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before Mr. Bryce McKenney, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Room 11-D, Columbus, Ohio, called at 10:21 a.m. on Tuesday, November 5, 2013.

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1 APPEARANCES:

2 Ohio Attorney General Mike DeWine  
3 By Mr. Devin D. Parram  
4 180 East Broad Street, Sixth Floor  
5 Columbus, Ohio 43215

6 On behalf of the Staff of the Public  
7 Utilities Commission of Ohio.

8 ALSO PRESENT:

9 Mr. Scott P. Damron.

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Tuesday Morning Session,  
November 5, 2013.

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ATTORNEY EXAMINER MCKENNEY: Let's go on the record at this time. The Public Utilities Commission of Ohio calls for hearing at this time and place Case No. 13-1666-TR-CVF, being In the Matter of: Scott P. Damron, Notice of Apparent Violation and Intent to Assess Forfeiture.

My name is Bryce McKenney, and I'm the attorney examiner assigned by the Commission to hear this case.

Before we move further with the case, at this time I'd like to take any prehearing motions from the parties.

MR. PARRAM: Yes, your Honor.

ATTORNEY EXAMINER MCKENNEY: Well, first, let's take the appearances of the parties.

MR. PARRAM: Yes. Good morning, your Honor. On behalf of the Staff of the Public Utilities Commission of Ohio, Ohio Attorney General Mike DeWine, by Assistant Attorney General William L. Wright, Section Chief, Devin D. Parram, 180 East Broad Street, Columbus, Ohio, Sixth Floor, 43215.

ATTORNEY EXAMINER MCKENNEY: Thank you,

1 Mr. Parram.

2 MR. DAMRON: I'm Scott Damron on behalf  
3 of myself. My address is 412 South Eighth Street,  
4 Miamisburg, Ohio 45342.

5 ATTORNEY EXAMINER MCKENNEY: Thank you,  
6 Mr. Damron.

7 MR. DAMRON: You're welcome.

8 ATTORNEY EXAMINER MCKENNEY: At this time  
9 are there any prehearing motions?

10 MR. PARRAM: Yes, your Honor. Staff  
11 called a staff witness, the inspector in this case,  
12 to be at the hearing today. He is unavailable at  
13 this time. I tried to contact him; and as far as I  
14 know, he is not going to be able to show up this  
15 morning.

16 The circumstances of his unavailability,  
17 I'm not aware of. But considering the importance of  
18 the witness in this case, I would like to make a  
19 motion for a continuance for another date to have the  
20 inspector show up.

21 ATTORNEY EXAMINER MCKENNEY: Mr. Parram,  
22 your motion to continue this case, as you know, has  
23 not been timely filed, as you are simply making it  
24 right now. Is there good cause for why I should  
25 grant this motion?

1 MR. PARRAM: I believe the importance of  
2 having the witness and the level of the violation,  
3 considering it's an out-of-service violation, which  
4 is a substantial violation, the importance of having  
5 the inspector here for this particular matter is  
6 important in this case.

7 ATTORNEY EXAMINER MCKENNEY: Is there  
8 good cause why he's not here? Do you know why he's  
9 not here?

10 MR. PARRAM: The cause I just stated is  
11 the only cause I know, your Honor.

12 ATTORNEY EXAMINER MCKENNEY: Thank you,  
13 Mr. Parram.

14 Mr. Damron, do you have anything you'd  
15 like to say regarding the Staff's motion?

16 MR. DAMRON: I ask that it not be  
17 continued on the fact that this reflects on his  
18 professionalism. I was subpoenaed; he was  
19 subpoenaed. He's not made it his job to be here.

20 This looks bad on the PUCO. He's making  
21 everyone look bad. We took the time to be here. He  
22 took the time not to be here.

23 I ask that it not be continued, and I  
24 have sufficient proof that the truck was fixed.

25 ATTORNEY EXAMINER MCKENNEY: Mr. Damron

1 I'm not going to get into the merits of the case.  
2 I'm just asking for your thoughts on the Staff's  
3 motion.

4 MR. DAMRON: Okay.

5 ATTORNEY EXAMINER MCKENNEY: Thank you  
6 for your comments. The Staff's motion to continue  
7 this case is going to be denied. We will go to  
8 hearing this morning.

9 Are there any other prehearing motions?

10 MR. DAMRON: No, sir.

11 ATTORNEY EXAMINER MCKENNEY: Mr. Parram,  
12 do you need some time to collect yourself before we  
13 move forward with the hearing this morning?

