BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the Matter of the Investigation of **Brian** J. Nisly, d/b/a Nisly Construction, of Partridge, Kansas, Regarding the) Violation of the Motor Carrier Safety) Statutes, Rules and Regulations and the) Commission's Authority Impose) to Penalties, Sanctions and/or the Revocation) of Motor Carrier Authority.)

Docket No. 20-TRAM-009-PEN

MOTION TO SUSPEND INTRASTATE MOTOR CARRIER OPERATIONS

The Staff of the State Corporation Commission of the State of Kansas (Staff), by and through its counsel, files its motion requesting the Commission suspend Brian J. Nisly, d/b/a Nisly Construction of Partridge, Kansas (Carrier) from all intrastate commercial motor carrier operations. In support of its Motion, Staff states as follows:

1. Carrier is a motor carrier as defined in 49 C.F.R. Part 390.5, as adopted by K.A.R.

82-4-3f, that operates commercial motor vehicle(s) in intrastate commerce.

2. Carrier is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT number 3315141.

3. On July 11, 2019, the Commission issued Carrier a penalty assessment for seven (7) violation(s) of the Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a compliance review conducted on June 21, 2019, by Kansas Corporation Commission Special Investigator Doug Handy. The Carrier paid the penalty amount of \$3,950 on August 13, 2019.

4. In the Penalty Order at ordering clause B., it is stated, "Further Brian J. Nisly, d/b/a Nisly Construction must submit to one follow-up safety compliance review within the next 18 months."

5. Special Investigator Verna Jackson has made numerous attempts to contact Carrier to facilitate a follow-up off-site safety compliance review on its operations as a motor carrier.

6. Ahsan Latif, Litigation Counsel, wrote and mailed Carrier a letter on August 28, 2020, informing Carrier that should it continue to resist by failing to respond, the Commission may suspend its motor carrier operations, revoke or amend certificates, and/or initiate sanctions or fines against Carrier. The letter gave Carrier ten (10) days from the date of the letter to respond.

7. As of February 24, 2021, Special Investigator Verna Jackson and Litigation Counsel Ahsan Latif have not heard from Carrier to schedule a follow-up motor carrier safety compliance review.

8. Staff asks that the Commission find Carrier received sufficient notices of the need to schedule a follow-up safety compliance review.

9. Staff asks that the Commission find Carrier failed to respond to several attempts to contact.

10. Staff asks the Commission find that Carrier's resistance to respond to Special Investigator Verna Jackson's attempts to contact and Litigation Counsel Ahsan Latif's letter poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

11. Based on the presented facts, Staff requests the Commission issue an order suspending Carrier's intrastate motor carrier authority operations until such time as Carrier

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contacts Special Investigator Verna Jackson or Litigation Counsel Ahsan Latif to schedule a follow-up safety compliance review, at which time Staff will recommend the Commission issue an order of reinstatement of intrastate motor carrier operations.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission issue an order suspending Carrier's intrastate motor carrier operations.

Respectfully submitted,

Isl Ahsan A. Latif

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For Commission Staff

CERTIFICATE OF SERVICE

20-TRAM-009-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Motion to Suspend Intrastate Motor Carrier Operations was served electronically this 24th day of February, 2021, to the following:

BRIAN J. NISLY, OWNER BRIAN J. NISLY D/B/A NISLY CONSTRUCTION 9512 S SALEM RD PARTRIDGE, KS 67566 briannisly@gmail.com AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov

/s/ Vicki Jacobsen

Vicki Jacobsen