

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF WES-MID AMERICA,  
INC., NOTICE OF APPARENT VIOLATION  
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 17-2532-TR-CVF  
(OH3228011468C)

### ENTRY

Entered in the Journal on July 25, 2018

#### I. SUMMARY

{¶ 1} The Commission finds that Staff's motion for default judgment should be granted and directs Wes-Mid America, Inc. to pay the assessed forfeiture of \$190 within 60 days of this Entry.

#### II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} Wes-Mid America, Inc. (Wes-Mid America or Company) was served with a notice of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPD informed Wes-Mid America that Staff intended to assess a civil forfeiture of \$190 for violations of the Commission's transportation rules that were discovered during a roadside inspection on Interstate Route 70 in Montgomery County, Ohio. Those violations included the following: 49 C.F.R. 390.21A, not marked in accordance with regulations - \$100; 49 C.F.R. 396.3A1BL, brake system pressure loss - \$50; and 49 C.F.R. 393.75A3, tire - flat and/or audible air leak - \$40.

{¶ 4} On December 20, 2017, Wes-Mid America filed a request for an administrative hearing in the above-captioned case in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} A prehearing settlement conference was held on February 15, 2018; however, the parties were unable to settle this matter and a hearing was scheduled for May 24, 2017. A copy of the Entry scheduling the hearing was served on Wes-Mid America at the address that was provided in the request for an administrative hearing.

{¶ 6} The hearing was convened, as scheduled, on May 24, 2018. However, Wes-Mid America did not appear for the hearing. At the hearing, Staff presented as exhibits the Driver/Vehicle Examination Report (Staff Ex. 1) and the NPD (Staff Ex. 2) that were issued to Wes-Mid America. Further, Staff moved for a default judgment against the Company (Tr. at 11).

{¶ 7} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to participate in the hearing proceeding shall be in default. The rule additionally states that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.

{¶ 8} In view of Wes-Mid America's failure to participate in the hearing, the Company is in default, in accordance with Ohio Adm.Code 4901:2-7-14. Accordingly, Staff's motion for default judgment should be granted and the recommended civil forfeiture of \$190 should be paid by Wes-Mid America within 60 days.

{¶ 9} Pursuant to R.C. 4923.99, Wes-Mid America is liable to the State of Ohio for payment of the assessed civil forfeiture of \$190. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures be made by certified check or money order made payable to: "Treasurer, State of Ohio" and shall be mailed or delivered to: "Fiscal Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793." Wes-Mid America's representative should write the case number (17-2532-TR-CVF) and

inspection number (OH3228011468C) on the check or money order, and the Company shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$190.

{¶ 10} R.C. 4905.57 provides that, at the direction of the Commission, the Ohio Attorney General shall bring a civil action in the Court of Common Pleas of Franklin County to recover an assessed forfeiture.

### III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Staff's motion for default judgment be granted. It is, further,

{¶ 13} ORDERED, That Wes-Mid America pay the assessed civil forfeiture of \$190 within 60 days to the state of Ohio as set forth in paragraphs 8 and 9. It is, further,

{¶ 14} ORDERED, That the Ohio Attorney General take the appropriate action to enforce this Entry as provided by law. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*Asim Z. Haque*

Asim Z. Haque, Chairman

*M. Beth Trombold*

M. Beth Trombold

*Thomas W. Johnson*

Thomas W. Johnson

*Lawrence K. Friedeman*

Lawrence K. Friedeman

*Daniel R. Conway*

Daniel R. Conway

KKS/mef

Entered in the Journal

**JUL 25 2018**

*Barcy F. McNeal*

Barcy F. McNeal  
Secretary