

1           BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                           - - -

3       In the Matter of Aleksandr D.:  
4       Pruzhanskiy, Notice of               :  
5       Apparent Violation and               : Case No. 10-196-TR-CVF  
6       Intent to Assess Forfeiture       :

7                           - - -

8                           PROCEEDINGS

9       before Katie L. Stenman, Hearing Examiner, at the  
10      Public Utilities Commission of Ohio, 180 East  
11      Broad Street, Room 11-D, Columbus, Ohio, called at  
12      10:00 a.m. Tuesday November 16, 2010.

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APPEARANCES:

Richard Cordray, Ohio Attorney General  
Public Utilities Section  
By Mr. John Jones  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the Public  
Utilities Commission.

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INDEX

- - -

STAFF EXHIBITS

IDENTIFIED ADMITTED

1	Driver Examination Report	8	35
2	Notice of Preliminary		
	Determination	32	35
3	Fine Schedule	29	35

- - -

1 Tuesday Morning Session,  
2 November 16, 2010.

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4 HEARING OFFICER STENMAN: The Public  
5 Utilities Commission of Ohio is assigned for hearing  
6 at this time and place Case No. 10-196-TR-CVF in the  
7 matter of Aleksandr Pruzhanskiy, Notice of Apparent  
8 Violation and intent to assess forfeiture.

9 My name is Katie Stenman, and I'm the  
10 Attorney Examiner assigned by the Commission to hear  
11 this case.

12 At this time I'd like to have the  
13 appearance of the parties on behalf of the staff.

14 MR. JONES: Yes, Your Honor. Good  
15 morning.

16 On behalf of the transportation staff of  
17 the Ohio Public Utilities Commission of Ohio,  
18 Attorney General Richard Cordray, Assistant Attorney  
19 General, John Jones, 180 East Broad Street, Columbus,  
20 Ohio 43215.

21 HEARING OFFICER STENMAN: At this time, I  
22 would note for the record Mr. Pruzhanskiy has not  
23 joined us.

24 We will take a 15-minute break until  
25 10:20 and wait and see if he arrives.

1                   Go off the record.

2                   (Discussion held off the record.)

3                   HEARING OFFICER STENMAN: Back on the  
4 record.

5                   Before we get started, let's note that  
6 it is 10:20 and Mr. Pruzhanskiy has not yet  
7 arrived.

8                   So is the State ready to go forward with  
9 its case?

10                  MR. JONES: Yes, Your Honor.

11                  HEARING OFFICER STENMAN: You can go  
12 ahead and call your first witness when you're ready.

13                  MR. JONES: Your Honor, just as a  
14 preliminary matter, I would like to make a motion for  
15 a default judgment that the Respondent,  
16 Mr. Pruzhanskiy, is not here.

17                  After working with me to set this date  
18 for hearing, you know, this was continued from  
19 September by motion of staff, and Mr. Pruzhanskiy and  
20 myself had worked to develop this date as our new  
21 hearing date, and, you know, he told me he would be  
22 here for the hearing. But, of course, as you  
23 indicated for the record it's going on 10:30 and he  
24 has not appeared today.

25                  So according to the rules, if he's made a

1 request for a hearing but yet he fails to appear for  
2 that hearing that the staff is able to make that  
3 motion, and I'd like to make that motion here today.

4 HEARING OFFICER STENMAN: Thank you.

5 That motion will be taken under  
6 advisement.

7 You can go ahead with your case.

8 MR. JONES: Thank you, Your Honor, the  
9 staff would call Officer Gerke to the stand.

10 - - -

11 TROOPER PAUL E. GERKE  
12 being duly sworn, as prescribed by law, was examined  
13 and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Jones:

16 Q. Would you please state your name for the  
17 record please.

18 A. Yes, Paul Edward Gerke.

19 Q. And where are you employed?

20 A. With the Ohio State highway patrol.

21 Q. How long have you been employed there?

22 A. For a little over 19 years.

23 Q. And what are your job duties and  
24 responsibilities?

25 A. Enforce the federal motor carrier rules

1 and regulations with commercial vehicles and also  
2 the Ohio Revised Code and work certain areas of  
3 traffic.

