

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of NW :
4 Logistics LLC, Notice of :
5 Apparent Violation and : Case No. 10-827-TR-CVF
6 Intent to Assess :
7 Forfeiture. :

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9 PROCEEDINGS

10 before Jim Lynn, Attorney Examiner, at the Public
11 Utilities Commission of Ohio, 180 East Broad Street,
12 Room 11-D, Columbus, Ohio, called at 10 a.m. on
13 Wednesday, December 1, 2010.

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On behalf of the Staff of the PUCO.

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December 1, 2010.

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At this time the Public Utilities Commission of Ohio has assigned for hearing at this time and place Case No. 10-827-TR-CVF, in the Matter of NW Logistics LLC, Notice of Apparent Violation and Intent to Assess Forfeiture.

I am Jim Lynn. I am the Attorney Examiner assigned to hear this case. At this time we will have the appearances of the parties. Actually there is only one party present currently and that's somebody from the Ohio Attorney General's Office.

MR. MARGARD: Thank you, your Honor. On the transportation staff of the Public Commission of Ohio by Richard Cordray, Ohio General, William L. Wright, Section Chief, Utilities Section by Assistant Attorneys Emer L. Margard and Stephen A. Reilly, 180 Street, 6th Floor, Columbus, Ohio.

EXAMINER LYNN: All right. Thank you,
Mr. Margard.

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481

1 there is no one present representing the carrier NW
2 Logistics. NW logistics was served with notice of
3 when this hearing time would be and we will continue
4 then with proceedings with Mr. Margard's witness and
5 hopefully somebody from NW Logistics will show up in
6 the meantime.

7 So having said that, Mr. Margard, if you
8 would like to call your witness, please.

9 MR. MARGARD: Thank you, your Honor. I
10 would call Inspector Byrne.

11 Mr. Byrne, if you would come up to the
12 witness stand, please. Thank you.

13 (Witness sworn.)

14 EXAMINER LYNN: Take your seat and,
15 Mr. Margard, you can go on with your questions.

16 MR. MARGARD: Thank you, your Honor.

17 - - -

18 MICHAEL J. BYRNE
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Margard:

23 Q. Please state your name for the record.

24 A. Michael J. Byrne.

25 Q. And by whom are you employed?

1 A. With the Ohio State Highway Patrol.

2 Q. And in what capacity?

3 A. The official title is Motor Carrier
4 Enforcement Inspector.

5 Q. And where are you stationed out of?

6 A. The district headquarters in Bucyrus,
7 Ohio.

8 Q. Can you briefly describe your duties and
9 responsibilities?

10 A. Duties and responsibilities include
11 inspection of commercial motor vehicles, making sure
12 basically they are safe, lights, tires, brakes,
13 combing through the truck, load securement, in
14 addition to that qualifications of the drivers
15 including CDL, medical card, logbooks, and also
16 checking carrier credentials.

17 Q. Thank you. How long have you been
18 employed as an inspector?

19 A. Since November of 2004.

20 Q. Do you have any specialized training or
21 certification to perform this job?

22 A. To perform this job you must be certified
23 in the North American Standard Level 1 inspection,
24 and to be recertified you must have a minimum of 32
25 level 1 inspections which are a full and complete

1 inspection plus to be Hazmat certified which is
2 irrelevant in this case. You have to have that, but
3 each year we have to do so many, and our main
4 requirement they want from us is a thousand
5 inspections per fiscal year.

6 Q. Thank you. Were you on duty on March 16
7 of this year?

8 A. Yes, sir.

9 Q. And do you recall what your job
10 assignment was that day?

11 A. Commercial vehicle enforcement.

12 Q. Okay. No different than -- nothing
13 unusual?

14 A. No.

15 Q. Okay. And in the course of your duties
16 on that date did you have an opportunity to inspect a
17 vehicle driven by a Derek Loveland?

18 A. That is correct, yes, sir.

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

20 EXAMINER LYNN: Yes.

21 Q. Inspector Byrne, I've handed you what I
22 have marked for purposes of identification as Staff
23 Exhibit 1. Is this a copy of the inspection report
24 that you generated as a result of an inspection
25 conducted on that date?

1 A. Yes, it is.

2 Q. By the way before we start looking at the
3 report do you -- do you have an independent
4 recollection of this inspection? Do you remember
5 this inspection?

6 A. I do have some recollection, yes, I do.

7 Q. Okay. Very good. Thank you. Let's
8 briefly take a look at -- at this report. First of
9 all, this was prepared by you; is that correct?

