

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Request of Houston :  
Transportation, Inc., : Case No.  
: 09-1981-TR-CVF  
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- - -

PROCEEDINGS

Before Harry H. Phillips-Gary, Attorney Examiner, held  
at the offices of the Public Utilities Commission of  
Ohio, 180 East Broad Street, Hearing Room 11-C,  
Columbus, Ohio, on Tuesday, August 31, 2010  
at 10:09 a.m.

- - -

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1 APPEARANCES

2 Mr. Werner L. Margard  
3 Assistant Attorney General  
4 180 East Broad Street, 6th Floor  
5 Columbus, Ohio 43215

6 On behalf of the Staff of the Public  
7 Utilities Commission of Ohio  
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Tuesday Morning Session,  
August 31, 2010.

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ATTORNEY EXAMINER: The Public Utilities Commission of Ohio has called for hearing at this time and place Case No. 09-1981-TR-CVF, being in the matter of the request of Houston Transportation, Incorporated, for an administrative hearing.

My name is Henry H. Phillips-Gary and I am the Attorney Examiner assigned by the Commission to hear this case.

At this time we'll take appearances on behalf of the parties. On behalf of Staff?

MR. MARGARD: Thank you, your Honor. On behalf of the Staff of the Public Utilities Commission, Richard Cordray, Attorney General; William Wright, Section Chief of the Utility Section by Werner L. Margard, Assistant Attorney General, 180 East Broad Street, 6th Floor, Columbus, Ohio.

ATTORNEY EXAMINER: All right. And I note for the record that the respondent is not present. It's, by the clock on the wall, 10 after 10:00.

MR. MARGARD: Your Honor, owing to the absence of the respondent in this matter, the Commission's docket showing that service of the entry

scheduling this hearing was, in fact, completed by certified mail, I would respectfully move for a default judgment against the respondent at this time. Staff is prepared to go forward with its case for the record.

ATTORNEY EXAMINER: Thank you. We will take the motion for default judgment under advisement.

And I would follow-up on Mr. Margard's comments on the docket in this matter showing that service was completed upon the respondent. The docket card shows that on July 21st, 2010, the docketing division received back a signed certified mail card indicating that service was complete upon the respondent.

At this point in time, Mr. Margard, if you would like to proceed with your case, you may do so.

MR. MARGARD: Thank you, your Honor. I'd like to call Harold Emnett to the stand, please.

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HAROLD EMNETT

being first duly sworn, as prescribed by law, was examined and testified as follows:

- - -

DIRECT EXAMINATION

By Mr. Margard:

Q. Please state your name.

1           A. My name is Harold Emnett.

2           Q. And by whom are you employed, Mr. Emnett?

3           A. By the Ohio State Highway Patrol, the Motor  
4 Carrier Enforcement Section at the Findlay District  
5 Headquarters in Findlay, Ohio.

6           Q. What are your duties and responsibilities  
7 in your position?

8           A. I inspect commercial vehicles within the  
9 state of Ohio under the Federal Motor Carrier Safety  
10 Administrations and Public Utilities Commission Rules  
11 and Regulations and complete inspections through the  
12 ASPEN program.

13          Q. Do you have certifications or are you  
14 trained to perform these duties?

15          A. Yes. I have certifications in the basic  
16 level I inspections through the Department of  
17 Transportation of the United States, hazardous material  
18 certification and commercial bus certification.

19          Q. Mr. Emnett, were you on duty on September  
20 16th of 2009?

21          A. Yes, I was.

22          Q. And in the course of your duties, did you  
23 have the opportunity to inspect a vehicle driven by a  
24 Donald Pace on behalf of Houston Transportation,  
25 Incorporated?

1 A. Yes, I did.

2 Q. And as a result of that inspection, did you  
3 find any violations?

4 A. Yes. I found that he had cargo, which was  
5 a powder substance, blowing off the vehicle and was on  
6 the vehicle at the time of this stop which was causing  
7 a safety problem with traffic and older people or  
8 people with respiratory problems while he was driving  
9 down the roadway.

10 Q. As you testified today, do you have an  
11 independent recollection of that inspection? Do you  
12 remember that inspection?

13 A. Yes, I do. Because a few days later the  
14 company called me and one of their people argued that I  
15 wrote it as an out of service violation and I remember  
16 having the conversation with the representative and he  
17 was highly upset because I placed the vehicle out of  
18 service.

19 Q. At the time of your inspection, did you  
20 make a report of your findings?

21 A. Yes, I did.

22 MR. MARGARD: May I approach, your Honor?

23 ATTORNEY EXAMINER: You may approach.

24 Q. Mr. Emnett, I have handed you a two page  
25 document marked for purposes of identification as Staff



1 Exhibit No. 1. Do you recognize this document?

2 A. Yes, I do. It was my ASPEN inspection  
3 report on the Houston Transportation, Incorporated  
4 truck and the driver Gary Pace -- I mean Donald Pace.

