

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of LMD Integrated Logistic) Case No. 14-685-TR-CVF
Services, Inc., Notice of Apparent) (OH3233003840C)
Violation and Intent to Assess Forfeiture.)

LMD INTEGRATED LOGISTIC SERVICES, INC., REPLY MEMORANDUM,
PER 4901-1-12 O.A.C., TO THE PUCO'S MEMORANDUM CONTRA/MOTION
FOR "NULLITY" FILED MARCH 3, 2015

Abbreviated Statement of the Case

LMD was cited by the PUCO Enforcement Staff for an alleged violation of safety regulations in the above styled case. LMD and the PUCO Staff, being unable to reach an informal agreement, proceeded with a formal Hearing before the PUCO on September 22, 2014. On January 28, 2015, the PUCO issued its OPINION AND ORDER upholding both the alleged violation and also upholding the companion civil forfeiture of \$1680.00. Next, LMD timely filed an Application for Rehearing on February 25, 2015 requesting:

- 1) a reversal of the portion of the PUCO Order upholding the alleged safety violation; and
- 2) the cancellation of the assessed civil forfeiture.

Subsequently, per 4901-1-35, on March 3, 2015, Counsel for the PUCO timely filed its Memorandum Contra to the Application for Rehearing providing its appropriate

evidence, Administrative Code references and attaching a verified affidavit. It is to that Memorandum Contra filing that this Response is provided.

Issues

- 1) The only responsive pleading to an Application for Rehearing is a Memorandum Contra per 4901-1-35 O.A.C. Since there is no procedure for any other interim pleadings, the PUCO must consider this March 3, 2015 pleading by PUCO Counsel as their Memorandum Contra. Not only legally is this the PUCO's Memorandum Contra, but it is factually the Memorandum Contra because it makes a Motion to Dismiss the LMD Application for Rehearing. Simply because the PUCO Staff chose to not use the words "Memorandum Contra", but using different words, asking that the LMD pleading be considered a "nullity", it still does not change the legal and factual document. This is the PUCO's Memorandum Contra and it has no legal process to file additional pleadings. If the PUCO attempts to file a second pleading in opposition to our Application for Rehearing, it should be dismissed sua sponte and stricken from the record. The PUCO Staff, for reasons known only to them, have chosen to pinpoint only one argument in its Memorandum Contra.

- 2) The first basis for denial is the misinterpretation of Ohio Administrative Code. The PUCO cites OAC 4901:2-7-22(B) and in essence states that the case is over because payment was made prior to the PUCO's final Order. The OPINION AND ORDER is dated January 28, 2015. This Order was signed by all Commissioners including the Chairman, a unanimous Decision. A comparison to civil rules would be that this is a "final appealable Order". In

other words, if no other pleadings or Appeals are filed, this is the end of the case. The full Commission had made its Decision. Nowhere does the Order state that it is an interim Order

It was only after this January 28, 2015 Order that in **following the Order** LMD timely provided the full payment as ordered, to wit:

ORDERED, That LMD pay the assessed civil forfeiture by check or money order payable to the "Treasurer, State of Ohio" and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215- 3793. Case No. 14-685-TR-CVF and inspection number OH3233003840C should be written on the face of the check or money order. Payment must be made within 30 days of this Opinion and Order. (Opinion and Order, page 8)

The Order demanded payment. Payment was made **after** the Opinion and Order. Payment was not made before the Order. Therefore, the PUCO Memorandum Contra should be denied.

- 3) The PUCO Staff Memorandum Contra also fails because it does not follow the clear logic and reading of 4901:2-7-22(B). To wit, the beginning of the first full sentence (and as quoted by the PUCO Staff) reads:

If the only remedy requested with respect to a violation is the payment of a forfeiture, and full payment of the forfeiture demanded in the notice is made prior to the execution of a settlement agreement or any final commission order, full payment shall terminate all further proceedings under this chapter regarding that violation.