10 A. Correct.

11 Q. And can you tell me how you prepared this
12 report?

13 A. This report was prepared using the
14 computer program called ASPA.

15 Q. Something you carry with you in your
16 vehicle?

17 A. Yes, it is, yes.

18 Q. And this happened at 7:47 in the morning?

19 A. Yes.

20 Q. And it's noted here that this is a level
21 II walk-around inspection.

22 A. Yes.

23 Q. Can you briefly explain what a level II
24 inspection is?

25 A. A level II inspection incorporates two

1 things, the driver inspection and then the actual
2 walk around of the truck. The driver inspection, of
3 course, is checking the driver's CDL, making sure
4 he's not fatigued, ill, intoxicated, anything that
5 would render him out of service according to the
6 out-of-service criteria, CDL, medical card, logbook.
7 Speaking of the walk around, the walk-around
8 inspection consists of checking lights, tires, low
9 air warning, emergency equipment, load securement,
10 things of that nature.

11 Q. Okay. Thank you very much. I take it in
12 your discussion with the driver and in the review of
13 the documents he is carrying with him, you were able
14 to complete much of the information that's contained
15 in this report?

16 A. Yes.

17 Q. I want to begin by taking a look at the
18 vehicle identification section. Do you see that on
19 the report?

20 A. Uh-huh.

21 Q. And you have two units here, correct?

22 A. Yes.

23 Q. And you have a type TT and ST. What are
24 those designations?

25 A. The TT means truck tractor which is the

1 power unit, and the ST means semitrailer, the towing
2 vehicle.

3 Q. And then you have the make, year, and the
4 state. I assume this is the state of registration
5 and a license number on the vehicle.

6 A. Uh-huh.

7 Q. You then have a company number here.
8 What does that company number refer to?

9 A. The company number refers to the vehicle
10 number.

11 Q. That's the number of the vehicle, not
12 necessarily of the company that owns the vehicle?

13 A. No. That's strictly just the vehicle
14 number that the company would put on the -- like a
15 decal.

16 Q. An identifying number.

17 A. An identifying number just for that
18 truck.

19 Q. Very good.

20 A. Or vehicle.

21 Q. Thank you. Then, of course, is the
22 vehicle identification number.

23 A. Uh-huh.

24 Q. And the gross vehicle weight? GVWR, is
25 that relevant for purposes of your inspection here?

1 A. With our -- the combination vehicles we
2 have been told it's not necessary for the gross
3 vehicle weight rating.

4 Q. Okay. Thank you. And then there is a
5 note for issued decal and existing decal. What are
6 these and what's the difference?

7 A. Issued decal, those apply to only whether
8 you are doing a level I inspection and if the vehicle
9 meets certain criteria, then it's issued to -- one of
10 our decals showing the vehicle passed with some
11 excellent qualification, if you will. The existing
12 decal means the vehicle has had a prior commercial
13 inspection and was issued a prior decal, one of the
14 things they want us to list on the document.

15 Q. In the last column it says OOS sticker.
16 I assume that's an abbreviation, OOS stands for out
17 of service.

18 A. Yes.

19 Q. And there is an indication yes here. Can
20 you please tell me why that is?

21 A. Yes. If the vehicle is to be placed out
22 of service, we either enter a yes for was placed out
23 of service and a sticker was issued or, no, that a
24 sticker was not issued.

25 Q. So this yes is because you issued an out

1 of service?

2 A. Yes. A sticker was applied, yes.

3 Q. Very good. Thank you. Before I get to
4 the violations I do want to briefly go up to the top
5 box where the driver's name appears. You also have
6 NW Logistics there which is the party of interest
7 here today. Can you tell me why that name appears in
8 this box?

9 A. That name appears in the box because that
10 is the carrier that was determined to be operating on
11 the roadway, the carrier determined to be
12 transporting the cargo.

13 Q. Okay. Very good. Thank you. Now, let's
14 head down to the violations section. And there are a
15 number of violations but only two of them are noted
16 as out-of-service violations, correct?

17 A. That is correct.

18 Q. Those are the only violations I want to
19 pay attention to today. The first out-of-service
20 violation is for operating a CMV, commercial motor
21 vehicle, correct?

22 A. Yes.

23 Q. After the effective date of an
24 unsatisfactory rating. Now, first of all, in terms
25 of putting this information into your report, what do

1 you actually put into your computer to generate this
2 information?

3 A. Well, the computer has a generic
4 violation, if you will, and I could use that generic
5 violation. I don't recall exactly what it says but
6 it's very -- a very vague so what you see there is
7 what I typed in which is what applies to the section
8 code there, the Code of Federal Regulations 49 CFR
9 385.82 and that's typed into and what I cannot finish
10 typing goes into my notes.

11 Q. Very good. Okay. So let's -- earlier in
12 your testimony you talked about company
13 credentials --

14 A. Yes.

15 Q. -- I believe is the phrase you used and
16 that is also part of your inspection. In addition to
17 your actual walk around the vehicle and your driver
18 qualifications and so forth, you also do what you
19 call the company credentials. Can you tell me how
20 you conduct that part of your inspection?

21 A. We have access to the internet through an
22 air card and for purposes of our inspection they want
23 us checking carrier credentials. What does that
24 mean? We connect to the internet, and we go to some
25 of the different Federal Motor Carrier Safety

1 Administration websites, and we check, No. 1, to see
2 that the carrier has the proper operating authority.
3 And if not, we verify with the out-of-service
4 criteria whether it is an out of service.