5 Q. And this is the inspection report that you  
6 completed at the time of your inspection; is that  
7 correct?

8 A. Yes, it is.

9 Q. Now, you indicate that you had found  
10 violations and that is indicated, is it not, in the  
11 violation section in about the middle of the first  
12 page?

13 A. Yes. One violation.

14 Q. And it says the vehicle was loaded with  
15 dolomitic microfine powder. Can you describe what that  
16 powder was or was like?

17 A. It's from a limestone quarry and it was a  
18 very light, almost like a cement powder, gray in color,  
19 and I'm not sure what they used it in exactly, but they  
20 use it in a manufacturing process.

21 Q. This is very fine powder?

22 A. Yes. Very fine, gray, light gray powder.

23 Q. Finer than sand, for example?

24 A. Yes.

25 Q. More like a talc kind of powder?

1           A. Flour, talcum type of powder.

2           Q. Can you describe what this trailer looked  
3 like for us, please.

4           A. I call it a dry bulk trailer and I'm not  
5 sure how many bottoms it was, but usually they have  
6 three to five dump charge areas underneath the trailer  
7 and they usually have manhole covers on the top where  
8 they load the powder in. It's a round shape and the  
9 bottom discharge areas go into a cone shape into a tube  
10 so it can be discharged out of the bottom to unload  
11 it. Usually they pump air into it to get it to push  
12 out through the pipe at the bottom.

13           Q. You indicated that it had manholes on the  
14 top of the tank; is that correct?

15           A. Correct.

16           Q. Would it have a manhole for each of the  
17 different sections of the tank?

18           A. Yes.

19           Q. Did you actually get on top of this vehicle  
20 to see what the manhole looked like?

21           A. Well, I walked around it and looked up to  
22 see if the manhole was shut, but I did not climb up  
23 because we were along the highway there on I-75 where  
24 we stopped the vehicle.

25           Q. But from your visual inspection of it,

1 could you determine whether or not these covers were  
2 properly in place?

3 A. Yes. They were properly in place. They're  
4 hinged and they all were closed, or they would be  
5 standing up and I would be able to see it.

6 Q. How did you become aware of the problems  
7 being caused by this vehicle?

8 A. That day another State Highway Patrol  
9 employee, not a trooper, was coming back from Columbus  
10 and he was approaching the Carey area and this truck  
11 entered the highway. And at first he called in and  
12 thought the truck was on fire because there was such a  
13 heavy cloud behind it that he had to slow up and the  
14 traffic had to slow up because they were blinded by  
15 they thought was smoke at first. And later on down the  
16 road I could hear his radio traffic, the dispatcher,  
17 because we were all on the same frequency, he realized  
18 it was coming from the trailer and he figured it was  
19 the load or something on the trailer that was coming  
20 off and blocking the view or creating a view hazard as  
21 he was going down the road.

22 Q. And where were you in relation to the  
23 vehicle at this time?

24 A. At that time I was at Interstate 75 and  
25 State Route 15 and US 68 exit just on the south end of

1 Findlay.

2 Q. And how far would that have been,  
3 approximately, from where this was first observed?

4 A. It would have been about ten miles.

5 Q. How is it then that you came in contact  
6 with this truck?

7 A. The State Highway Patrol employee called in  
8 and asked for us to intercept the truck because it was  
9 creating such a problem on the roadway with vision, and  
10 I was the closest one, and Trooper Ryan Wilson was a  
11 little ways down the road from me. He was about two,  
12 three miles away from me, and we were the closest two  
13 people that were in the area.

14 Q. And did you wait until the truck passed you  
15 or how did you intercept the truck?

16 A. Both myself and Trooper Wilson started  
17 south on US 68, State Route 15, it's the same road, it  
18 comes together. And we intercepted it about four to  
19 five miles away from Findlay heading toward Findlay.  
20 The State Patrol employee stayed then behind the truck  
21 keeping us abreast of the location of it so we could  
22 intercept it as quickly as we could, but the problem  
23 was once we got in behind the vehicle, it was in a  
24 construction zone and they were grinding the roadway,  
25 so when they went by, we could not get right in behind

1 the truck. There was a few vehicles between us and the  
2 semi that was involved in this inspection, so we had to  
3 follow it a ways. And it was bumpy because they were  
4 grinding roadways and where the bridges were they had  
5 to stop and there was a bump, and it was a very bumpy  
6 four miles. I'd say it was that we followed it up to  
7 75 to where we could get it stopped.