4 Q. What is your training certification for  
5 you to do your job?

6 A. I was trained at the Ohio State Highway  
7 Patrol Academy right up the road here on 17th  
8 Avenue. That lasted for seven months, and the  
9 federal motor carrier training was also held at the  
10 Academy and that was a little over a month and a half  
11 training.

12 Q. And where -- what office are you assigned  
13 to?

14 A. Out of the Berea office on the Ohio  
15 turnpike.

16 Q. Okay. And your jurisdiction, how wide is  
17 that?

18 A. Well, I can go anywhere in the state to  
19 enforce the federal motor carrier regulations, but on  
20 the turnpike, it runs from the Pennsylvania line just  
21 past Berea.

22 Q. And to do your job, what equipment is  
23 issued to you?

24 A. They issue my uniforms, all the equipment  
25 that I wear on my uniform and a patrol vehicle with a

1 lot of instruments inside, computers, radios,  
2 cameras, several things.

3 Q. Okay. And do you generate any reports as  
4 a result of your inspections that you do in the  
5 field?

6 A. With everyone, yes, sir.

7 Q. And what kind of report is that?

8 A. It's a report that's in Aspen, it's  
9 called an Aspen report on our computer that generates  
10 several captions as far as where you're at, what  
11 direction you're going, the vehicle, any violations  
12 that you might find on the vehicle for the federal  
13 motor carriers.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. I have there before you what's marked as  
16 Staff Exhibit 1.

17 Would you please identify that document  
18 for the record, please.

19 A. Yes. This is a driver vehicle  
20 examination report that I did on October 30, 2009.

21 Q. Okay. And who was the subject of that  
22 inspection?

23 A. Mr. Aleksandr Pruzhanskiy.

24 Q. Okay. And what was the date?

25 A. The inspection date was October 30,



2009.

Q. And can you please tell us how it came about that you observed Mr. Pruzhanskiy on that date to have an inspection done of his motor vehicle.

A. Yes. I was traveling westbound on the Ohio turnpike.

It was roughly around the 205, 205 1/2 westbound area, there was a commercial motor vehicle in front of me in the right lane, distance, a few hundred feet in front of me, and I observed the vehicle drifting into the center lane of travel. There's three lanes going westbound there, and it drifted into the center lane of travel, and then it drifted completely off the road onto the right berm. There's a berm off the roadway as well.

And then it drifted back into the roadway and back onto the berm as it -- right after it reentered the roadway. And that's when I activated my lights and sirens attempting to stop the vehicle.

Q. And what time of day was this?

A. It was in the morning at about 4:45 in the morning.

Q. Okay. And what were the conditions like?

A. Conditions were dry, it was dark. There

1 was no lights, not lighted.

2 Q. And can you kind of give us a general  
3 description of the road, how wide the road is or how  
4 big of a highway we're talking about.

5 A. We're talking about three lanes of travel  
6 going westbound with a berm on the left side as well  
7 as the right side.

8 The lanes of travel are roughly 13 feet  
9 wide. And the berms, they range, but in that area,  
10 they are at least ten and a half feet.

11 Q. And is there a median there that  
12 separates the other side?

13 A. Yeah. There's a -- just a -- the median  
14 is basically a cement wall they have constructed  
15 along the turnpike that separates the east and west  
16 travels.

17 Q. And how heavy was traffic that day?

18 A. Extremely light, extremely light.

19 Q. And if you look at Staff Exhibit 1, did  
20 you make notes from what you observed at the time of  
21 the stop?

22 A. Yes, sir, I did.

23 Q. Could you read those notes into the  
24 record, please.

25 A. Sure. My notes indicate that unit number

1 1 was observed traveling westbound on the Ohio  
2 turnpike.

3 Unit number 1 drifted into the center  
4 lane of travel as well as completely onto the right  
5 berm. Unit number 1 reentered the roadway and then  
6 drifted back onto the right berm. The overhead  
7 lights and siren were activated in an attempt to stop  
8 unit number 1.

9 The driver noticed the patrol car and  
10 stopped his vehicle in the right lane of traffic.  
11 The inspecting officer had to direct the driver  
12 several times to pull onto the right berm.

13 The driver looked at the inspecting  
14 officer with a blank stare when instructed to move  
15 the vehicle.

16 The driver eventually understood the  
17 command and moved onto the berm.

18 The driver appeared very tired and  
19 stated that he did not remember drifting off the  
20 roadway. Also the driver stated that drifting was  
21 not a crime.