5 Then we also check through the fed's
6 website to see if there is an out-of-service order, a
7 Federal Motor Carrier Safety Administration
8 out-of-service order, against the carrier. That's
9 what we are doing when we are checking credentials of
10 that carrier.

11 Q. When you say again the carrier, this is
12 different than a sticker that you place on a vehicle.
13 This is an out-of-service order against the carrier
14 as a whole.

15 A. As the whole entity, yes.

16 Q. And that's where the unsatisfactory
17 rating comes from here, that the company is rated as
18 unsatisfactory and, therefore, may not conduct
19 business?

20 A. That is correct.

21 Q. Very good. Thank you. How did you
22 determine that NW Logistics was the carrier in this
23 case?

24 A. Several -- several different ways. No.
25 1, the markings on the side of the vehicle and I do

1 have pictures that indicate -- that show NW Logistics
2 the carrier, some insurance paperwork also showing NW
3 Logistics, driver interview, and the logbook entry
4 for the 16th which if I may add was not current at
5 the time of that inspection.

6 Q. And that was one of the other violations
7 that you found, wasn't it, that the logbook was not
8 current?

9 A. Yes, yes.

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

11 EXAMINER LYNN: Yes.

12 Q. Inspector Byrne, I've handed you a
13 document I have marked for purposes of identification
14 as Staff Exhibit 2. Is this a copy of one of the
15 photographs that you took indicating the markings on
16 the vehicle?

17 A. Yes, it is.

18 Q. Just to be clear this is, in fact, a -- a
19 photograph that you took using equipment issued to
20 you at the time of the inspection?

21 A. Yes.

22 Q. Thank you.

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

24 EXAMINER LYNN: Yes, you may.

25 Q. Inspector Byrne, I have now handed you a

1 document marked for purposes of identification as
2 Staff Exhibit 3. Can you identify this document for
3 me, please?

4 A. This is the insurance paperwork that was
5 onboard the commercial vehicle showing, for example,
6 liability.

7 Q. And this document demonstrates that the
8 vehicle was insured by NW Logistics?

9 A. That is correct.

10 Q. And just to be clear this is again a copy
11 of the photograph that you took off this particular
12 document; is that correct?

13 A. Yes, sir.

14 Q. Thank you.

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

16 EXAMINER LYNN: Yes, you may.

17 Q. Inspector Byrne, I have now handed you a
18 multi-page document marked for purposes of
19 identification as Staff Exhibit No. 4. These all
20 appear to be pages of a driver's log. Can you please
21 identify what these photographs demonstrate, please?

22 A. These photographs demonstrate pictures of
23 the logs, the driver's records of the duty status, in
24 other words, logbook for the 14th, 15th, and 16th.
25 If I may continue, I could elaborate a little more?

1 Q. Please do.

2 A. Okay. You'll see the log entry dated
3 3-14 of 2010 shows that the driver was off duty from
4 3-6 to 3-14. Continuing onto the next page you will
5 see the date of 3-15-10 that the logbook is
6 incomplete meaning that the carrier is missing and as
7 well as the grid graph is incomplete.

8 During this inspection I had Mr. Loveland
9 update this logbook, logbook entry I should say, to
10 show what he had been doing since that time.

11 The third page shows the updated logbook
12 filled out minus the mileage up to the 16th at the
13 time he was stopped. Mr. Loveland was advised to
14 make his logbook current up to the time of the
15 inspection, and as you can see there the notation DOT
16 Sandusky, Ohio, so we had him update it and make sure
17 that he fills out the logbook completely up to that
18 time showing the proper identification of who he is
19 operating for and what he has been doing since up to
20 the time of the inspection.

21 Q. Very good. Thank you. So there is an
22 indication of some sort that he was -- he was off
23 duty -- some notation of Ridge Apple Growers but was
24 off duty during that period. That as of the 15th, he
25 indicates the name of his carrier as NW Logistics?

1 A. Yes.

2 Q. As he does on the 16th, the day of the
3 inspection, NW Express Log, assuming Logistics.
4 Thank you. Now, after having determined that NW
5 Logistics was the carrier, you indicated you checked
6 some -- some federal sites to determine the company's
7 authority as you will.

8 A. Yes.

9 Q. What -- what did you determine as a
10 result of that inquiry?

11 A. Well, after checking a couple of the
12 different federal websites, namely, one of them was
13 Query Central. Query Central was checked, indicated
14 the carrier was under a federal out-of-service order.
15 And this was also verified with a phone call to the
16 Federal Motor Carrier Safety Administration. And as
17 well, the carrier has no operating authority per the
18 check with the what they call SAFER website as well
19 as Query Central. I lost my train of thought.

