

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Economy :  
Drain Service/Mark H. : Case No. 17-1540-TR-CVF  
Smith, Notice of Apparent : 17-1541-TR-CVF  
Violation and Intent to :  
Assess Forfeiture. :

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PROCEEDINGS

before Mr. Kerry K. Sheets, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at 10:20  
a.m. on Wednesday, December 13, 2017.

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1 APPEARANCES:

2 Mike DeWine, Ohio Attorney General  
3 By Mr. John Jones,  
4 Assistant Attorney General  
5 Public Utilities Section  
6 30 East Broad Street, 16th Floor  
7 Columbus, Ohio 43215

8 On behalf of the Staff of the PUCO.

9 Mr. Mark H. Smith

10 On his own behalf.

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Wednesday Morning Session,  
December 13, 2017.

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EXAMINER SHEETS: Okay. I'll go ahead  
and call the hearing.

The Public Utilities Commission of Ohio  
has set for hearing at this time and place Case Nos.  
17-1540 and 1541-TR-CVF, in the Matter of Economy  
Drain Service and Mark H. Smith.

My name is Kerry Sheets. I am an  
Attorney Examiner for the Commission. I have been  
assigned to hear these cases. And I'll have the  
appearances of the parties, please, starting with  
staff.

MR. JONES: Yes. Good morning, your  
Honor. On behalf of the staff of the Public  
Utilities Commission of Ohio Attorney General Mike  
DeWine, Assistant Attorney General John Jones, 30  
East Broad Street, Columbus, Ohio 43215.

EXAMINER SHEETS: Thank you.

Mr. Smith, could you give your name and  
address.

MR. SMITH: My name is Mark Smith. My  
address is 2139 Wilson Avenue, Warren, Ohio 44483.

EXAMINER SHEETS: Are there any

1 preliminary matters to take care of this morning?

2 MR. JONES: Your Honor, I just want to  
3 bring to your attention that Mr. Smith is here today.  
4 He's not here to contest the violations for the  
5 carrier citations or the driver citations, but he's  
6 merely here to provide mitigation to the Commission  
7 that he's taken the necessary steps to bring himself  
8 into compliance with the regulations of the  
9 Commission, and he just wanted an opportunity to  
10 present that evidence that he is in compliance today.

11 EXAMINER SHEETS: Is that correct,  
12 Mr. Smith?

13 MR. SMITH: That's correct, your Honor.

14 EXAMINER SHEETS: Do you want to make a  
15 statement on the record under oath?

16 MR. SMITH: No. I just would like to  
17 present my evidence, if that's all right.

18 EXAMINER SHEETS: Okay. Well, if that's  
19 correct, if you don't intend to contest the matter,  
20 then you are going to pay the fine, then we'll have  
21 to consider the matter submitted on the record.

22 MR. JONES: Well, your Honor, I still --  
23 I want to mark and admit the exhibits since they're  
24 not being challenged or any cross-examination of  
25 those exhibits. I still need to -- I want to mark

1 and move for the admission of the exhibits which are  
2 the pictures and the inspection report and the -- and  
3 he's -- Mr. Smith is not challenging the calculation  
4 of the proposed forfeitures that the staff has  
5 calculated for these violations, and I just wanted to  
6 make those part of the record so that they are in the  
7 record, if that's all right.

8 EXAMINER SHEETS: So you want to submit  
9 some exhibits?

10 MR. JONES: Yes, your Honor. I wanted to  
11 read those into the record.

12 EXAMINER SHEETS: You can go ahead.

13 MR. JONES: Thank you, your Honor. I  
14 would like to start, and I have a copy there provided  
15 to the Bench and also to the court reporter, the  
16 first would be Staff Exhibit 1 which is the  
17 Driver/Vehicle Examination Report regarding all the  
18 information that was gathered by the inspector on the  
19 inspection date of April 17, 2017, that outline, all  
20 the code citations and description of information  
21 that support those citations. So that would be Staff  
22 Exhibit 1.

23 Staff Exhibit 2 would be the Notice of  
24 Preliminary Determination that is in reference to the  
25 driver citations of operating a commercial motor

1 vehicle within proper CDL, that's commercial driver's  
2 license. The other being the operating a  
3 property-carrying vehicle without possessing a valid  
4 medical certificate. And the amounts assessed for  
5 those driver violations would be \$250 for the CDL and  
6 \$100 for the medical certificate for a total of \$350  
7 for the driver citations.