22 Q. Okay. Now, if you could, you're  
23 observing this erratic driving, you're behind this  
24 commercial motor vehicle, and then this vehicle --  
25 you activate your lights after noticing this vehicle

1 to cross lanes, then going into the berm, coming back  
2 into the lanes of traffic, and you conduct the stop  
3 of the vehicle. The vehicle actually stops on the  
4 highway; is that correct?

5 A. That's correct.

6 Q. And can you please pick it up at that  
7 point. After you had stopped the vehicle and you are  
8 in -- on the highway, what -- can you please describe  
9 that.

10 A. Yes, sir. I was behind him, and it's  
11 very prevalent in my mind, this is the only one  
12 that's ever occurred with me, he stopped in the  
13 roadway. I'm behind him with my lights on and scared  
14 to death that we were going to get tagged from  
15 behind, rear ended, because obviously you're going  
16 at a pretty good clip on the turnpike, 65 miles an  
17 hour.

18 So I got out of my vehicle and I ran up  
19 to the passenger side, and I'm pounding on the door  
20 to get his attention, and I jumped up inside. I'm  
21 looking inside, and he's just staring at me with a  
22 blank stare and I'm pounding on the window and the  
23 door, open the door. You got to get off the road.

24 Finally he came over and unlocked the  
25 door, and I remember opening the door and telling him

1 you have to get off the road. You're stopped in the  
2 roadway. And he just looked at me with, you know, a  
3 blank stare and he appeared very tired.

4 Finally he understood after I screamed at  
5 him a couple times get off the road, and that's when  
6 he moved over, finally got onto the berm, and I ran  
7 back and moved my car off the road as well.

8 Q. So I take it you were at that point  
9 probably pretty animated trying to get him off the  
10 road trying to get him to realize that he was sitting  
11 on the road and get him off the road?

12 A. Yes, sir, I was very vocal about it, yes.

13 Q. And it was your observation that,  
14 although you're yelling out these commands to him,  
15 move the vehicle, it's taking him a while a to  
16 register to respond to you as to what you're telling  
17 him?

18 A. Again, I was very agitated and upset  
19 trying to get his attention. So time lapse, probably  
20 30 seconds for him to actually snap into where, you  
21 know, understand that, you know, somebody is standing  
22 there telling you to get off the road because he was  
23 basically incoherent. He was -- you could tell he  
24 was very drowsy.

25 Q. And his appearance, describe his

1 appearance in relation to that.

2 A. Well, he was drooped and eyelids were  
3 half closed, looking at me, you know, kind of cocking  
4 his head, trying to figure out what he was being  
5 yelled at for. Finally, you know, he sat up, and I  
6 remember him, okay, okay, okay.

7 I jumped off the side rail and motioned  
8 him get off the road, get off the road, and he  
9 finally did.

10 Q. Okay. So at that point then he was then  
11 able to move the vehicle off the road and onto the  
12 berm, and what did you do at that point after?

13 A. I ran back and moved my patrol car behind  
14 him and came back up and again opened the door, and  
15 I'm standing real -- very close to him because I like  
16 to lean into the truck for my own safety. I'm  
17 standing there on the side with the door open just to  
18 see if there's anybody else in the vehicle.

19 I don't -- you know, it's dark outside,  
20 and just for my safety and gives my interview process  
21 a lot better chance as well, you know, when I'm  
22 talking to him. I'm looking for an odor of alcohol,  
23 alcoholic beverage, and just, you know, I can ask  
24 questions and get a better response, have him, you  
25 know, get the registration, driver's license, medical

1 card, just observe him at a closer venue.

2 Q. Did you detect any odor of alcohol?

3 A. No. The whole time I didn't detect any  
4 odor of alcohol at all.

5 Q. Okay. So it's your testimony then that  
6 you found his condition that he was just very tired,  
7 his appearance and his actions and his  
8 communication.

9 A. Absolutely. It was night and day. The  
10 second time I went back up, he was very coherent,  
11 understood everything I was asking him to get for me.  
12 His vocabulary was good. It was completely different  
13 than me initially trying to knock on the door and get  
14 him to open it; he wasn't responding much at all, you  
15 know, so it was completely the opposite situation.

16 Q. Okay. So let's go back to your report  
17 here for a second, and at the top there, you  
18 indicated that you conducted a level 1 inspection, a  
19 walk-around. Can you please describe that.