Throughout this PUCO administrative process, LMD and Counsel in extensive on and off the record discussions with the PUCO Staff stated that there are two remedies:

- 1) The underlying violation; and
- 2) The forfeiture

It was abundantly clear to all parties involved, both PUCO and LMD, that the alleged violation being placed upon LMD's federal safety record is of prime importance. Knowing full well the extensive burden placed upon LMD, time wise, travel wise and cost wise, LMD even offered many times during negotiations to pay the assessment, as long as the underlying incorrectly determined violation was dismissed. Please see attached Exhibit 1, which is the Affidavit of Lou Diblosi. In summary, premature payment (which did not occur in this case) can only "terminate all further proceedings" if the payment is the only issue. As LMD has stated in its post-hearing brief, "as long as this citation remains on the Respondent's record, the Respondent has suffered, and will continue to suffer, an adverse impact to its operations, its ability to attract and acquire future business, and its rating by current and potential insurers." Because the assessment was not the only remedy requested, the PUCO's Memorandum Contra should be denied.

- 4) Finally, the Ohio Revised Code controls the issue of when the payment of the assessment should be made. 4903.10 Application for Rehearing (O.R.C.) states in part:

In all other cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission.

4903.10 makes no use of the word "final", as used by the PUCO Staff. The word "final" appears nowhere but for the PUCO Staff's Memorandum Contra. LMD

had no choice but to pay the assessment timely, which it did. Furthermore, ORC 4903.15 provides that “[E]very order made by the [PUCO] shall become effective immediately upon entry thereof upon the journal of the [PUCO]. ...” In addition, ORC 4903.16 provides, “A proceeding to reverse, vacate, or modify a final order rendered by the [PUCO] does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days’ notice to the [PUCO], allows such a stay”

Under OAC 4901:2-7-01 (Definitions), paragraph (E) defines “hearing” to mean “all proceedings before the [PUCO] involving a violation, commencing with the filing of a request for administrative hearing and concluding with the issuance of a final order of the [PUCO].” The term “final” order is not defined anywhere in the provisions of OAC chapter 4901:2 (governing the PUCO’s regulation of motor carriers), let alone the specific provisions of OAC 4901:2-7 (governing forfeitures and compliance orders related to motor carriers).

In light of all of the foregoing statutory and regulatory procedural provisions, LMD asserts that the Order was final when it was “journalized by the secretary of the commission” as set forth in OAC 4901-1-35(A) & (C), ORC 4903.10, and ORC 4903.15. Accordingly, LMD’s position is that the Order was final when it was entered on the journal, execution of the Order was not stayed, and LMD had no choice but to comply with the Order.

Wherefore, the PUCO’s Memorandum Contra should be denied on one or all of the above reasons. Furthermore, on March 3, 2015, the PUCO utilized its singular right

to file a Memorandum Contra opposing LMD's Application for Rehearing. Any subsequent pleading should be stricken from the official files in this case.

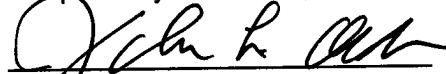
The PUCO Staff has chosen to place its entire basis for opposition to the Rehearing on one sole issue, the payment of the assessment within 30 days of the PUCO Order. Since it has chosen to limit its Memorandum Contra to a single issue, it has left completely unopposed all factual and legal issues contained in the Application for Rehearing.

As such, each and every basis for the Application for Rehearing is **legally and factually** unopposed.

LMD's Application for Rehearing is unopposed.

LMD requests that a PUCO Order be issued, since the only basis for opposition to the LMD Application for Rehearing is baseless and all facts and law contained in the Application for Rehearing are uncontroverted and uncontested, and without further ado, grant the Application in full, dismiss the violation, cancel the assessment and return forthwith \$1680.00 to LMD.