14 MR. PARRAM: No, your Honor.

15 ATTORNEY EXAMINER MCKENNEY: Are you  
16 prepared to move forward?

17 MR. PARRAM: Staff is not prepared to  
18 move forward, as we do not have our primary witness  
19 in this case, your Honor, hence, the motion for a  
20 continuance.

21 ATTORNEY EXAMINER MCKENNEY: I  
22 understand. Do you have anything else that you can  
23 put on for hearing?

24 MR. PARRAM: We only have one witness as  
25 it relates to the violation, your Honor. So that's

1 it. If the ALJ is not going to grant my motion for a  
2 continuance, we don't have the inspector as it  
3 relates to the violation in this case.

4 ATTORNEY EXAMINER MCKENNEY: Do you have  
5 an inspection report in this case?

6 MR. PARRAM: We do, your Honor. Would  
7 you like for me to move and mark the inspection  
8 report, your Honor?

9 ATTORNEY EXAMINER MCKENNEY: You may do  
10 so, if you wish.

11 MR. PARRAM: Your Honor, Staff would like  
12 to have marked for purposes of identification Staff  
13 Exhibit 1, which is the Driver/Vehicle Examination  
14 Report that is at issue in this case, inspection  
15 date: February 12, 2012.

16 ATTORNEY EXAMINER MCKENNEY: It will be  
17 so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

20 ATTORNEY EXAMINER MCKENNEY: You may.

21 MR. DAMRON: Thank you.

22 ATTORNEY EXAMINER MCKENNEY: Thank you.

23 MR. PARRAM: Your Honor, I would move for  
24 the admission of Staff Exhibit 1.

25 ATTORNEY EXAMINER MCKENNEY: Mr. Damron,



1 I will give you the opportunity to let me know if you  
2 have any objection to the admission of Staff  
3 Exhibit 1.

4 MR. DAMRON: No, sir.

5 ATTORNEY EXAMINER MCKENNEY: I understand  
6 you do not. I'm going to take the motion to admit  
7 Staff Exhibit 1 under advisement on the grounds that  
8 no foundation has been laid for Staff Exhibit 1.  
9 However, the Commission does recognize examination  
10 reports as prima facie evidence in certain cases. So  
11 at this time, I'm going to take it under advisement  
12 and will rule on this accordingly.

13 Mr. Parram, is there anything else that  
14 you would like to proceed with this morning?

15 MR. PARRAM: Yes, your Honor. I did have  
16 one preliminary matter where the Staff was not going  
17 to be putting on a witness as it relates to the  
18 forfeiture amount in this case. There was an  
19 agreement between Staff and Mr. Damron in this case  
20 to reduce the forfeiture amount from \$1,000 to zero  
21 dollars.

22 Prior to the hearing, we had a  
23 discussion; and we weren't contesting the forfeiture  
24 amount -- or he wasn't contesting the forfeiture  
25 amount because it is zero dollars. So we aren't

1 presenting any witness on that.

2 ATTORNEY EXAMINER MCKENNEY: Okay. Does  
3 the Staff rest its case then?

4 MR. PARRAM: The Staff rests its case.

5 ATTORNEY EXAMINER MCKENNEY: All right.  
6 Mr. Damron, at this time, you'll be given an  
7 opportunity to make a statement, if you wish.

8 MR. DAMRON: Okay.

9 ATTORNEY EXAMINER MCKENNEY: Mr. Damron,  
10 before you proceed, I'm going to have to ask you to,  
11 first, take an oath. Then I'll have to ask you to  
12 step up here. You can bring anything with you, if  
13 you need it.

14 MR. DAMRON: It's locked in the car.

15 ATTORNEY EXAMINER MCKENNEY: Mr. Damron,  
16 please raise your right hand.

17 (Witness sworn.)

18 ATTORNEY EXAMINER MCKENNEY: You may be  
19 seated. I'll remind you, you are now under oath.

20 MR. DAMRON: Yes, sir.

21 ATTORNEY EXAMINER MCKENNEY: At this time  
22 you may give a statement for the record.

23 MR. DAMRON: My statement is the truck  
24 was repaired. The attorney has the -- the receipt  
25 where the truck was repaired. That's the only

1 evidence that I really have at this time.