20 A. Yes, sir. It's a level 2 actually.

21 Q. It's a level 2?

22 A. Yes, sir. A level 2 just basically is a  
23 walk-around inspection just like you indicated. Just  
24 looked for any violations that might be obvious  
25 violations.

1           Q.    Okay.  And, now, Staff Exhibit 1, this is  
2 information you gathered from the inspection that you  
3 then inputted into your report?

4           A.    Yes, sir.

5           Q.    And can you describe how you would have  
6 done that?

7           A.    Yeah.  There's a procedure with the Aspen  
8 program, each page starts with a location.  The  
9 second page might be the driver, then the vehicle  
10 information goes in, the violations that you might  
11 have found or have occurred.  And any notes, there's  
12 a note section you can pop up.  There's several pages  
13 of the report that you can fill out, and I just go  
14 systemically from left to right and fill the report  
15 out.

16          Q.    So you input this data into a laptop  
17 that's in your patrol car?

18          A.    Yes, sir.  And I also have a printer in  
19 the vehicle so at the end of the report I can print  
20 it out and give a copy to the driver.

21          Q.    Okay.  And I notice that there's a report  
22 number, how is that generated?

23          A.    That's generated through the Aspen  
24 program.  So this one right here would have been  
25 report number 6098.  Basically it's a systematic



1 number that's generated by the Aspen program.

2 That indicates my inspection number. So  
3 that was my 6098th inspection.

4 Q. Okay. And then in the second field, you  
5 have information pertaining to the driver and also  
6 the carrier. Where did you get that information  
7 from?

8 A. That's either given out by the DOT number  
9 that I can get from the registration forms or on the  
10 side of the vehicle. It will generate their address,  
11 their phone number, give me a bunch of stuff about  
12 the carrier that he's working for.

13 Q. Okay.

14 A. It's either from the paperwork or I can  
15 generate it from the DOT number.

16 Q. As far as the driver information, then,  
17 you also have -- did you have Mr. Pruzhanskiy produce  
18 his CDL, his commercial driver's license for your  
19 review?

20 A. Yes. He would have handed me his  
21 commercial driver's license, and I also ask for a  
22 medical card that subsequently goes with it.

23 Q. Okay. So from that documentation were  
24 you able to verify the identification of the driver?

25 A. Yes, sir.

1           Q.    Okay.  And that information then is  
2 incorporated into your report?

3           A.    Yes, sir.

4           Q.    And then likewise the location field has  
5 all the information pertaining to where the -- where  
6 the origin and destination of the carrier was going,  
7 the driver was going for the load; is that correct?

8           A.    This right here, Mr. Jones, would have  
9 been the location that I actually got him to stop at,  
10 he finally stopped at, which would have been at the  
11 204 westbound because I did follow behind him for a  
12 little bit, and by the time we got stopped and he  
13 actually pulled over about a half mile to a mile  
14 distance and that's about where he stopped for the  
15 inspection.

16          Q.    So it took -- from the time that you put  
17 the light bars on to stop him, how far of a distance  
18 did it take for you to actually get him stopped?

19          A.    It was a little while.  I'm guessing  
20 roughly about a half mile.

21          Q.    Okay.

22          A.    Before he saw me, finally saw the lights  
23 or heard the sirens, one or the other, and he just  
24 put on the brakes and stopped right there in the  
25 road.

1           Q.    Do you remember the speed limit that he  
2 was traveling? Was he traveling the speed limit or  
3 under the speed limit, do you remember?

4           A.    That I couldn't -- I can't recall that.

5           Q.    I think you indicated the speed limit was  
6 65 miles per hour.

7           A.    It's 65 miles per hour for commercial  
8 vehicles.

9                   It wouldn't be prevalent in my mind if he  
10 was going at a very slow speed. It wasn't a slow  
11 speed, but yet it wasn't excessive either.

12          Q.    Okay. And also then I see that you have  
13 a field there for vehicle identification. What's  
14 that information there that that shows?

15          A.    Yeah. That's the vehicle identification  
16 for the tractor and the trailer that he was  
17 operating, license plate numbers, company numbers  
18 that might be displayed on the vehicle, the VIN  
19 numbers that correspond to each vehicle and what kind  
20 of -- what make of the vehicle. The tractor was a  
21 freightliner, and the trailer was a Wabash.

