

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 Investigation of **David**)
Brandyberry, d/b/a B Bar K Tree Service, of)
Lenora, Kansas, Regarding the Violation of)
the Motor Carrier Safety Statutes, Rules and) Docket No. 18-TRAM-069-PEN
Regulations and the Commission's Authority)
to Impose Penalties, Sanctions and/or the)
Revocation of Motor Carrier Authority.)

MOTION TO AMEND PENALTY ORDER

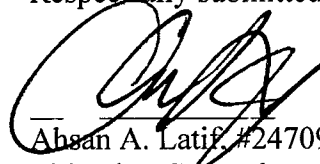
The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), by and through its counsel, files its motion requesting the Commission amend the Penalty Order issued to David Brandyberry, d/b/a B Bar K Tree Service (Respondent) on June 6, 2017. In support of its Motion, Staff states as follows:

1. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 2476800.
2. On August 17, 2017, the Commission issued Respondent a Penalty Order assessing it an \$850 penalty as a result of two (2) violations of the Motor Carrier Safety Regulations found during a Compliance Review conducted on July 19, 2017, by Transportation Division Special Investigator Penny Fryback.
3. Respondent contacted Transportation Staff and provided previously unavailable documentation demonstrating that a successful periodic (annual) inspections had taken place on the motor carrier's vehicles.
4. Staff requests the Commission to issue an Amended Penalty Order, attached hereto and made a part hereof, which removes the \$750 penalty alleging the carrier failed to

conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission issue an Order amending the Penalty Order issued on August 17, 2017, to remove a penalty that was previously assessed against the carrier.

Respectfully submitted,



Ahsan A. Latif, #24709

Litigation Counsel

Kansas Corporation Commission

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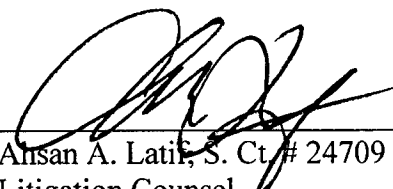
For Commission Staff

VERIFICATION

17-GIMM-403-KHP

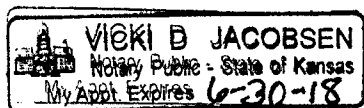
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

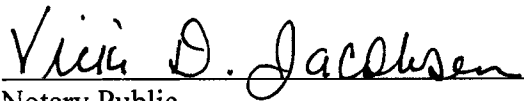
Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Motion to Amend Penalty Order*, and attests that the statements therein are 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 28th day of August, 2017.





Notary Public

My Appointment Expires: June 30, 2018

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ORDER AMENDING PENALTY ORDER

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

I. BACKGROUND

- 1, Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 2476800.
2. On August 17, 2017, the Commission issued Respondent a Penalty Order assessing it an \$850 penalty as a result of two (2) violations of the Kanas Motor Carrier Safety Regulations found during a Compliance Review conducted on July 19, 2017, by Transportation Division Special Investigator Penny Fryback.
3. On August 28, 2017, Staff Filed a Motion to Amend the Penalty Order to remove the previously assessed a penalty of \$750 alleging the carrier failed to conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129.

4. Staff states in its motion that previously unavailable documentation has been produced which demonstrates that the motor carrier's vehicles were inspected during the period investigated.

II. FINDINGS AND CONCLUSIONS

5. The Commission finds it has jurisdiction over Respondent because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

6. Based on the available facts, the Commission finds that Staff's Motion to Amend Penalty Order to remove the penalty assessed prior to the production of previously unavailable documentation.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Penalty Order issued on August 17, 2017, to David Brandyberry, d/b/a B Bar K Tree Service, of Lenora, Kansas, is hereby amended to remove the previously assessed a penalty of \$750 alleging the carrier failed to conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129.

(B) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

(C) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: _____

Lynn M. Retz
Secretary to the Commission

AAL

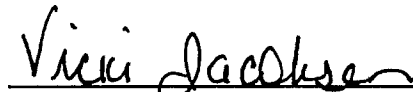
CERTIFICATE OF SERVICE

18-TRAM-069-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Motion to Amend Penalty Order was served via electronic service this 28th day of August, 2017, to the following

DAVID BRANDYBERRY, OWNER
DAVID BRANDYBERRY
D/B/A B BAR K TREE SERVICE
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bbark@ruraltel.net

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Vicki Jacobsen