20 Q. You mentioned that you placed a call.
21 Did you place that call at the time of your
22 inspection?

23 A. Yes. The call was placed because I want
24 to be absolutely sure that this carrier was under an
25 out of service.

1 Q. Okay. Thank you.

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

3 EXAMINER LYNN: Yes, you may.

4 Q. Inspector Byrne, I've handed you two
5 documents separately marked, one as Staff Exhibit No.
6 5 and one as Staff Exhibit No. 6. Are these
7 documents that you generated as a result of your
8 inquiries that day at the time of the inspection?

9 A. Yes. These are documents that were
10 presented directly from the -- those particular
11 websites, Query Central.

12 Q. And can you very briefly summarize what
13 these documents show?

14 A. If you'll look at Staff Exhibit No. 5,
15 you will see on there top left corner shows Query
16 Central and there is a -- this was printed out on the
17 16th, the date of the inspection. I took a
18 photograph of this on the 16th. You will see there
19 OOS 3-15-2010. That means the out of service was
20 issued on 3-15-2010, the reason being unsatisfactory,
21 unfit and per further down you will see the carrier
22 name, USDOT number, physical address, so on.

23 Exhibit No. 6 is also for the Federal
24 Motor Carrier Safety Administration website showing
25 the same carrier, same USDOT number, address. You

1 will notice towards the middle of the page authority
2 type there is two types of authority he can use -- or
3 all three, common, contract, and broker. And the
4 status shows inactive, none, none, so the carrier has
5 no authority whatsoever there. And then, of course,
6 towards the bottom it shows what kind of insurance
7 they would need to carry on file and what is
8 required.

9 Q. So -- so that I'm clear when it says
10 inactive, that means they have no active authority to
11 engage in common carrier.

12 A. That is correct.

13 EXAMINER LYNN: Inspector Byrne, is that
14 because of the safety issue?

15 THE WITNESS: That may -- I don't know
16 how to answer that. That could be possibly
17 independent or could be in conjunction with.

18 EXAMINER LYNN: All right. Thank you.

19 Q. And just to be clear and to follow-up on
20 the judge's question, if the carrier is out of
21 service, its authority would effectively be suspended
22 during that out-of-service period; is that your
23 understanding?

24 A. Honestly I do not know.

25 Q. That's fine. But for purposes of this

1 case in addition to the carrier being out of service,
2 you were able to determine that the carrier did not
3 have authority to be operating as a common carrier in
4 this state.

5 A. That is correct.

6 Q. You indicated you also conducted and
7 interviewed the driver. Was there anything
8 significant of note in that interview that you would
9 like to add to the record at this time?

10 A. I do recall the interview with the
11 driver, and he was somewhat confused because I want
12 to be absolutely sure of who the carrier is. I don't
13 want to be writing up the wrong carrier for purposes
14 of the inspection. And he was confused somewhat as
15 to who the carrier was. He said Ridge Apple Growers
16 owns the truck, but he was driving for NW Logistics.

17 So to be firm in this I want to be sure
18 with him who the actual carrier's operating for that
19 day, carrier NW Logistics or Ridge Apple Growers.
20 And after the interview, it was determined by talking
21 with him NW Logistics was the carrier.

22 Q. And just again to be clear, it is not
23 unusual, is it, for a carrier to be using a vehicle
24 that is owned by a different entity?

25 A. Sure, that is correct.

1 MR. MARGARD: That's all the questions I
2 have for Inspector Byrne. Thank you, your Honor.

3 EXAMINER LYNN: Thank you. Thank you,
4 Mr. Margard.

5 - - -

6 EXAMINATION

7 By Examiner Lynn:

8 Q. Actually I had a few questions for you.

9 A. Sure.

10 Q. Let's see, were there any shipping papers
11 that indicated NW Logistics was the carrier?

12 A. The shipping papers did not -- according
13 to my photographs, the only thing I was determining
14 with the shipping papers -- there are photos of the
15 shipping papers showing where his next delivery was
16 going to and where the cargo had originated, but
17 unfortunately the shipping papers did not determine.

18 Q. Your inspection report indicates it was
19 shrubbery being hauled.

20 A. Yes.

21 Q. But, again, the source of the shrubbery
22 did not indicate on shipping papers who the carrier
23 was for that particular load.

24 A. (Witness nods head.)

25 EXAMINER LYNN: I have a few other

1 questions of Mr. Margard. Do you have a question
2 related to this?

3 MR. MARGARD: Your Honor, I do. If it
4 would benefit, your Honor, I do have a copy of the
5 shipping document Inspector Byrne alluded to, and I
6 would be happy to mark that.

7 EXAMINER LYNN: Okay. We can do that as
8 well. Is that Staff Exhibit 7, I guess?

9 MR. MARGARD: Yes, thank you, your Honor.

10 Q. (By Examiner Lynn) And you indicated that
11 after some discussion with the driver, you determined
12 NW Logistics was the carrier. But you indicated the
13 driver also had made some reference to Ridge Apple
14 Growers.

15 A. Yes.

16 Q. Did he -- did he make any connection
17 between Ridge Apple Growers and the load he was
18 hauling on the day you did the inspection?