22          Q.    And then the next field of your report  
23 has violations.

24          A.    Yes, sir. Violations that occurred or I  
25 found.

1           Q.    And let's look, the first violation that  
2 you note there in that field pertains to operating a  
3 commercial motor vehicle while ill or fatigued, and  
4 what information did you provide there for  
5 identifying that violation?

6           A.    In that field I always put down whether  
7 they were operating fatigued a commercial motor  
8 vehicle. And I also advise to see the notes because  
9 my notes section are extensive and there's very  
10 little room in the Aspen program. When you initially  
11 put up the violation, you might have maybe the  
12 capability of one or two sentences at the very most,  
13 so I can't elaborate. So I always advise to see my  
14 notes because I want to elaborate a little bit about  
15 the situation.

16          Q.    And I see you provide the code section  
17 for the federal motor carrier safety regulation  
18 392.3; is that correct?

19          A.    That's correct, yes, sir.

20          Q.    And what's the information reading from  
21 left to right? What other information is provided  
22 there?

23          A.    Basically what unit, whether it's the  
24 driver, whether it's unit number 1, which would be up  
25 in the vehicle identification just above it which

1 would have been -- number 1 would be the tractor or  
2 number 2 being the trailer. In this instance it's  
3 specifically generated for the driver only and was he  
4 out of service, yes or no. You just put a yes or no  
5 in there and obviously he was placed out of service.

6 Q. What was the reason for placing him out  
7 of service?

8 A. For being fatigued. It's an automatic  
9 driver out-of-service violation with the federal  
10 motor carriers.

11 Q. Okay. And is he told at that time that  
12 he's placed out of service verbally?

13 A. Verbally, yes, sir. When I bring the  
14 report up to him, I go systematically over everything  
15 that I have on my report and explain it thoroughly to  
16 the driver and ask him if he has any questions when  
17 I'm finished.

18 Q. And what are the other fields there I see  
19 going across to the right?

20 A. The level of inspection, basically that's  
21 generated by the Aspen program. We don't put  
22 anything in there. It's just automatically. And  
23 whether it was verified on the right, that's  
24 basically just for any equipment violation that might  
25 occur such as a -- if he's out service for such --

1 like a flat tire. If it was repaired in front of me,  
2 I can verify in that caption there whether it was  
3 repaired on the scene or it's unrepaired and will be  
4 repaired at a later time.

5 Q. Okay.

6 A. So that didn't come into play. And  
7 obviously the crash caption there, there was no crash  
8 involved.

9 Q. And then there is another field below  
10 that that talks about special checks. What's marked  
11 there?

12 A. The reasoning for the stop, whether it be  
13 an obvious violation such as a flat tire or a light  
14 out or that kind of instance.

15 This was a traffic violation. I stopped  
16 him for marked lane violation, and, therefore, it  
17 generates a traffic violation.

18 Q. Okay. And according to your notes here  
19 for the violation field, the Respondent,  
20 Mr. Pruzhanskiy, was issued a warning for the lanes?

21 A. Yes, sir. I issued him a warning for the  
22 marked lane violation.

23 Q. Okay. And then after such time then that  
24 you have generated your report based on what you  
25 observed and your inspection, what then -- you say

1 you then print that out in your vehicle and what do  
2 you do with it at that time?

3 A. There's a caption on the bottom of each  
4 page that's printed out for me to sign and then over  
5 on the right next to my name is a place for the  
6 driver to sign.

7 And also there's several areas on the  
8 report that I will take a yellow highlighter and  
9 highlight anything that he needs to know immediately  
10 because the report has to go to his motor carrier  
11 that he's driving for. It has to pass through their  
12 hands, and I will highlight everything that's going  
13 to be needed for them to know. And I explain this  
14 all to the driver.

15 Q. And could you tell us what you would  
16 highlight in this report?

17 A. Absolutely. I definitely would have  
18 highlighted 392.3 section code of being out of  
19 service for driving while fatigued. I also would  
20 have highlighted the inspection notes area and let  
21 him know that he needs to read that over. And more  
22 than likely with this situation, I don't recall, but  
23 I would have probably gone over it with him because I  
24 always do with everything I highlight. And I also  
25 would have highlighted the fact that he cannot drive,

1 he is out of service from driving until he is safe to  
2 operate the commercial motor vehicle.

