

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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

In the Matter of the Investigation of Danny G.)
Lambeth, d/b/a Truck Wholesale of Wellsville,)
Kansas, Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation for Violation(s) of) Docket No. 17-GIMM-408-KHP
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.)

ORDER CONTINUING EVIDENTIARY HEARING

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission makes the following findings:

1. On July 10, 2018, the Commission issued an *Order Setting Procedural Schedule*, scheduling an evidentiary hearing for August 15, 2018.¹

2. On August 14, 2018, Danny Lambeth filed a Motion to Reset Hearing. The Prehearing Officer granted Mr. Lambeth's Motion and continued the evidentiary hearing to a date to be determined.²

3. On October 3, 2018, Commission Transportation Staff (Staff) filed a Motion for Order Setting Hearing, requesting that the evidentiary hearing in this docket be rescheduled for November 1, 2018.³ Staff did not request a specific start time for the hearing. Staff indicated that

¹ *Order Setting Procedural Schedule*, ¶ 10 (July 10, 2018).

² *Prehearing Officer Order Continuing Evidentiary Hearing*, Ordering Clause A (Aug. 14, 2018).

³ Staff's Motion for Order Setting Hearing, ¶ 4 (Oct. 3, 2018).

it had “contacted Mr. Lambeth who communicated his availability for a hearing set on such a date.”⁴

4. On October 15, 2018, the Prehearing Officer issued an order rescheduling the evidentiary hearing for Thursday, November 1, 2018, at 9:00 a.m., in the First Floor Hearing Room at the Commission’s Topeka Office.⁵ The Prehearing Officer Order was served upon Mr. Lambeth by electronic mail on October 15, 2018.

5. On November 1, 2018, at 9:00 a.m., in the Commission’s First Floor Hearing Room at its Topeka Office, the Commission convened the scheduled evidentiary hearing. Ahsan Latif entered his appearance on behalf of Staff. Mr. Lambeth did not appear. Staff provided a recommendation regarding notice, explaining that the aforementioned October 15, 2018 Prehearing Officer Order provided proper notice of the time and place of the hearing, and therefore, recommending that notice of the hearing was proper. The Commission found notice to be proper and proceeded with the hearing. As a preliminary matter, the Commission found Staff’s August 3, 2018 Motion to Strike to be moot in light of Mr. Lambeth’s absence from the hearing.

6. Staff witnesses, Kansas Highway Patrol Trooper Joshua Webber and Transportation Division Director Mike Hoeme, took the witness stand and their testimony, both direct and rebuttal, was admitted into the record in this docket. Mr. Lambeth still was not present at approximately 9:15 a.m., and thus, based on Staff’s verbal recommendation, the Commission verbally issued a default order against Mr. Lambeth.

7. At approximately 9:30 a.m., the Prehearing Officer was made aware that Mr. Lambeth had arrived at the Commission’s Topeka Office, asking about the hearing. Mr. Lambeth appeared to have a misunderstanding of the start time for the hearing, but by 9:30 a.m., the court

⁴ *Id.*

⁵ *Prehearing Officer Order Resetting Evidentiary Hearing*, Ordering Clause A (Oct. 15, 2018).

reporter had departed and Trooper Weber was also believed to have left. Thus, Mr. Lambeth was informed that the evidentiary hearing could not go forward on November 1, 2018.

8. In the interest of conserving administrative time and resources, and in light of the fact that the Commission has not issued a formal written default order, the Commission finds there is good cause to continue the evidentiary hearing to **Tuesday, November 27, 2018 at 10:00 a.m.** The hearing will be held in the First Floor Hearing Room at the Commission's Topeka Office, 1500 SW Arrowhead Road, Topeka 66604.

9. The Commission reiterates that any party who fails to attend or participate in the evidentiary hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act.⁶ Moreover, with respect to this particular proceeding as it moves forward, the Commission makes clear its strong presumption in favor of finding default where a party has been properly notified of a hearing and yet fails to heed such notice and appear at the hearing at the proper time and place.

THEREFORE, THE COMMISSION ORDERS:

A. The evidentiary hearing is continued to **Tuesday, November 27, 2018 at 10:00 a.m., to be held in the First Floor Hearing Room at the Commission's Topeka Office, 1500 SW Arrowhead Road, Topeka 66604.**

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁷

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

⁶ K.S.A. 77-518(c)(8); K.S.A. 77-520.

⁷ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/06/2018

A handwritten signature in cursive script, appearing to read "Lynn M. Retz", written in black ink.

Lynn M. Retz
Secretary to the Commission

MJD

CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
first class mail and electronic service on 11/06/2018.

DANNY G. LAMBETH
D/B/A TRUCK WHOLESale
PO BOX 501
22640 PLEASANT VALLEY RD
WELLSVILLE, KS 66092
Fax: 913-262-8155
truckwholesale@gmail.com

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe