

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the General Investigation)
of **Garrett Benjamin d/b/a Garrett**) Docket No. 17-GIMM-343-KHP
Benjamin Farms of Council Grove,)
Kansas, Pursuant to the Kansas Highway)
Patrol Issuance of a Notice of Violation(s))
and Invoice for the Violations of the)
Kansas Motor Carrier Safety Statutes,)
Rules and Regulations.)

ORDER SETTING HEARING

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records and being fully advised in the premises, the Commission makes the following findings:

1. On December 5, 2016, the Kansas Highway Patrol issued a Notice of Violation(s) against Garrett Benjamin Farms (Respondent), for alleged violations found during a November 29, 2016, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP). Respondent was assessed \$450 in civil fines, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Leaking/Spilling/Blowing/Falling Cargo, citing 393.100B, a \$150.00 fine for Inoperative Turn Signal, citing 393.9TS, and a \$0.00 fine for Brake OOS (#defective = or > 20%), citing 396.3A1BOS.

2. On December 31, 2016, Respondent initiated a formal challenge with the KHP.

3. On January 6, 2017, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

4. On January 22, 2017, Respondent requested a hearing before the Commission.

5. Pursuant to K.S.A. 2015 Supp. 77-511, the above-referenced matter has been set for hearing on May 24, 2017 at 9:00 a.m., in the First Floor Hearing Room at the Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604.

6. The hearing will be formal in nature and will involve both the rules of civil procedure and the rules of evidence. Please note that 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.

7. Pursuant to K.A.R. 82-1-229(c), parties will prefile direct testimony ten (10) days prior to the scheduled hearing date. The Commission has authorized the use of electronic filing and service in lieu of the traditional physical filing and service of documents. If electronic filing and service is not utilized, one original and seven copies of the prefiled testimony must be filed with the Secretary of the Commission, 1500 SW

Arrowhead Road, Topeka, Kansas 66604. Rebuttal testimony may be presented at the hearing.

8. Nothing in the Kansas Administrative Procedure Act shall preclude the Commission's Transportation Staff (Staff) and Respondent from reaching an informal settlement, subject to formal Commission approval. See K.S.A. 77-505. Thus, Staff and its counsel will contact Respondent and/or Respondent's counsel to schedule an informal telephone conference prior to the hearing in order to clarify the issues and explore provisional settlement possibilities.

9. If any party(s) fails to appear and participate in this hearing, the Commission may proceed to hear evidence against the party(s) and enter such order as shall be justified by the evidence. Failure to participate may result in default judgment against the Respondent pursuant to K.S.A. 2015 Supp. 77-520. Further, at any point in the proceedings, a proceeding may be converted into another type of agency proceeding pursuant to K.S.A. 77-506.

10. Any person requiring special accommodations under the Americans With Disabilities Act needs to give notice to the Commission at least ten (10) days prior to the scheduled hearing date.

11. The Commission will preside over this hearing. The attorney designated to appear on behalf of the agency is Ahsan Latif, telephone number 785-271-3118, 1500 SW Arrowhead Road, Topeka, Kansas 66604.

12. If applicable, any and all prehearing orders issued in this matter are attached in accordance with K.S.A. 2015 Supp. 77-518(b).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The evidentiary hearing is scheduled for Wednesday, May 24, 2017, beginning at 9:00 a.m. or as soon thereafter as the matter can be heard. The hearing will be held in the Commission's Topeka offices.

B. The parties have fifteen (15) days, plus three (3) days if served by mail, from the date this order was served in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAR 28 2017



Amy L. Green
Secretary to the Commission

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MAILED

MAR 28 2017

CERTIFICATE OF SERVICE

17-GIMM-343-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on MAR 28 2017.

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/s/ DeeAnn Shupe

DeeAnn Shupe

MAILED

MAR 28 2017