3 Q. Okay. So then in this case for this  
4 inspection you did then sign this form and have  
5 Mr. Pruzhanskiy also sign this report?

6 A. Yes, sir.

7 Q. When you served -- and you served that  
8 report then on him at that time?

9 A. Yes, sir.

10 Q. Okay. And then subsequently then would  
11 you have sent this report electronically anywhere  
12 else?

13 A. Yes. It would have gone to the Public  
14 Utilities Commission. It's generated through the  
15 computer air card and sent through the safer web  
16 system and sent electronically that way.

17 Q. You would have sent that report the same  
18 day?

19 A. Yes, sir.

20 Q. Okay. So, Officer Gerke, looking over  
21 Staff Exhibit 1, is all the information contained  
22 therein the way it's presented here in this Staff  
23 Exhibit 1, is it an accurate representation of the  
24 report that you would have generated that day in the  
25 inspection?



1           A.     Everything except the top left where it  
2           says Public Utilities Commission. On my report it  
3           says the Ohio Turnpike Commission, and it has my  
4           supervisor's name and number to contact if the  
5           company has any questions in an attempt to get to  
6           me. That's the -- other than that, it's almost  
7           identical.

8           Q.     Okay. And is this a record that's kept  
9           in the ordinary course of business that you had to  
10          rely on in the course of doing your job?

11          A.     Yes, sir.

12          Q.     Okay. So, Officer Gerke, is it then your  
13          opinion that you -- from your observations and your  
14          inspection that occurred on October 30, 2009, that  
15          it's your opinion that Mr. Pruzhanskiy was fatigued  
16          while operating a commercial vehicle?

17          A.     Absolutely, yes, sir.

18                 MR. JONES: Your Honor, I have no further  
19          questions of this witness.

20                 HEARING OFFICER STENMAN: Thank you.

21                         - - -

22                         EXAMINATION

23          By Hearing Officer Stenman:

24                 Q.     Just quickly. When you placed  
25          Mr. Pruzhanskiy out of service --

1           A.    Yes, ma'am.

2           Q.    -- how long did you take him out of  
3 service for?

4           A.    Until he's able to operate the vehicle  
5 safely.

6                    Things have changed since then. Now it's  
7 an automatic ten hours of service.

8           Q.    Okay.

9           A.    But when this was conducted every  
10 individual was different.

11          Q.    Okay.

12          A.    It might take you ten minutes, and  
13 Mr. Jones might be two hours. It was when you can  
14 operate it safely.

15          Q.    Okay. So did he then, you know, just  
16 drive away after?

17          A.    No. We were real close to a service  
18 plaza. I followed him down to the service plaza, and  
19 I always make sure they're awake before we do that,  
20 and I want you to get out of the vehicle, get a cup  
21 of coffee.

22                   I don't care what you do. Until you are  
23 safe to drive this vehicle, that's where we are  
24 going. Because I don't feel comfortable leaving them  
25 on the side of the road and me driving away, you

1 know, because he could -- it could be two hours for  
2 him until he feels safe. But we were so close to the  
3 service plaza, I took him down there.

4 Q. Okay.

5 HEARING OFFICER STENMAN: Thank you.

6 MR. JONES: Your Honor, at this time,  
7 Staff would like to call John Canty to the stand  
8 please.

9 - - -

10 JOHN J. CANTY

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

13 DIRECT EXAMINATION

14 By Mr. Jones:

15 Q. Could you please state your name for the  
16 record please.

17 A. It's John J. Canty, C-a-n-t-y.

18 Q. And where are you employed?

19 A. The Public Utilities Commission of Ohio.

20 Q. And what is your job title and  
21 responsibilities?

22 A. I am the assistant chief of the  
23 Compliance Division. I supervise the employees who  
24 are responsible for sending out the notices on  
25 violations that are discovered during roadside

1 inspections.

2 Q. Does your department also receive reports  
3 from the field involving inspections that are  
4 conducted in the field?

5 A. Yes, we do.

6 Q. How is that done?

7 A. After the inspecting officer completes  
8 his inspection on his laptop computer, he submits  
9 that information wirelessly to a federal database  
10 called Safety Net and then we download that  
11 information every night from Safety Net into our  
12 system here at the PUCO.