2 ATTORNEY EXAMINER MCKENNEY: Do you have  
3 that document, and do you care to mark it for  
4 admission into evidence?

5 MR. DAMRON: They have a copy of the  
6 document. I don't have it as foreseen with the  
7 problem with the keys locked in my car.

8 ATTORNEY EXAMINER MCKENNEY: Let's go off  
9 the record real quick.

10 (Discussion was held off the record.)

11 ATTORNEY EXAMINER MCKENNEY: Let's go  
12 back on the record.

13 Mr. Damron, does that conclude the  
14 statement that you wish to give in this case?

15 MR. DAMRON: Yes.

16 ATTORNEY EXAMINER MCKENNEY: All right.  
17 Mr. Parram, do you have any cross-examination?

18 MR. PARRAM: I do, your Honor.

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20 CROSS-EXAMINATION

21 By Mr. Parram:

22 Q. Do you have a copy of Staff Exhibit 1?

23 A. Staff Exhibit 1, yes.

24 Q. The Driver/Vehicle Examination Report?

25 A. Yes.

1 Q. Did you bring it up there with you?

2 A. No, sir.

3 MR. PARRAM: May I approach, your Honor?

4 ATTORNEY EXAMINER MCKENNEY: You may.

5 THE WITNESS: Thank you.

6 Q. (By Mr. Parram) Now, Mr. Damron, Staff  
7 Exhibit 1 is a copy of the Driver/Vehicle Examination  
8 Report that was provided to you after the inspection  
9 on February 1, 2013; is that correct?

10 A. Yes.

11 Q. And on Staff Exhibit 1, there are a  
12 number of different violations listed. The first  
13 violation listed is 393.209D?

14 A. Yes.

15 Q. And that is looseness of a Pitman arm on  
16 the steering gear output shaft. Do you see that?

17 A. Yes.

18 Q. What exactly does that mean?

19 A. That means the steering box output shaft  
20 is connected to an arm to the steering mechanism.  
21 It's secured with one bolt. There's -- there's teeth  
22 on the shaft; and there was minute looseness of the  
23 shaft in the steering arm, Pitman arm.

24 Q. Okay. So prior to February 12, 2013, the  
25 date of this inspection, did you have a circumstance

1 where you were cited for looseness of the Pitman arm?

2 A. Yes, sir.

3 Q. Okay. And what date did that occur?

4 A. That occurred approximately eight days  
5 before. It would be February 4.

6 Q. So February the 4th, you said?

7 A. Uh-huh. I'm thinking the 3rd or the 4th.

8 Q. Okay. And then also let me try to find  
9 it here.

10 MR. PARRAM: May I approach the witness,  
11 your Honor?

12 ATTORNEY EXAMINER MCKENNEY: You may.

13 Q. (By Mr. Parram) Okay. 393.9. There's a  
14 violation listed, the third violation down. It  
15 indicates 393.9?

16 A. Uh-huh, 393.9.

17 Q. It says, "Inoperable Required Lamp.  
18 RIGHT SIDE TAIL LIGHT INOPERATIVE."

19 Do you see that?

20 A. Yes, sir.

21 Q. What does that mean?

22 A. It means the right side taillight was  
23 out. It was not working.

24 Q. Okay.

25 A. It's not an out-of-service violation.

1 Q. I understand that. And on --

2 ATTORNEY EXAMINER MCKENNEY: Mr. Parram,  
3 I'm going to warn you not to get outside the scope of  
4 his direct. His direct was very limited. I will ask  
5 you to stick to the violation which he addressed on  
6 his direct testimony, just the out-of-service  
7 violation.

8 Q. (By Mr. Parram) Is it your contention  
9 that the out of service -- the Pitman arm was  
10 repaired?

11 A. Explain to me what you're saying to me.

12 Q. After the February 4 --

13 A. Oh.

14 Q. -- inspection, is it your contention that  
15 the Pitman arm was repaired?

16 A. Yes.

17 Q. Were there other repairs?

18 A. Yes, sir.

19 Q. What were those repairs?

20 A. I believe it was some electrical to the  
21 taillights and a brake chamber -- brake chamber  
22 pancake.

23 Q. So you said there was a problem with the  
24 taillight?

25 A. Yes, but that's not what we're here for.

1 We're here for the out-of-service violations.

2 Q. Was the taillight --

3 THE WITNESS: Isn't that it exactly, sir?

4 ATTORNEY EXAMINER MCKENNEY: I'll just  
5 ask you to answer the questions he asked.

6 Q. (By Mr. Parram) Was the taillight  
7 repaired when the Pitman arm was repaired?

8 A. That's explained as to the -- it is  
9 explained on the receipt, which I don't have a copy  
10 of; but you do.

11 Q. And on February 12, was the right  
12 taillight still inoperable?

13 A. Yes. It -- it was not operating  
14 properly. It had a loose wire.

15 Q. Would you typically notice a taillight is  
16 inoperative on your standard walk-around before you  
17 operate your vehicle?