8 Then I have marked as Staff Exhibit 3 the  
9 Notice of Preliminary Determination that outlines the  
10 carrier citations, and those citations are inoperable  
11 required lamp, two citations for that -- for that  
12 section. And another -- a third one would be failing  
13 to secure cargo. A fourth would be no or defective  
14 trailer brake, and the last would be no US DOT number  
15 displayed on the vehicle. And for the -- all the  
16 forfeitures involved in this would be, let's see  
17 here, look at my chart here, for the lamp citations,  
18 there would be a zero forfeiture recommended by the  
19 staff. For the failure to secure a cargo would be  
20 \$100, your Honor, recommended by the staff. For the  
21 group -- okay. For the no trailer brake or defective  
22 trailer brake would be a \$50 forfeiture recommended  
23 by the staff. And the last one no US DOT number  
24 displayed would be \$100 forfeiture recommended by the  
25 staff for a total of \$250 for the carrier citations.

1                   And, lastly, I have what's marked as  
2   Staff Exhibit 4 are all the photographs that were  
3   taken by Inspector Brayer at the time of the  
4   inspection. They are marked Staff Exhibit 4A through  
5   I believe S in the alphabet and so all those pictures  
6   are there that were taken the day of the inspection.

7                   And so those would be all the exhibits  
8   staff would be asking to be marked for the record and  
9   also I would move for the admission of those exhibits  
10   and my understanding from Mr. Smith is that he has no  
11   cross-examination or challenge to those exhibits,  
12   your Honor.

13                  MR. SMITH: I just have --

14                  EXAMINER SHEETS: Good. Do you concur  
15   with everything he said, Mr. Smith?

16                  MR. SMITH: Not totally, no.

17                  EXAMINER SHEETS: Very good. Okay.

18                  MR. JONES: I believe he said "not  
19   totally." I think he wants to clarify.

20                  MR. SMITH: I need to clarify some of  
21   those.

22                  EXAMINER SHEETS: All right. I will  
23   consider those exhibits submitted on the record.

24                  (EXHIBIT ADMITTED INTO EVIDENCE.)

25                  EXAMINER SHEETS: Is there testimony



1 today then?

2 MR. JONES: Well, I guess you wanted to  
3 clarify.

4 MR. SMITH: I do.

5 MR. JONES: He wanted to clarify. He had  
6 some -- something I guess you wanted to clarify from  
7 what I just said.

8 MR. SMITH: Yeah. I would like to  
9 address each one of those, if I could.

10 EXAMINER SHEETS: You agree with  
11 everything?

12 MR. SMITH: No, not totally, no.

13 MR. JONES: You are challenging  
14 something?

15 MR. SMITH: Well, I am just  
16 challenging -- yes, I guess I am. Yeah, I am  
17 challenging some of those things because, you know,  
18 we talked -- you talked about the trailer brake. It  
19 was actually there. It just was not hooked up to the  
20 vehicle.

21 MR. JONES: Right.

22 MR. SMITH: We remedied that situation.  
23 We hooked it onto the vehicle, so the last time the  
24 trailer was removed it just -- the trailer brake was  
25 not secured back to the vehicle, but it was there.

1 It wasn't absent or wasn't marked.

2 EXAMINER SHEETS: Do you want to make a  
3 statement on the record?

4 MR. SMITH: I guess I do, your Honor.

5 EXAMINER SHEETS: Come up here.

6 MR. SMITH: Okay. Can I bring my?

7 EXAMINER SHEETS: To the witness stand.

8 MR. SMITH: Okay.

9 (Witness sworn.)

10 EXAMINER SHEETS: Go ahead and make your  
11 statement. Speak up for the court reporter.

12 - - -

13 MARK H. SMITH

14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 THE WITNESS: Okay. Since the event that  
18 we were talking about I've gone ahead and got my  
19 commercial driver's license, you know, so that I can  
20 be in compliance with, you know, the violation.

21 EXAMINER SHEETS: Driver's license.

22 THE WITNESS: I have got my commercial  
23 license. I would like to enter that into evidence.  
24 As far as the, what is it, the medical card? I went  
25 to the BMV in three locations and requested the

1 document that I signed when I got my commercial  
2 driver's license so that I could then get the medical  
3 card, all of which all three locations told me that I  
4 didn't need a medical card, and I videotaped and  
5 recorded each one of them. I would like to play that  
6 for the court, if that's all right.