Respectfully submitted,



John L. Alden (0002697)

AldenLaw

One East Livingston Avenue

Columbus, Ohio 43215

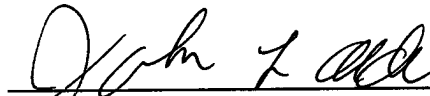
(614) 221-1306

jalden@aldenlaw.net

Attorney for Respondent, LMD Integrated Logistic Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2015, copies of the foregoing Response of LMD Integrated Logistic Services, Inc., to the PUCO'S Memorandum Contra Filed March 3, 2015, were served upon the following parties of record in this proceeding, by electronic mail.



John L. Alden
*Attorney for Respondent,
LMD Integrated Logistic Services, Inc.*

Scott Farkas, Hearing Examiner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Scott.Farkas@puc.state.oh.us

Ryan O'Rourke, Staff Counsel
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
Ryan.O'rourke@puc.state.oh.us

Joseph Turek, Staff Counsel
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Joseph.Turek@puc.state.oh.us

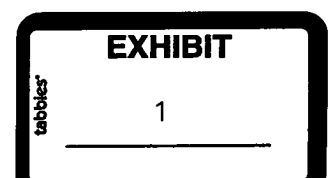
BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of)	
LMD Integrated Logistic Services, Inc.,)	
)	Case No. 14-685-TR-CVF
Notice of Apparent Violation and)	
Intent to Assess Forfeiture.)	(OH3233003840C)
)	
)	
)	

**VERIFIED STATEMENT OF LOUIS DIBLOSI, JR., CEO OF LMD INTEGRATED
LOGISTIC SERVICES, INC.**

I am Louis Diblosi, Jr. I am the Chief Executive Officer of LMD Integrated Services, Inc. (LMD), the Petitioner in the above styled matter.

In summary, the case involves the improper citation by the Public Utilities Commission of Ohio (PUCO) on an international intermodal shipment, which contained, in part, hazardous materials. Because of the misapplication of the federal DOT laws, as adopted by the PUCO, it is vitally important for LMD to oppose the citation. As both my counsel and I mentioned many times to the PUCO and Attorney General counsel, the most important reason for LMD's appealing of this citation is the effect that the violation has on our hazardous materials record, which is open for public viewing by safety officials, the general public; and I wish to highlight current and potential customers. This safety record, which is controlled by the federal Department of Transportation (DOT) is used nationwide by safety enforcement entities such as the PUCO, and the more violations contained in this record, the more safety enforcement officials increase each succeeding dollar assessment. Transportation is extremely competitive



and LMD, or any motor carrier, could easily lose an existing customer, or lose a future customer because of a bad safety record. This federal DOT safety record is known as “CSA” (Comprehensive Safety Analysis) and/or “SMS” (Safety Measurement System). In summary, the primary reason for our Application for Rehearing is to keep our excellent safety record. I would note that the cost to LMD, or any motor carrier, in opposing these matters is many times the cost of the underlying assessment.

I state the above reasons for our Appeal because of the Motion Contra/letter signed by PUCO Staff Attorney, Joseph S. Turek, dated March 3, 2015 and docketed by the PUCO on the same date. This Motion Contra/letter moves that our PUCO Application for Rehearing “...should be treated as a nullity” because LMC and its ongoing efforts to comply with all transportation rules and regulations timely followed the specific Order of the Commission when it stated in its “OPINION AND ORDER” (emphasis in the original)

ORDERED, That LMD pay the assessed civil forfeiture by check or money order payable to the “Treasurer, State of Ohio” and mail or deliver it to the Public Utilities Commission of Ohio, Attention: Fiscal Division, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793 Case No. 14-685-TR-CVF and inspection number OH3233003840C should be written on the face of the check or money order. **Payment must be made within 30 days of this Opinion and Order.** (emphasis added)

This Opinion and Order was signed by all Commissioners, including the Chairman, Thomas W. Johnson.

As properly stated and highly documented by the PUCO Staff, LMD paid the full amount of the assessment within said 30 day time limit, i.e. within 30 days after the Order. LMD did nothing other than follow the command of the Order. There was nothing in the Order that

said LMD had the option not to pay. There is nothing in the Order to indicate that it was an interim Order. The logical and proper process for LMD was to immediately pay the assessment.