13 Q. And did you have an opportunity to review  
14 Staff Exhibit 1 in preparation for the testimony  
15 today?

16 A. Yes, I did.

17 Q. Okay. And you heard the testimony of  
18 Officer Gerke as to him formally assessing as to how  
19 the inspection occurred and he sent a report  
20 electronically into the Commission.

21 As to looking at Staff Exhibit 1, how  
22 does your department receive this information? Is  
23 anything modified in the transmission of that  
24 information to your department?

25 A. No. All the data which the officer

1 inputs into the Aspen program on his laptop, all of  
2 that data remains the same. There's a slight  
3 difference which I think he mentioned in his  
4 testimony on the actual heading of the report. Where  
5 ours says Ohio Public Utilities Commission, I believe  
6 that theirs mentions the highway patrol since they  
7 are the agency conducting the inspection.

8 Q. Okay.

9 A. But every other data element remains  
10 exactly the same. We don't change anything.

11 Q. Okay. And then now once your department  
12 receives a driver vehicle examination report, then  
13 what is then physically done at that point in time?

14 A. At that point it is processed through a  
15 program that we have which reviews every inspection  
16 that comes into our system. The program then  
17 assesses the violations which are cited on the  
18 inspection report automatically using parameters in a  
19 program that we have predetermined. We have a fine  
20 schedule which explains how that program assesses  
21 each violation or fine schedule. It's broken down  
22 into general categories and violations.

23 Then it also lists each violation  
24 separately and what that dollar amount should be.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.    And I want to refer your attention there  
2           to Staff Exhibit 3 and have you identify that  
3           document for the record please.

4           A.    Yes.  That is our fine schedule.  This is  
5           called the fine schedule.  It was effective  
6           October 1, 2008.

7                     It is several pages, ten pages in length.  
8           As I stated before, it lists the four groups of  
9           violations on the first two pages, and then on the  
10          remaining pages, it lists all the violations  
11          individually and what the fine amount would be.

12          Q.    Okay.  So is this the fine schedule that  
13          was in effect at the time of the inspection that  
14          occurred in this case on October 30, 2009?

15          A.    Yes, it is.

16          Q.    And would you please show us where we  
17          would find the violation for fatigued driver  
18          operating a commercial motor vehicle under the code  
19          provision 392.3?

20          A.    Yes.  If you turn to page 3 of the fine  
21          schedule near the bottom it lists the violation  
22          section on the left side 392.3, ill or fatigued  
23          driver \$100.  That is the amount that we assessed to  
24          the driver when we sent out the notice to him.

25          Q.    Okay.  And this fine schedule, is this

1 something that is in compliance with the Commercial  
2 Vehicle Safety Alliance and the procedures required  
3 by that alliance?

4 A. Yes, it is.

5 Q. And so any report that would come in,  
6 this fine schedule would be used to determine what  
7 the proper assessment or forfeiture would be for a  
8 particular violation of the Federal Motor Carrier  
9 Safety regulations?

10 A. That's correct.

11 Q. And so upon your review of this case and  
12 the inspection report, the fine here or the  
13 forfeiture here that was calculated using the fine  
14 schedule was done appropriately according to  
15 procedure?

16 A. Yes, it was.

17 Q. After determining then what the  
18 appropriate forfeiture assessment would be for this  
19 particular violation, what's the next action your  
20 department takes?

21 A. The next step is to send out a notice to  
22 the responsible party. It's referred to as a Notice  
23 of Apparent Violation and intent to assess civil  
24 forfeiture. That is sent to -- in this case it was  
25 sent to the driver, Mr. Aleksandr Pruzhanskiy.

1                   It would have been sent to the address  
2                   which was listed on the inspection report which I  
3                   presume the officer got off of the driver's  
4                   commercial driver's license.

5                   The notice would have said we intend to  
6                   assess a \$100 fine against the driver and then it has  
7                   instructions to either pay that fine or request a  
8                   conference.

9                   Q.     Okay. And what process is then followed  
10                  then after that initial notification of the  
11                  assessment or forfeiture to Mr. Pruzhanskiy? Is  
12                  there a second step then that the process follows?

13                  A.     Yes. In this case, Mr. Pruzhanskiy did  
14                  request a conference. A conference was held with  
15                  him. I believe it was not an in-person conference  
16                  but a telephone conference.