19 A. Just other than talking with him, he said
20 Ridge Apple Growers owned the truck.

21 Q. Owned the truck, I see. So Ridge Apple
22 Growers according to the driver owned the truck, but
23 on the vehicle itself the name of the company and
24 apparently the USDOT number and so forth on the door
25 on Staff Exhibit 2, those are all NW Logistics.

1 A. Yes.

2 Q. Okay.

3 A. And if need be, sir, I do have some
4 additional photographs that show the vehicle, vehicle
5 information showing Ridge Apple Growers with the
6 matching of the unit VIN number.

7 Q. I'm sorry. You kind of lost me.

8 A. Okay. As we discussed, Ridge Apple
9 Growers owns the truck.

10 Q. Okay.

11 A. And the Michigan registration shows Ridge
12 Apple Growers.

13 Q. The registration for the license plate or
14 something?

15 A. The registration with the license plate,
16 yes. However, the company markings on the side of
17 the vehicle show NW Logistics.

18 Q. I see.

19 MR. MARGARD: Your Honor, I also have a
20 copy of that registration card which I'll mark as
21 Staff Exhibit 8 and offer.

22 EXAMINER LYNN: Okay. That would be
23 helpful. Thank you.

24 Q. Let's see, I had a few other questions.
25 And the -- on Staff Exhibit 5 is the Query Central

1 printout. Query Central then is a federal website?

2 A. Yes, it is.

3 Q. Okay. And you had made -- I think in
4 response to one of Mr. Margard's questions, you had
5 made a comment about the vehicle -- or the carrier, I
6 should say, not only being out of service but also
7 having no operating authority.

8 A. Yes.

9 Q. Was I correct about that? Okay. The
10 out-of-service determination was apparently made when
11 you went to, say, Query Central, it says OOS date,
12 out-of-service date, 3-15-2010. The Staff Exhibit 6
13 exhibit indicates carrier out of service also but the
14 part about, again, no operating authority, how is
15 that determined?

16 A. The -- through the Query Central and then
17 there's also a section of Query Central called
18 licensing and insurance. You click on that, and it
19 brings up this page here. You will see where it says
20 this carrier is out of service. That is referring to
21 the federal out-of-service order.

22 Q. All right.

23 A. But as you go down then, it also shows
24 where the authority -- they have no authority to --

25 Q. Is that on Staff Exhibit 6 where it

1 indicates authority status inactive?

2 A. Yes.

3 Q. Okay. Has no authority, okay. So that's
4 indicated on Staff Exhibit 6 and you are saying you
5 weren't really sure if there was a connection between
6 the out of service because of I guess safety
7 violations and no authority. You didn't really know
8 if there was any connection between the two.

9 A. That I'm not 100 percent about because I
10 have -- I know of cases where vehicles have been
11 stopped and they have a federal out-of-service order
12 but yet still have authority. Yeah. So I'm not sure
13 how that could be --

14 Q. Just to make sure I have the details
15 straight then, so the out of service would apply
16 to -- actually to this entire carrier, whatever
17 vehicles it would have, not just this one in
18 particular.

19 A. That is correct.

20 Q. And then no operating authority means
21 that -- I guess help me with what that means or if
22 you don't know, you don't know.

23 A. Well, to briefly summarize up this
24 carrier is a for hire carrier. They are hauling
25 someone else's goods.

1 Q. All right, sure.

2 A. To be able to haul those goods, they can
3 just go out and say, John Q. Dough, I'm going to haul
4 your cargo here. We're going to operate between
5 these dates.

6 Q. Okay.

7 A. They have got to have permission.

8 Q. Okay.

9 A. Okay? If they don't have permission, in
10 other words, the authority, then they can't be
11 hauling goods.

12 Q. Okay. So NW apparently if they had
13 authority would be a common carrier based on --

14 A. It could be any one of those three.

15 Q. Any of the three?

16 A. Any one of the three or all.

17 Q. Okay. At any rate we know at the time of
18 the inspection they had no authority at all via
19 common, contract, or broker according to Staff
20 Exhibit 6.

21 A. That's correct.

22 EXAMINER LYNN: We'll go off the record
23 for a minute.

24 (Recess taken.)

25 EXAMINER LYNN: Okay. We will go back on

1 the record at this time. Mr. Margard has marked as
2 he indicated he would Staff Exhibits 7 and 8, Staff
3 Exhibit 7 being a shipping paper that accompanied the
4 driver on this load, Staff Exhibit 8 being the
5 registration card for the vehicle itself. I guess it
6 was for licensing purposes, vehicle licensing
7 purposes.

8 Mr. Margard, I believe you had some
9 comments about these exhibits?

10 MR. MARGARD: If I may only briefly, your
11 Honor, ask the witness to authenticate these two
12 documents.

13 EXAMINER LYNN: Okay. Sure.

14 - - -

15 FURTHER DIRECT EXAMINATION

16 By Mr. Margard:

17 Q. Inspector Byrne, you have before you what
18 has been marked for purposes of identification as
19 Staff Exhibits 7 and 8. As the Examiner indicated,
20 No. 7 purports to be a copy of the shipping paper in
21 this case; is that correct?