Now, ironically, the PUCO Staff makes a Motion to have my Application for Rehearing treated as a “nullity”. That makes no sense to me. LMD followed the strict Order of the Commission’s “OPINION AND ORDER”.

Throughout the many weeks of formal and informal negotiations, pre-hearing conferences and the full day Hearing in this matter, it was made abundantly clear to the PUCO Staff and Counsel that the dollar assessment played a bit part in our Appeal, the unnecessary entry on our safety record being the overwhelming basis of our Appeal.

In reviewing the Staff’s March 3, 2015 Motion, it begins:

On January 28, 2015, the Commission issued its opinion and order in this case, which directed LMD Integrated Logistics Services, Inc. (LMD) to pay a civil forfeiture of \$1680 for violating 49 C.F.R. 177.817(A).

The Staff also acknowledged and highlighted that twelve (12) days later, LMD paid the demanded amount. I am being chastised, and being asked to be “...treated as a nullity...” because I timely paid the assessment.

In summary, all involved on behalf of LMD made it abundantly clear that our prime thrust in this case was not the payment of the forfeiture, but the underlying violations being reflected on our federal DOT safety record. It is confusing to me, and contrary to logic, that

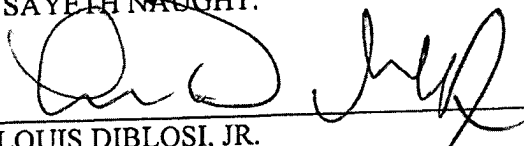
counsel for the PUCO now moves to make my Application for Rehearing a nullity based upon his citing Ohio Administrative Code 4901:2-7-22(B):

If the **only remedy requested** with respect to a violation is the payment of a forfeiture, and full payment of the forfeiture demanded in the notice is made prior to the execution of a settlement agreement or any final commission order, full payment shall terminate all further proceedings... (emphasis added)

Payment of the forfeiture is not the "**only remedy requested**".

I make this statement now, under oath, as I did numerous times during the on the record Hearing and all companion discussions. To wit, the prime remedy requested is protection of our nationwide excellent safety record and the deletion of the alleged violation on our federal safety record (CSA/SMS.)

FURTHER AFFIANT SAYETH NAUGHT.

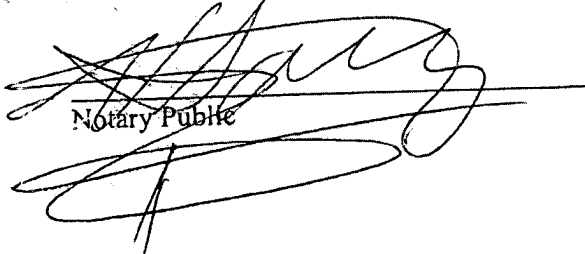


LOUIS DIBLOSI, JR.
CEO, LMD INTEGRATED LOGISTIC SERVICES, INC.

State of California)
) SS:
County of Los Angeles

Sworn to and subscribed in my presence on March 9th, 2015.

Witness my hand and official seal



Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los AngelesOn 3-9-2015

before me,

Vicky Saenz, Notary public

Date

Here Insert Name and Title of the Officer

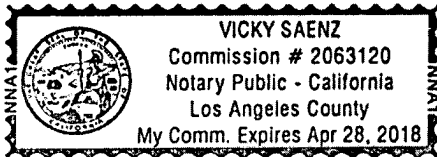
personally appeared Louis Mario Diblosi Jr.

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Affidavit sayeth NaughtDocument Date: 3/9/2015Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)Signer's Name: [Signature]☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☒ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/10/2015 4:01:43 PM

in

Case No(s). 14-0685-TR-CVF

Summary: Reply Reply To PUCO Staff Memo Contra electronically filed by Mrs. Erin L Henson on behalf of AldenLaw and Alden, John L. Mr.