17                  Q.     And that's just an opportunity for the  
18                  staff to communicate with the Respondent, in this  
19                  case Mr. Pruzhanskiy, and to discuss any issues or  
20                  facts of the case?

21                  A.     Yes. To give the driver the chance to  
22                  present his side of the case and any mitigating  
23                  circumstances, what have you.

24                  Q.     Okay. And if the settlement conference  
25                  is not successful in terms of resolving the violation



1 at that point, what happens next?

2 A. The next step is to send a notice to the  
3 driver informing him of our decision. That notice is  
4 called a Notice of Preliminary Determination. That  
5 would be sent to the driver following the conference  
6 advising him of our determination from that  
7 conference.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Okay. And would you please identify  
10 Staff Exhibit 2, please, for the record.

11 A. Yes. That is the notice. I was  
12 referring to the Notice of Preliminary Determination.  
13 This is dated January 25, 2010, addressed to  
14 Mr. Aleksandr Pruzhanskiy. It is advising him that  
15 the conference was conducted, and as a result of that  
16 conference, the staff has made a preliminary  
17 determination that the Commission should make a civil  
18 forfeiture against him in the amount of \$100. And  
19 there are instructions to either pay that or to  
20 request an administrative hearing.

21 Q. Okay. And the address that that's sent  
22 to notifying him of that information, that's taken  
23 from the vehicle inspection report?

24 A. Actually for the Notice of Preliminary  
25 Determination that would be sent to -- it may be the

1 same address. I don't see the driver's address on  
2 the inspection report, but when the person makes a  
3 request for conference with us, it would be a  
4 written request for conference. So it has to be  
5 written and they would provide to us an address and  
6 telephone number where we can get in contact with  
7 them, and this address that the Notice of  
8 Preliminary Determination was sent to would have  
9 come -- the address of Mr. Pruzhanskiy would have  
10 been the address he provided to us in his request  
11 for a conference. And it may be the same as what  
12 is on this commercial driver's license, but I don't  
13 see.

14 Q. If you -- if I can refer you to page 2 of  
15 Staff Exhibit 1, it would be the boxed in --

16 A. There it is.

17 Q. -- information.

18 A. Yes, thank you. It appears to be the  
19 same address that was on his CDL.

20 Q. Okay.

21 A. Yes, it is.

22 Q. Okay. And underneath the title of  
23 document, Notice of Preliminary Determination,  
24 there's also information there that pertains to a  
25 case number, what's that cross referenced with?

A. That is the same as the inspection number that's on the top of the inspection report on Staff Exhibit 1 which was conducted October 30, 2009.

Q. Okay. And again the Staff Exhibit 2, it also highlights the same code provision and the same citation that's provided in the Staff Exhibit 1 for being a fatigued driver, operating a commercial motor vehicle; is that correct?

A. That's correct.

Q. Now, as to Staff Exhibit 2 and 3, are these records that are kept in the ordinary course of business for your department to function for working off these records?

A. Yes.

MR. JONES: Your Honor, I have no further questions.

HEARING OFFICER STENMAN: Okay. Thank  
you, Mr. Canty.

MR. JONES: Your Honor, at this time I'd like to move for the admission of Staff Exhibits 1, 2 and 3 into the record.

HEARING OFFICER STENMAN: At this time  
Staff Exhibits 1, 2 and 3 will be admitted.

(EXHIBITS ADMITTED INTO THE RECORD.)

1 MR. JONES: Thank you, Your Honor.

2 HEARING OFFICER STENMAN: Is there  
3 anything else to come before us today?

4 MR. JONES: No, Your Honor. Staff rests.  
5 No further witnesses. Thank you.

6 HEARING OFFICER STENMAN: All right.  
7 Thank you.

8 Hearing nothing else, we're adjourned.

9 MR. JONES: Thank you.

10 (Thereupon, the hearing was concluded at  
11 11:00 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, November 16, 2010, and carefully compared with my original stenographic notes.

---

Deborah J. Guzzo, Registered  
Professional Reporter and  
Notary Public in and for the  
State of Ohio.

My commission expires June 25, 2012.

(2240-DJG)

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Summary: Transcript Transcript of Aleksander D. Pruzhanskiy hearing held on 11/16/10.  
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Guzzo,  
Deborah Mrs.