and incorporated herein by reference.

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

10. 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.

11. 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.

12. 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 rules and regulations and provides no exceptions for interstate motor carriers.

13. Staff asks that the Commission find Respondent received sufficient notice of the Commission’s Default Order, and requisite opportunity to pay the \$150 civil penalty.

14. Staff asks that the Commission find Respondent failed to act upon the Commission’s Order.

15. Staff asks the Commission find, based on Respondent’s interstate motor carrier operations that Respondent is subject to the Commission’s safety regulations, pursuant to K.S.A. 2015 Supp. 66-1,129.

16. Staff asks that, pursuant to K.S.A. 2015 Supp. 66-1,129a(a), 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.

17. Therefore, based on the presented facts, Staff requests the Commission issue an order suspending Respondent’s motor carrier operations in the state of Kansas until such time as Respondent pays the Commission-ordered penalty of \$150, at which time Staff will recommend the Commission enter an order reinstating Respondent’s motor carrier operations in the state of Kansas.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission issue an order suspending Respondent's motor carrier operations in the state of Kansas.

Respectfully submitted,



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For Commission Staff

**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 Violation for)
Violation(s) of the Kansas Motor Carrier) Docket No. 15-GIMM-212-KHP
Safety Statutes, Rules and Regulations and)
the Commission's Authority to Impose)
Penalties, Sanctions and/or the Revocation)
of Motor Carrier Authority.)

DEFAULT ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised, the Commission finds:

1. On or about July 7, 2014, the Kansas Highway Patrol (KHP) issued a Notice of Violation assessing fines against BMS Transportation Company, Inc. (BMS), for violations found during a June 23, 2014 routine motor carrier stop and inspection.
2. On November 12, 2014, BMS submitted a Request for Hearing.
3. On November 24, 2014, Commission Staff (Staff) filed a Notice of Hearing setting the matter for hearing on January 14, 2015.
4. On December 11, 2014, the Commission issued an Order Granting Continuance, rescheduling the hearing for February 11, 2015.
5. On January 30, 2015, Ken Pratt, the Owner of BMS, sought permission to appear pro se. In response to Pratt's request, the prehearing officer conducted a status conference

advising that since a Commission Order on his request would not be available until February 10, 2015, the parties may want to request a continuance in the event that BMS needs to find counsel for the hearing.

6. On February 4, 2015, BMS filed its Motion for Continuance explaining the uncertainty over its request to appear pro se necessitates a continuance. Staff did not oppose a continuance, and on February 10, 2015, the Commission granted the Motion for Continuance and rescheduled the hearing for March 18, 2015, at 9:00 a.m.

7. On March 5, 2015, the Commission issued its Order Granting Request to Appear Pro Se.

8. Neither BMS nor its representative appeared at the evidentiary hearing held on March 18, 2015.¹ Mr. Michael Duenes and Mr. Robert Vincent appeared as Litigation Counsel on behalf of Commission Staff.² Technical Trooper Shawn Hines, Technical Trooper Jason Mills, and Mr. Mike Hoeme appeared as Staff Witnesses.³

9. The Commission found Notice was proper based on Staff's statement that on November 24, 2014, it filed and served a Notice of Hearing to Ken Pratt's address of record via certified mail with return receipt requested.⁴ Commission Staff did not receive a signed receipt.⁵ Staff then resent the Notice of Hearing by regular mail on December 17, 2014, and it was not returned.⁶ Further demonstrating BMS was on notice of the hearing date, Pratt moved for a

¹ Transcript of Proceedings, Docket No. 15-GIMM-212-KHP, March 18, 2015, p. 2.

² *Id.*

³ *Id.*, p. 3.

⁴ *Id.*, p. 5.

⁵ *Id.*

⁶ *Id.*

continuance on January 4, 2015, and received the Commission's February 10, 2015 Order granting BMS's motion scheduling the hearing on March 18, 2015.⁷

10. The Commission is given full power, authority and jurisdiction to supervise and control motor carriers, doing business in Kansas, and is empowered to do all things necessary and convenient to exercise that power, authority and jurisdiction.⁸

11. The Commission may initiate sanctions or fines for violations of any provision of Kansas law relating to the regulation of motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.⁹

12. K.S.A. 77-520, which governs default actions on administrative proceedings, provides in relevant part:

- (a) If a party fails to attend or participate in a pre-hearing conference, hearing or other state of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

13. Additionally, K.S.A. 77-520 also provides that the proposed default order becomes final seven days after service of the proposed default order unless the party, against whom the proposed default order was issued, submits a written request that the proposed order be vacated and states the grounds relied upon.¹⁰

14. In this case, prefiled testimony states BMS is a motor carrier as defined by K.S.A. 66-1,108, and that on June 23, 2014, BMS committed two violations of the Kansas Motor Carrier Safety Rules and Regulations while operating a commercial motor vehicle in the state of Kansas.

⁷ *Id.*

⁸ 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.

⁹ K.S.A. 66-1,129a, 66-1,142b, and amendments thereto.

¹⁰ K.S.A. 77-520(b) and (c).

15. Pursuant to K.S.A. 66-1,129a and 66-1,142b, the alleged violations of Kansas motor carrier rules and regulations are subject to a civil penalty ranging from \$100 to \$1,000 for negligent violations, and up to \$5,000 for intentional violations.

16. Staff recommended upholding the \$150 civil penalty assessed in Invoice Number H000549106.

17. The Commission finds BMS in default for failing to appear at the March 18 hearing, and concludes the penalties assessed for violations identified on June 23, 2014 are reasonable pursuant to K.S.A. 66-1,129a and 66-1,1142b. Therefore, the Commission upholds the \$150 civil penalty assessed in Invoice Number H000549106.

18. Pursuant to K.S.A. 77-520(b), BMS has seven days from service to move to vacate this Default Order. Absent such motion, this Order will automatically become a Final Order of Default effective seven days after service.

THEREFORE, THE COMMISSION ORDERS:

A. BMS Transportation Company, Inc. (BMS) is found in default for its failure to appear at the evidentiary hearing scheduled for March 18, 2015.

B. This order serves as notice to BMS of the Default Order. BMS has seven days to submit a written motion requesting the Default Order be vacated and stating grounds in support of its motion.

C. Pursuant to K.S.A. 77-520(c) this Default Order becomes a Final Order of Default effective seven days after service, provided BMS does not file a motion to vacate.

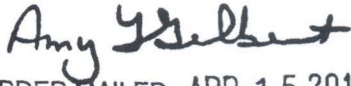
D. The parties have 15 days, plus three days if served by mail, from the date of service of this Order to petition for reconsideration.¹¹

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: APR 14 2015


ORDER MAILED APR 15 2015
Amy L. Gilbert
Secretary

BGF/mf

¹¹ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

15-GIMM-212-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Motion to Suspend Motor Carrier Operations in the State of Kansas was placed in the United States mail, postage prepaid, or hand-delivered this 30th day of November, 2015, to the following:

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