

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Default of Motor )  
Carriers and Drivers Pursuant to Rule ) Case No. 12-2427-TR-CVF  
4901:2-7-14, Ohio Administrative Code. )

FINDING AND ORDER

The Commission finds:

- (1) Section 4923.04, Revised Code, authorizes the Commission to adopt safety rules applicable to the highway transportation of persons or property, and the transportation and offering for transportation of hazardous materials. Pursuant to this authority, the Commission established safety standards in Chapter 4901:2-5, Ohio Administrative Code (O.A.C.), including the adoption of the provisions of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation contained in Title 49 Code of Federal Regulations (C.F.R.), Parts 40, 107, subparts f and g, 367, 380, 382, 383, 385, 386, 387 and 390 to 397, unless specifically excluded or modified by a rule of the Commission, and those portions of the hazardous materials regulations contained in 49 C.F.R. 171 to 180 as are applicable to transportation or offering for transportation by motor vehicle.
- (2) Section 4923.99, Revised Code, authorizes the Commission to determine whether any person has committed a violation of such regulations, and assess a civil forfeiture against such person.
- (3) Accordingly, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Chapter 4901:2-7, O.A.C. These rules require that a respondent be afforded reasonable notice and opportunity for a hearing when the Commission finds a violation of the regulations adopted in Rule 4901:2-5-02, O.A.C. Specifically, Rule 4901:2-7-07, O.A.C., provides that the Commission Staff (Staff) may serve a Notice of Intent to Assess Forfeiture (NIF) upon a respondent within 90 days after the discovery of a violation but no more than one year following the violation. In addition, Rule 4901:2-7-12,

O.A.C., states that a Notice of Preliminary Determination (NPD) may be issued to a respondent following the issuance of a NIF.

- (4) Pursuant to Rule 4901:2-7-14, O.A.C., a respondent upon whom a NIF or NPD has been served who, within 30 days, fails to pay the amount of the forfeiture stated in the notice, or serve upon the Commission a request for conference, pursuant to Rule 4901:2-7-10, O.A.C., or administrative hearing, pursuant to Rule 4901:2-7-13, O.A.C., shall be in default. A respondent in default shall be deemed to have waived all further right to contest liability for the forfeiture described in the NIF or NPD. Pursuant to Rule 4901:2-7-14(D), O.A.C., if a respondent is in default, the Commission may, on its own motion and without prior notice, order payment of the amount indicated in the NIF or NPD.
- (5) The respondents listed in the attachment have been served with either an NIF or an NPD and have neither served a request for conference, pursuant to Rule 4901:2-7-10, O.A.C., served a request for administrative hearing, pursuant to Rule 4901:2-7-13, O.A.C., nor paid the forfeiture indicated in the notice. Each respondent therefore is in default, pursuant to Rule 4901:2-7-14, O.A.C., and is subject to an order of the Commission finding the respondent liable for the amount indicated and ordering payment of such amount. This proceeding involves 72 motor carriers/drivers and forfeitures in a total amount of \$76,669.50.
- (6) However, before the Commission issues an order finding the identified respondents liable for the amounts indicated in the attachment and ordering payment of such amounts, each respondent should be granted an opportunity to demonstrate why it should not be held in default and ordered to make payment of the forfeiture. Each respondent may serve upon the Staff a response to this finding and order demonstrating that it was not properly served with the NIF, it paid the civil forfeiture, or it served a request for conference or administrative hearing within 30 days of receipt of the NIF or NPD. This response shall be made in writing, by October 19, 2012, and addressed to the Public Utilities Commission of Ohio, Transportation Department Show Cause, 180 East Broad Street, 4<sup>th</sup> Floor, Columbus, Ohio 43215.

- (7) Staff shall determine whether a respondent has demonstrated why it should not be held in default and shall report to the Commission those respondents who should be found liable for, and ordered to make payment of, the forfeiture.

It is, therefore,

ORDERED, That by October 19, 2012, each respondent listed in the attachment to this finding and order pay the forfeiture amount indicated or demonstrate why it should not be held in default and ordered to make payment of the forfeiture indicated on the attachment. It is, further,

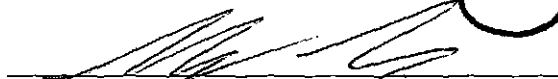
ORDERED, That Staff report to the Commission those respondents who should be found liable for, and ordered to make payment of, the forfeiture. It is, further,

ORDERED, That a copy of this finding and order be served upon each respondent.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Todd A. Switchler, Chairman



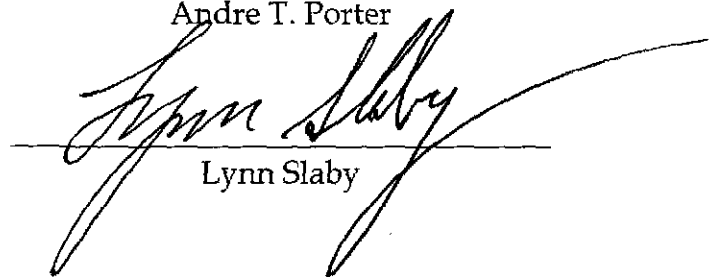
Steven D. Lesser



Andre T. Porter



Cheryl L. Roberto

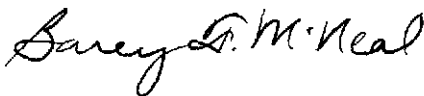


Lynn Slaby

JST/js  
Attachment

Entered in the Journal

**SEP 19 2012**



Barcy F. McNeal  
Secretary