7 MR. JONES: I guess --

8 EXAMINER SHEETS: Does that conclude your  
9 testimony? Does that conclude your statement?

10 THE WITNESS: No.

11 EXAMINER SHEETS: You're done?

12 THE WITNESS: No, I'm not.

13 MR. JONES: Your Honor, I believe  
14 Mr. Smith is making a request to play a recording of  
15 his conversation with the clerk of the Bureau of  
16 Motor Vehicles?

17 THE WITNESS: Three different locations,  
18 yeah, one being the examiner's office where I  
19 actually took the test for the CDL. I went and asked  
20 them if I needed the -- the medical card, and all  
21 three locations told me, no, that I did not need a  
22 medical card.

23 EXAMINER SHEETS: What we need now is  
24 just your statement, Mr. Smith, okay?

25 THE WITNESS: Okay. I can't back that

1 with any evidence?

2 EXAMINER SHEETS: I don't think we need a  
3 recording here at this time. Just go ahead with what  
4 you were going to say under oath.

5 THE WITNESS: Okay.

6 EXAMINER SHEETS: You can tell us what,  
7 you know, what happened.

8 THE WITNESS: Okay. I have video and  
9 recorded.

10 EXAMINER SHEETS: No. Just go ahead and  
11 complete your statement, please.

12 THE WITNESS: So I guess my statement is  
13 that if I am being told by the examination office and  
14 by the Bureau that I don't need a medical card  
15 because of the way my license is, then I guess I'm  
16 contesting the fact that I am being charged with -- I  
17 am in violation of not having a medical card when  
18 they are telling me I don't have to have a medical  
19 card. I mean, they are the ones I went to to ask,  
20 you know, what my requirements were. And they were  
21 the only option I had at that point which they all  
22 told me the same thing, that a medical card was not  
23 required for my license and my CDL.

24 The other thing I wanted to say was I --  
25 I'm not a commercial truck driver even though I have

1 the license. I took pictures, you know, that show  
2 that I am in compliance with the ODOT standards, but  
3 I'm not for hire, so I don't need an ODOT number. I  
4 think that's in the rules.

5 Other than that I don't think there was  
6 anything else that I had. That was everything that I  
7 was being charged with that I was in violation of.

8 EXAMINER SHEETS: You're offering those  
9 as exhibits?

10 THE WITNESS: I would like to, yeah. I  
11 would like to offer all of these as exhibits.

12 EXAMINER SHEETS: How many pictures do  
13 you have there?

14 THE WITNESS: Three. Three, your Honor.

15 EXAMINER SHEETS: Four?

16 THE WITNESS: Three.

17 EXAMINER SHEETS: Okay.

18 THE WITNESS: And my driver's license  
19 saying I've got my CDL.

20 EXAMINER SHEETS: We'll have to make  
21 copies of that --

22 THE WITNESS: That's fine.

23 EXAMINER SHEETS: -- after the hearing.

24 Yeah, we can mark the pictures as Respondent's  
25 Exhibit 1 and a copy of the driver's license will be

1 Respondent's Exhibit 2.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 EXAMINER SHEETS: Mr. Smith, are you done  
4 with your statement?

5 THE WITNESS: I had one more statement.  
6 The fact that I was charged with not having the  
7 proper binding on the tractor that I was hauling, I  
8 just wanted to put in the record I did have binders  
9 on it. I was -- just did not have enough, that they  
10 required, from what I understand, instead of two  
11 chains on that particular piece of equipment I needed  
12 four. But, again, you know, once I found out what  
13 the regulation was, again, I became compliant and  
14 started putting four chains on that tractor.