18 A. What I was explaining to you is it was a  
19 loose wire. While the truck was sitting, yes. When  
20 I inspected it that morning, the lamp was working.  
21 Vibration and stuff on those trucks are unbelievable.  
22 It could the next stop not be working but the next  
23 stop be working, you know. That's just something  
24 that you've got to catch.

25 Q. Okay.

1           A.    I also want to state that there was one  
2           lamp not working, but there was also two lamps next  
3           to it that were working.

4           Q.    And for the Pitman arm that you say was  
5           repaired, did you supervise the repairs of the  
6           vehicle?

7           A.    No, sir. My wife had a heart attack that  
8           morning, and I -- I called the -- I called the  
9           "pickle" post and spoke with the officer's supervisor  
10          and told him that I would have to leave the vehicle  
11          because I felt being with my wife was more important  
12          and I would have to leave the vehicle. We're talking  
13          on the day of the 4th; I would have to leave the  
14          vehicle to go be with my wife.

15                I believe it is stated on the receipt  
16          that you have there for the man to be paid, they  
17          requested they wanted cash because I didn't have an  
18          account with them, that they were to come to the  
19          emergency room at the hospital that I was at with my  
20          wife to be paid in cash. So at that time they were  
21          paid in cash. The receipt was obviously marked  
22          "paid." So that explains to me -- that explains to  
23          me what you're asking about; right.

24          Q.    And before you operated the vehicle,  
25          again, after the initial violation, what did you do



1 to ensure that the Pitman was actually repaired?

2 A. I looked at the Pitman arm, and I seen  
3 heat marks where he had obviously heated it up. You  
4 know, it was -- you know, I visually inspected it;  
5 and I also -- to check a Pitman arm by yourself is  
6 tough to do. You've got to shake the steering  
7 mechanism. And if the wheels aren't off the ground,  
8 it's hard to shake the steering mechanism.

9 You can grab them by your hand, like most  
10 drivers do, and shake them. But, you know, it  
11 wouldn't show the minute looseness that, you know,  
12 was apparently there.

13 MR. PARRAM: No further questions, your  
14 Honor.

15 ATTORNEY EXAMINER MCKENNEY: Well,  
16 Mr. Damron, I have no questions for you. So at this  
17 time, you're excused from the stand.

18 MR. DAMRON: Thank you, sir.

19 ATTORNEY EXAMINER MCKENNEY: Before I  
20 continue further, do you have any motions that you  
21 would like to make? You had indicated briefly off  
22 the record that you would wish to make one. This  
23 would be the appropriate time to do so.

24 MR. DAMRON: I would still like to make  
25 the motion of this being dismissed and let the Court

1 know that I also am going to report this officer for  
2 the unprofessionalism at the time of the stop and  
3 here to waste the State of Ohio of's money and time  
4 and these fine people here with us. Thank you.

5 ATTORNEY EXAMINER MCKENNEY: Thank you.  
6 Mr. Damron, unfortunately, that's not relevant to  
7 this particular case --

8 MR. DAMRON: That's true.

9 ATTORNEY EXAMINER MCKENNEY: -- but your  
10 motion to dismiss this case will be taken under  
11 advisement.

12 MR. DAMRON: Thank you.

13 ATTORNEY EXAMINER MCKENNEY: Is there  
14 anything further from either of the parties at this  
15 time? We're adjourned. Thank you all.

16 MR. DAMRON: Thank you.

17 MR. PARRAM: Thank you.

18 (The hearing was concluded at 10:40 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 Tuesday, November 5,  
2013, and carefully compared with my original  
stenographic notes.

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Margaret A. Marsh, Registered  
Professional Reporter.

(73814-MM)

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

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Summary: Transcript in the matter of Scott P. Damron hearing held on 11/05/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Marsh, Margaret