22 A. That is correct.

23 Q. And Exhibit No. 8 purports to be a copy
24 of the registration for this vehicle to Ridge Apple
25 Growers; is that correct?

1 A. Yes.

2 Q. And just so that the record is clear,
3 these are both copies of the photographs that you
4 took at the time of your inspection; is that correct?

5 A. That is correct.

6 Q. And all of the photographs that we have
7 made copies of, these are -- except for the fact they
8 are in black and white instead of color, these are
9 true and accurate copies of photographs that you took
10 at the time?

11 A. Correct.

12 MR. MARGARD: That's all I have.

13 EXAMINER LYNN: All right. Thank you,
14 Mr. Margard.

15 - - -

16 FURTHER EXAMINATION

17 By Examiner Lynn:

18 Q. Let's see, Inspector Byrne, looking at
19 Staff Exhibits 7 and 8 then, I had a question about
20 Staff Exhibit 8. That indicates then the owner of
21 the vehicle, Ridge Apple Growers, or at least for
22 purposes of licensing the vehicle is -- I'll start
23 over.

24 The owner for purpose of licensing is
25 Ridge Apple Growers; am I correct?

1 A. That is correct.

2 Q. Is it -- is this something you have
3 encountered on other occasions where the owner of the
4 vehicle might be different from the carrier that's
5 operating the vehicle?

6 A. Yes.

7 Q. That does happen.

8 A. Yes.

9 Q. And, again, you indicated in your
10 questions with the driver and apparently the driver,
11 if I remember correctly, had mentioned Ridge Apple
12 Growers to you.

13 A. Yes, he did.

14 Q. But you indicated based on your
15 discussions with him on that day, that he -- after
16 talking to him, you concluded that he was hauling for
17 NW Logistics on that particular day with that
18 particular load.

19 A. Yes. I want to be 100 percent sure who
20 the actual carrier is.

21 Q. All right. Now, let's see, and you --
22 also on Staff Exhibit 1 you had indicated aside from
23 the operating a commercial motor vehicle after there
24 being an unsatisfactory rating, that's one of the
25 violations, you also indicated operating without

1 required operating authority. I see. So those are
2 both -- those are two operating violations. One is
3 the operating authority issue and the other is the
4 out of service based on prior I guess safety
5 violations of the company; is that correct?

6 A. Uh-huh.

7 EXAMINER LYNN: That's fine. All right.
8 Okay. I have no other questions at this time. I may
9 have further questions later, but you can take your
10 seat for now. Thank you very much.

11 Mr. Margard.

12 MR. MARGARD: Thank you, your Honor.
13 Staff would call Mr. John Canty.

14 EXAMINER LYNN: Mr. Canty.

15 (Witness sworn.)

16 EXAMINER LYNN: Please take your seat.

17 Mr. Margard, you may continue.

18 MR. MARGARD: Thank you, your Honor.

19 - - -

20 JOHN J. CANTY

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

23 DIRECT EXAMINATION

24 By Mr. Margard:

25 Q. Please state your name.

1 A. John J. Canty, C-A-N-T-Y.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. The Public Utilities Commission of Ohio,
5 I am the assistant chief of the compliance division.

6 Q. And your business address, please?

7 A. 180 East Broad Street, Columbus, Ohio
8 43215.

9 Q. Thank you. How long have you been the
10 assistant chief of compliance?

11 A. Approximately 19, 20 years.

12 Q. And what are your duties and
13 responsibilities very briefly?

14 A. Among other things I supervise the
15 employees who are responsible for sending out the
16 notices for violations that are discovered on
17 commercial motor vehicle inspections.

18 Q. You then are knowledgeable about how
19 civil forfeitures are calculated?

20 A. Yes.

21 Q. Can you please describe how a civil
22 forfeiture is calculated for violation to the Motor
23 Carrier Safety Regulations.

24 A. Yes. We have a chart, violations chart,
25 that we have in the office which breaks down all the

1 violations into four categories and then assesses the
2 violations according to how many violations fall into
3 each category. We also have -- well, actually the
4 fourth category of violations lists violations that
5 are assessed independently of other violations. We
6 also have an addendum to that several pages long
7 which lists every violation and with the dollar
8 amount as per each violation.

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

10 EXAMINER LYNN: Yes.

11 Q. Mr. Canty, I have handed you a multi-page
12 document that's been marked for purposes of
13 identification as Staff Exhibit No. 9. Can you
14 identify this document for me, please.

15 A. Yes. That is the fine schedule for
16 violations discovered during a commercial motor
17 vehicle inspection that I was referring to that we
18 use in the compliance division.

19 Q. Now, this particular document indicates
20 it became effective October 4, 2007. Is this the
21 most recent version?