8 Q. In the course of your time following this  
9 vehicle, were you able to observe any of this material  
10 coming off of the truck?

11 A. Yes. It was still on the fender wells.  
12 From talking with the State Patrol employee, most of  
13 it, by the time it got up to us, had already blown off  
14 to the top part of it. But it was still blowing off  
15 the fender wells where it blew back and the spillage  
16 was on the fender wells and was blocked by part of the  
17 cargo tank. But when we hit the bumps, I could plainly  
18 see it bounce off and, I guess, puff up in the air.

19 Q. After you stopped the vehicle and had an  
20 opportunity to walk around it and inspect it, did you  
21 note then that there was still material on the tanker?

22 A. Yes. I looked up at the top and like I  
23 said earlier, most of it had blown off while we were  
24 following it or as it was coming up from Carey, Ohio.  
25 But there was still some on the fender wells and that's

1 why -- correction, that's where I picked some of it up  
2 to show Trooper Wilson what kind of product it is.  
3 Since he does work the area and we're more used to the  
4 stone trucks coming out of that quarry, but they do  
5 manufacture a powder product and I was showing him what  
6 it looked like and the feel of it and how light it was.

7 Q. Below the section noted violations on Staff  
8 Exhibit 1 there's a section that says inspection  
9 notes.

10 A. Yes.

11 Q. Are those your notes?

12 A. Yes.

13 Q. And those would have been put in at the  
14 time you conducted your inspection; is that correct?

15 A. Correct.

16 Q. And you indicated that you spoke with the  
17 driver at the time of your inspection?

18 A. Yes, I did.

19 Q. And what did he tell you about this excess  
20 powder?

21 A. I questioned him about the amount of the  
22 excess powder on top of the -- and the sides of the  
23 trailer before he left and he stated he tried to push  
24 it off with his boots but he didn't have a broom with  
25 him, and I forget if he said he lost the broom or just

1 forgot to put the broom on the truck, but usually they  
2 have a broom to broom everything off. But he didn't  
3 have anything and he didn't go to the office or  
4 anywhere there at the load site to get a broom. He  
5 just tried to kick it off and, of course, he couldn't  
6 get very much off with his foot on top of a trailer, a  
7 16 foot -- I mean, 13 foot, 6 inches tall and smooth.  
8 He had a hard time walking around. So he just decided  
9 to drive on and let it blow off.

10 Q. And he was aware of this material on the  
11 tanker, though?

12 A. Yes, he was.

13 Q. In the violation section you did note that  
14 it was out of service. There's also a section that  
15 says verify and there's a letter A here. Do you know  
16 what that means?

17 A. Yes. As I was walking around I went ahead  
18 and just knocked the rest of the powder off knowing  
19 what it was. And I knew it was ground up limestone and  
20 it wasn't a hazard to myself, my arms or my hands or to  
21 the ground because they put the stone down for the road  
22 base. So I went around and knocked it off myself  
23 because we were stopped on Interstate 75 with very  
24 heavy traffic and I tried to keep the driver and the  
25 truck as much as I can during the inspection because of

1 safety reasons.

2 Q. So you were able to release the vehicle  
3 after you had removed the excess material?

4 A. Yes.

5 Q. Mr. Emmett, is there anything else  
6 pertinent to this inspection or pertinent to your  
7 report that you think the Commission needs to know  
8 before making its decision in this case?

9 A. I felt with the interview of the State  
10 Patrol employee that it was a serious hazard and threat  
11 to other motorists and their families on the roadway  
12 because it was such a vision problem that he had to  
13 slow down and the other traffic had to slow down. And  
14 I was also thinking of the elderly, if they were -- or  
15 children or anybody that had breathed in this powder,  
16 it could have affected them, their health, if they had  
17 a good inhale of it.

18 MR. MARGARD: Thank you, your Honor, I have  
19 no further questions.

20 ATTORNEY EXAMINER: I have no questions for  
21 the witness. The witness may be excused.

22 MR. MARGARD: Your Honor, I call Mr. John  
23 Canty to the stand.

24 - - -

25



JOHN CANTY

being first duly sworn, as prescribed by law, was  
examined and testified as follows:

- - -

DIRECT EXAMINATION

By Mr. Margard:

Q. State your name and business address,  
please.

A. John J. Canty, Public Utilities Commission  
of Ohio, 180 East Broad Street, Columbus, Ohio 43215.

Q. And you're employed by the Commission; is  
that correct?

A. By the Public Utilities Commission, yes.

Q. And in what capacity, please?

A. I'm the Assistant Chief of the Compliance  
Division.

Q. And in that role are you responsible for  
determining assessments and the reasonableness of  
assessments made against individuals who have violated  
motor carrier safety rules?