15 EXAMINER SHEETS: Okay. Does that  
16 complete your statement?

17 THE WITNESS: That completes my  
18 statement.

19 EXAMINER SHEETS: Now, you are contesting  
20 the violation; is that correct?

21 THE WITNESS: I'm not contesting the  
22 violation, no.

23 EXAMINER SHEETS: Okay. Mr. Jones, do  
24 you have any questions?

25 MR. JONES: Yeah, I just had some brief

1 questions, if I could, please. Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Jones:

5 Q. Mr. Smith, the one violation here that's  
6 laid out in the Staff Exhibit 3 for the carrier  
7 violation, it does specify that it either requires a  
8 carrier name and/or US DOT number. And here  
9 specifically it's pertaining to -- I know I said US  
10 DOT number but refers to carrier name has to be on  
11 the vehicle --

12 A. Right.

13 Q. -- that you were operating, and did you  
14 have a carrier name on the vehicle?

15 A. At that time, no, but I have made that  
16 correction as well.

17 Q. That's a correction you've made.

18 A. I have, yeah.

19 Q. Okay. Very good. Let's see here, as to  
20 the medical certificate, let's see, okay, so you said  
21 you had -- you had spoken to the BMV about your  
22 status.

23 A. I went to two separate BMVs and asked two  
24 separate individuals the same question with my -- I  
25 gave them my Ohio driver's license with the CDL on it

1 and asked them if I needed a medical card to complete  
2 this license, and all of them told me no. So I went  
3 to the examination's office as well where they -- I  
4 took the test and actually asked the examiner the  
5 same question, and he said no. So -- I guess I am  
6 questioning, you know, that violation especially  
7 because of being -- you know, I'm being told I'm in  
8 violation of something, yet I am being also told that  
9 that's not required of me. I guess I need some  
10 clarification on that one.

11 Q. And the type of CDL that was issued to  
12 you, can you clarify that?

13 A. I'm not really sure of that. I don't  
14 have my glasses on either. But I think it's class C  
15 or class B. I don't know. I can't see it. It says  
16 it on here. If somebody has got their glasses, we  
17 can look at it. No, he said it was a class 3, not A,  
18 B, or C. It's a class A.

19 Q. It's a class A.

20 A. It's class A but he said it was also a  
21 class 3, and I don't know what that means but they  
22 made me sign a piece of paper saying I was just  
23 driving in the State of Ohio. I asked them for that  
24 document but they would not give it to me but I  
25 signed a document saying that I was going to drive



1     only in the State of Ohio, that I don't go out of  
2     state. And when I signed that document, that's when  
3     they told me I did not need a medical card because I  
4     wasn't leaving the State of Ohio.

5                 MR. JONES: Your Honor, can I approach  
6     the witness to inspect the CDL license?

7                 EXAMINER SHEETS: Come up here.

8                 MR. JONES: Thank you.

9                 Q.     (By Mr. Jones) Mr. Smith, looking at your  
10    commercial driver's license issued by the State of  
11    Ohio, and I do see it's a class A license, and it  
12    expires on March 28, 2020, and on the back of the  
13    card it reads for restrictions "Interstate only." Do  
14    you agree with that statement from what I am reading  
15    from your card?

16                A.     Yeah.

17                Q.     Okay. And do you know, Mr. Smith, that  
18    having that classification that a medical card is  
19    required at least for initially, for the first time  
20    until a doctor would have to tell you that one would  
21    not be required for your operating a commercial motor  
22    vehicle? Do you know that?

23                A.     No, I didn't. No, I wouldn't know that  
24    because when I passed the test, I went directly over  
25    to the BMV and they made me sign the paper saying

1 that I wasn't going to drive without -- outside the  
2 state and that's when they told me I did not need a  
3 medical card. So I've been told that on several  
4 occasions, and I have video of them, you know, saying  
5 the same thing. I have video and audio.

6 MR. JONES: Your Honor, if we could just  
7 have a moment, please?

8 EXAMINER SHEETS: You may.

9 MR. JONES: Your Honor, in light of  
10 Mr. Smith's testimony on this particular citation for  
11 the medical card requirement, the staff of the  
12 Commission would withdraw that citation for the  
13 carrier case. So the charge under the Notice of  
14 Preliminary Determination in the -- I'm sorry, in the  
15 driver case. I'm sorry. I said carrier; it's driver  
16 case, operating a vehicle without possessing a valid  
17 medical certificate under Code 391.41A through F and  
18 for \$100 forfeiture being noticed to Mr. Smith on  
19 June 14, 2017, it's that particular citation that the  
20 staff would be withdrawing here today. And so the  
21 forfeiture -- total forfeiture amount for the driver  
22 side of the case would be a total of \$250, not \$350  
23 that we would be recommending to the Commission.