22 A. It is the version that would have been in
23 effect when this -- this was assessed, yes.

24 Q. Excellent. Thank you. Are the dollar
25 amounts contained in this schedule consistent with --

1 in your opinion with the recommended fines or penalty
2 schedule adopted by the Commercial Vehicle Safety
3 Alliance?

4 A. Yes.

5 Q. And is the procedure that you've
6 described consistent with the recommended civil
7 penalty procedure adopted by the Commercial Vehicle
8 Safety Alliance?

9 A. Yes.

10 Q. And this procedure is the same for all
11 carriers and individuals?

12 A. Yes, it is.

13 Q. Thank you. Let's take a look at the
14 specific violations in this case if we can. In the
15 course and scope of your duties, have you had an
16 opportunity to review the Commission's file in this
17 case?

18 A. Yes, I have.

19 Q. And have you seen what's been marked as
20 Staff Exhibit No. 1, the Vehicle Examination Report?

21 A. Yes.

22 Q. And this document is part of the file
23 that you reviewed in preparing your testimony?

24 A. Yes, it is.

25 Q. In fact, are all of the documents marked

1 so far today as part of this hearing part of the
2 Commission's file in this case?

3 A. Yes, they are.

4 Q. Thank you. There are two violations
5 noted on this report as out-of-service violations; is
6 that correct?

7 A. Yes.

8 Q. Am I correct in understanding that only
9 out-of-service violations are assessed forfeitures?

10 A. Not entirely. There are some violations
11 that fall into group 4 which are not out of service
12 such as not using the seatbelt would be an example.
13 That would have an independent forfeiture amount for
14 them regardless of whether or not they are out of
15 service.

16 Q. None of the other violations found in
17 this case, however, fall in that category, do they?

18 A. No.

19 Q. Okay. Thank you. Let's talk about these
20 specific violations here. And can you tell me how
21 the civil for -- civil forfeiture assessment was made
22 for the two violations found here.

23 A. Yes. We have a computer program that
24 runs against the data that we have stored in the
25 database. It identifies which violations are to be

1 assessed and the dollar amount they are to be
2 assessed based on the fine schedule that we have
3 established. The computer assesses that dollar
4 amount on the record, and we mail out the forfeiture
5 notice to the party.

6 Q. And specifically what was the amount of
7 the forfeiture assessed in this case?

8 A. The total amount was \$1,000.

9 Q. And is there an apportionment of that
10 amount between the two violations?

11 A. There is an apportionment of violation
12 amounts. In this case there's two violations that
13 could have been assessed, the first being the
14 out-of-service violation, the second one being the no
15 authority violation. The out-of-service violation is
16 \$1,000, and the no operating authority is 500 which
17 would normally add up to \$1,500. However, we are
18 prohibited by statutory requirements that we may not
19 assess more than \$1,000 per inspection. So that's
20 why the total amount on this was \$1,000, not \$1,500.

21 Q. In your opinion were the forfeitures
22 properly determined and assessed in this case?

23 A. Yes.

24 Q. And in your opinion are those amounts
25 reasonable?

1 A. Yes.

2 Q. Mr. Canty, I do want to ask you one other
3 question about the circumstances in this case and
4 that's the situation where the carrier was placed out
5 of service. Inspector Byrne testified that he was
6 aware of that because he checked a federal site that
7 indicated when the out of service became effective.
8 Were you present for that portion of his testimony?

9 A. Yes, I was.

10 Q. And do you have any additional
11 information about how that information came to be
12 recorded in the federal databases or when, in fact,
13 the out-of-service violation occurred for this
14 carrier?

15 A. Yes. According to the research that I
16 have done on this case, there was a compliance review
17 done at the location of the company in I believe it
18 was Caledonia, Michigan. As a result of that
19 compliance review, violations were discovered which
20 were severe enough to take the carrier out of
21 service. The carrier was notified on January 13 of
22 2010 that they would be out of service effective
23 March 15, 2010, unless they appealed that decision.
24 I did not see anything on the record that would show
25 that they did appeal that decision.

1 Q. It is -- is it your understanding of this
2 violation that a carrier is permitted to operate for
3 a period of time after receiving that initial notice?

4 A. After receiving the notice, yes.

5 Q. The January 13, 2010, notice?

6 A. Correct.

7 Q. And they are permitted to operate for 60
8 days; is that correct?

9 A. Approximately 60 days, in this case the
10 notice was sent on January 13. The out-of-service
11 date would have been March 15. That's approximately
12 60 days.

13 Q. Very good. So in your opinion based on
14 your review of this case, this carrier was, in fact,
15 operating more than 60 days after it was given an
16 unsatisfactory safety rating?

17 A. Yes, I believe the inspection was the day
18 after the effective date. The effective date was
19 March 15; the inspection date was March 16.

20 Q. Very good. Thank you.

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

22 EXAMINER LYNN: Yes, you may.

23 Q. Mr. Canty, I have handed you two
24 documents marked respectively for purposes of
25 identification as Staff Exhibits 10 and 11. Can you

1 identify these documents for me, please.