A. Yes.

Q. And did you personally have responsibility  
for determining that assessment in this case?

A. No, I did not.

Q. Did somebody under your supervision have

1 that responsibility?

2 A. Yes.

3 Q. And can you briefly describe how that  
4 determination is made?

5 A. Yes. After the inspection is completed in  
6 the field on the inspector's laptop, the data is  
7 uploaded to our database here at the PUCO. We run a  
8 computer program against the inspections and the  
9 program assesses the violations that are discovered,  
10 assigns a monetary fine forfeiture against those  
11 violations. We then send out those notices to the  
12 appropriate party. Our staff conducts a conference if  
13 the party requests a conference, as they did in this  
14 case. We send out all the notices that are required  
15 for that.

16 Q. What was the amount of the assessment  
17 levied in this case?

18 A. It was a \$100 forfeiture.

19 Q. And based on your review of Commission  
20 policies and practices and based on your review of  
21 procedures used to issue forfeitures in such instances,  
22 was that amount properly assessed?

23 A. Yes, it was.

24 Q. And is that amount consistent with  
25 standards established by the Commercial Vehicle Safety

1 Alliance?

2 A. Yes, it is.

3 Q. In your opinion, was that amount reasonable  
4 and properly assessed against the respondent in this  
5 case?

6 A. Yes.

7 Q. In your opinion, did the respondent receive  
8 all of the notices that they were entitled to receive  
9 in this case?

10 A. Yes. All the notices were properly served.

11 Q. Is there anything further that you believe  
12 the Commission needs to know in order to find that the  
13 \$100 should, in fact, be assessed against this  
14 respondent?

15 A. No.

16 MR. MARGARD: All right. No further  
17 questions for Mr. Canty.

18 ATTORNEY EXAMINER: All right. Let's go  
19 off the record for a second.

20 (Off the record - discussion)

21 MR. MARGARD: Thank you, your Honor. If I  
22 may, I have one final matter if I might. May I  
23 approach, your Honor?

24 ATTORNEY EXAMINER: You may approach.

25 CONTINUED DIRECT EXAMINATION

1 By Mr. Margard:

2 Q. Mr. Canty, I've handed you a multi page  
3 document that's been marked for purposes of  
4 identification as Staff Exhibit No. 2. Can you tell me  
5 what this document is, please.

6 A. Yes. This is a document dated December 7,  
7 2009 regarding the same inspection. It's addressed to  
8 Mr. Robert Houston at Houston Transportation,  
9 Incorporated in Newland, North Carolina. This notice  
10 is sent following a conference. This notice is known  
11 as a notice of preliminary determination. This is to  
12 inform the carrier that the conference was held and we  
13 intend to maintain forfeiture at \$100.

14 Q. Also advises them of their right to a  
15 hearing, correct?

16 A. Yes, it does.

17 Q. And this is the document to which you  
18 referred earlier when you indicated that all of the  
19 proper notices were provided to respondent in this  
20 case; is that correct?

21 A. Yes.

22 Q. And this is a document that would be  
23 regularly maintained as part of the Commission's  
24 records in its ordinary course of business?

25 A. Yes.

1 MR. MARGARD: Thank you.

2 ATTORNEY EXAMINER: Do you have any further  
3 questions for the witness?

4 MR. MARGARD: I do not, your Honor.

5 ATTORNEY EXAMINER: All right. The witness  
6 may be excused.

7 MR. MARGARD: Your Honor, I would  
8 respectfully move for the admission of Staff Exhibits  
9 No. 1 and 2 and I would at this time renew my motion  
10 for a default judgment against the respondent in this  
11 matter.

12 ATTORNEY EXAMINER: All right. Staff has  
13 moved for admission of Staff Exhibit 1, which is the  
14 driver/vehicle examination report and Staff Exhibit 2,  
15 the notice of preliminary determination. Seeing no  
16 objection to admission of those exhibits, they will be  
17 admitted. And with regard to your motion for default,  
18 that will be taken under advisement.

19 MR. MARGARD: Thank you, your Honor.

20 ATTORNEY EXAMINER: Anything else?

21 MR. MARGARD: No.

22 ATTORNEY EXAMINER: All right. Seeing  
23 nothing further, then we are adjourned. Thank you.

24 MR. MARGARD: Thank you.

25 (The proceedings concluded at 10:30 a.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on August 31, 2010, and carefully compared with my original stenographic notes.

---

CATHERINE PASSMORE  
 Certified Shorthand Reporter and  
 Notary Public in and for the  
 State of Ohio

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Transcript Transcript of Houston Transportation hearing held on 08/31/10.  
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Cathy  
Passmore