24 And so we -- we make that change here  
25 today. We dismiss or withdraw that particular

1 citation, the medical certificate citation.

2 EXAMINER SHEETS: So the company's --  
3 company case will go away; is that what you're  
4 saying?

5 MR. JONES: Well, here on the record we  
6 are withdrawing that piece of the case, your Honor,  
7 so we're not pursuing that -- that citation against  
8 Mr. Smith here today. And we will not be pursuing  
9 that charge against him, so we withdraw that piece of  
10 the case and ask for that part to be dismissed, make  
11 an oral motion to dismiss that piece of the case here  
12 today.

13 In light of the remaining citations for  
14 both the driver citations and carrier citations,  
15 Mr. Smith is not contesting, and so we would ask the  
16 Commission to find Mr. Smith in violation of  
17 everything else, but we ask the Commission to dismiss  
18 the medical certificate citation.

19 EXAMINER SHEETS: Very good. So it's  
20 down to \$250 then.

21 MR. JONES: It will be \$250 for the  
22 driver part of the case. There would still be the  
23 carrier side of the case that has the total of \$250,  
24 your Honor.

25 EXAMINER SHEETS: Very good. Is there

1 anything more to add today?

2 MR. JONES: I have nothing -- the staff  
3 has nothing else they'll offer, your Honor.

4 EXAMINER SHEETS: Are we done, Mr. Smith?

5 THE WITNESS: Yes.

6 EXAMINER SHEETS: Okay. Well, with that  
7 said --

8 MR. JONES: I think -- did you have some  
9 exhibits, pictures?

10 THE WITNESS: Yeah, I have exhibits.

11 MR. JONES: We have pictures we need to  
12 mark, and he wanted to move. Can I see those  
13 pictures before we agree to those pictures?

14 EXAMINER SHEETS: Respondent's Exhibit 1  
15 and the driver's license would be Exhibit 2.

16 MR. JONES: We'll have to get a copy of  
17 his license.

18 EXAMINER SHEETS: We have to make a copy  
19 of that, and I'll consider those submitted on the --  
20 admitted into the record.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MR. JONES: Could I see the pictures  
23 first before I agree to them?

24 EXAMINER SHEETS: You may.

25 MR. JONES: Thank you.

1 THE WITNESS: You can have those. Want  
2 to make a picture of the license.

3 MR. JONES: I just want to show these  
4 real quick.

5 Your Honor, I did have a question to  
6 Mr. Smith based --

7 EXAMINER SHEETS: You do have a question?

8 MR. JONES: I do.

9 EXAMINER SHEETS: Okay. We'll proceed  
10 then.

11 MR. JONES: Thank you, your Honor. Well,  
12 I guess there's no exhibit numbers. Like you said,  
13 maybe we should clarify what's what first for his.

14 EXAMINER SHEETS: I marked the pictures  
15 1, Respondent's Exhibit 1, and the driver's license  
16 would be 2.

17 MR. JONES: Okay. Thank you.

18 Q. (By Mr. Jones) Looking at Respondent's  
19 Exhibit 1 in particular here, it depicts here on the  
20 pictures the side door of your vehicle, your truck.  
21 On both -- on both sides it has -- it has the name of  
22 the company, not for hire, and there is a number then  
23 that appears under the name of the company. What  
24 number is that?

25 A. It's a telephone number.

1 Q. Oh, it's a telephone number. Okay.

2 A. Yeah. Because I don't go out of the city  
3 everyone would assume it's 330.

4 Q. Okay.

5 A. And I don't think I need an ODOT number  
6 if I don't cross state lines, do I?

7 MR. JONES: That's correct.

8 Your Honor, that's all the questions I  
9 have.

10 EXAMINER SHEETS: Okay. Thank you. And  
11 we probably should make a copy of his license.

12 MR. JONES: That's all I have, your  
13 Honor.

14 EXAMINER SHEETS: All you have?

15 Okay. The case will be submitted on the  
16 record. I thank you all for coming.

17 (Thereupon, at 10:52 a.m., the hearing  
18 was concluded.)

19 - - -

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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 13,  
2017, and carefully compared with my original  
stenographic notes.

*Karen Sue Gibson*

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-6467)

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Summary: Transcript In the matter of Economy Drain Services/Mark H. Smith, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on December 13, 2017. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.