2 A. Yes. Staff Exhibit 10 is a -- what we
3 refer to as a Notice of Apparent Violation and Intent
4 to Assess Civil Forfeiture. It is dated March 23,
5 2010. It is addressed to NW Logistics in Caledonia,
6 Michigan. This is the notice that we are required to
7 send to any party who is going to be assessed a civil
8 forfeiture.

9 In this case it lists the two violations
10 that we have been discussing, the out-of-service
11 violation and the no operating authority violation.
12 It advises the company that the amount of the
13 forfeiture will be \$1,000. Within 30 days they must
14 either pay that forfeiture or ask for a conference.

15 Q. And I will note in addition in Exhibit 10
16 the violations are noted as being part of violation
17 group 4. That's group 4 as identified on Staff
18 Exhibit 9, the out-of-service violation chart?

19 A. Correct.

20 Q. Thank you. And Staff Exhibit No. 11,
21 please.

22 A. No. 11 is what we refer to as a Notice of
23 Preliminary Determination. It is dated May 18, 2010,
24 addressed to NW Logistics in Caledonia, Michigan.
25 This is the notice that we send out following the

1 completion of a conference with the company. This
2 advises them that as a result of the conference, we
3 still intend to maintain the forfeiture of \$1,000.
4 They are directed to either pay that amount or
5 request an administrative hearing.

6 Q. Now, are both of these documents part of
7 the file that you reviewed in preparing for your
8 testimony today?

9 A. Yes.

10 Q. And both of these documents are items
11 that are typically and regularly maintained by the
12 Commission as part of its files?

13 A. Yes.

14 Q. And in your opinion and based on your
15 review of the file in this case, did the respondent
16 receive all notices that they were required to be
17 served with as required by the Ohio Administrative
18 Code?

19 A. Yes.

20 MR. MARGARD: Thank you, your Honor. I
21 have no other questions for Mr. Canty.

22 - - -

23 EXAMINATION

24 By Examiner Lynn:

25 Q. Mr. Canty, you had mentioned that based

1 on your research, you learned the carrier received in
2 January of this year that it would be placed out of
3 service and that it had I guess 60 days approximately
4 until it actually had to shut down operations. You
5 also indicated there is no indication that the
6 carrier had appealed that decision; am I right on
7 that?

8 A. That's correct.

9 Q. And this was indicated on one of the U.S.
10 Department of Transportation websites?

11 A. Yes, it is.

12 EXAMINER LYNN: All right. I have no
13 further questions either. Thank you for your
14 comments. Can we go off the record for a minute?

15 (Recess taken.)

16 EXAMINER LYNN: Before we continue,
17 Mr. Margard, do you want to move these be admitted
18 into evidence?

19 MR. MARGARD: I would, your Honor. I
20 would respectfully move for the admission of Staff
21 Exhibits 1 through 11.

22 EXAMINER LYNN: That motion will be
23 granted. They will be admitted into evidence.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER LYNN: I also want to mention

1 for the record several things. It's now 11 o'clock.
 2 This hearing began at 10 a.m. There is no one
 3 present representing NW Logistics. The request for a
 4 hearing was made by a Mr. Mirsad Bektas, M-I-R-S-A-D
 5 B-E-K-T-A-S. And he had been the contact person for
 6 NW Logistics since that request for hearing was made.

7 The hearing was originally scheduled for
 8 October 21. Because of unforeseen circumstances I,
 9 the Attorney Examiner, had to cancel that date,
 10 October 21, and change the date to December 1.

11 I did get in touch with Mr. Bektas who
 12 was still at NW Logistics at that time and explained
 13 to him the hearing date would have to be moved. The
 14 date was then rescheduled to December 1, and the
 15 carrier was served with notice of the new date,
 16 December 1 of this year at 10 a.m.

17 In addition, I earlier this week on
 18 Monday of this week which would have been November 29
 19 made a call to Mr. Bektas reminding him of the
 20 hearing date. He contacted me yesterday by telephone
 21 late in the day and explained that he was no longer
 22 employed by NW Logistics. And I then asked him is
 23 the owner of the company aware of the violation. And
 24 he said, oh, yes, he is aware of the violation.

25 Having said that then I'll note for the

1 record that presumably based on Mr. Bektas' prior
2 connection with NW Logistics, the company is aware of
3 the violation, and in addition service was made to NW
4 Logistics of the date of today's hearing, the date
5 and the time. However, no one has been present to
6 show up for the company.

7 Finally, I'll add that during this past
8 hour while the hearing was going on I went off the
9 record twice to check for telephone messages of my
10 office to see if anyone from the company had called
11 and perhaps was on the way here and there have been
12 no messages.

13 So having said that I believe we've
14 concluded everything that's necessary for the hearing
15 today. I want to thank everyone for their
16 attendance, and we will adjourn.

17 (Thereupon, the hearing was concluded
18 11:05 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 Wednesday, December 1,
2010, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5294)

- - -

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