

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Marcus Smith:

Notice of Apparent Violation : Case No.

and Intent to Assess : 21-1079-TR-CVF

Forfeiture. :

- - -

PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held at the  
offices of the Public Utilities Commission of  
Ohio, 180 East Broad Street, Hearing Room 11-C,  
Columbus, Ohio, on Wednesday, June 22, 2022, at  
1:00 P.M.

- - -

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- - -

APPEARANCES:

Mr. Thomas Lindgren  
Assistant Attorney General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

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

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1                               Wednesday Morning Session,  
2                               June 22, 2022.

3                               - - -

4                               ATTORNEY EXAMINER LYNN: The Public  
5 Utilities Commission of Ohio has assigned for  
6 hearing at this time Case No. 21-1079-TR-CVF,  
7 Marcus Smith, Notice of Apparent Violation and  
8 Intent to Assess Forfeiture.

9                               I am Jim Lynn, the Attorney Examiner  
10 assigned to hear this case. And at this time I  
11 will have the appearances of the only party  
12 that's present in the room, we will start with  
13 the Ohio Attorney General's office.

14                              MR. LINDGREN: Thank you, your  
15 Honor. On behalf of the Commission's Staff,  
16 Ohio Attorney General Dave Yost, by Thomas G.  
17 Lindgren, Assistant Attorney General. The  
18 address is 30 East Broad Street, 26th Floor,  
19 Columbus, Ohio 43215.

20                              ATTORNEY EXAMINER: Thank you, Mr.  
21 Lindgren. I will note for the record at this  
22 point in time the driver, Mr. Marcus Smith, is  
23 not present. And I will add a few comments  
24 related to that.

25                              The letter indicating when this

1 hearing would take place was mailed out in late  
2 April, and there is no indication in the  
3 Commission's docketing information system that  
4 that letter was returned because the address was  
5 not correct.

6 Also, Mr. Lindgren, we were  
7 discussing before the hearing began, if you  
8 could provide a little bit of detail on your  
9 attempts to try to reach Mr. Smith I assume in  
10 probably recent weeks; am I correct?

11 MR. LINDGREN: Yes. It was actually  
12 yesterday I called the Get There Fast carrier  
13 that he formally worked for. They informed me  
14 that he no longer drives for them. They could  
15 not provide me with a phone number.

16 They did provide me with an e-mail  
17 address they had for him. And I sent a message  
18 there approximately 24 hours ago and I have not  
19 received a response from him.

20 ATTORNEY EXAMINER: And so you have  
21 not gotten any reply from him, nor have you  
22 heard anything from Mr. Smith since the time  
23 that the settlement conference was conducted?

24 MR. LINDGREN: No, I have not.

25 ATTORNEY EXAMINER: All right.

1     Okay. Well, we will give Mr. Smith a little bit  
2     of time, perhaps a half hour maximum, that will  
3     be about it.

4                 So we will go off the record at this  
5     point in time, allow a little more time for him  
6     to contact us. I will check my telephone calls  
7     up stairs and so on. And we will reconvene in  
8     about a half hour. Thank you.

9                 (RECESS TAKEN)

10                ATTORNEY EXAMINER: I will note I  
11     was checking for voice messages or any e-mails  
12     the driver had called in saying he couldn't make  
13     it. No indication he has tried to contact me at  
14     all.

15                Mr. Lindgren, did you have anything  
16     more to add?

17                MR. LINDGREN: Well, your Honor, at  
18     this point I would like to move for a default  
19     judgment given that the Respondent has not  
20     appeared.

21                ATTORNEY EXAMINER: I will take that  
22     into consideration. Thank you.

23                MR. LINDGREN: Your Honor, would  
24     you permit me to admit some exhibits without  
25     testimony or will you need to hear from

1 witnesses?

2 ATTORNEY EXAMINER: Go off the  
3 record for a minute.

4 (DISCUSSION OFF THE RECORD)

5 ATTORNEY EXAMINER: Mr. Lindgren,  
6 then you were asking whether you could admit  
7 some exhibits into evidence. I think that is  
8 certainly acceptable.

9 And given that it's a default I  
10 don't know that we really need any testimony by  
11 witnesses for that.

12 So, with that being said, what  
13 documents did you have in mind?

14 MR. LINDGREN: Thank you, your  
15 Honor. Staff Exhibit 1 would be the  
16 Driver/Vehicle Examination Report from the  
17 inspection done on March 22nd of 2021 in the  
18 State of Ohio.

19 Staff Exhibit 2 would be the  
20 Driver/Vehicle Examination Report done in the  
21 state of Iowa on March 11th of 2021. That  
22 originally placed the driver out of service.

23 And then Staff Exhibit 3 would be  
24 the Notice of Preliminary Determination  
25 informing the Respondent of the violations and



1 that he was being assessed for a forfeiture of  
2 total of \$3,274.

3 ATTORNEY EXAMINER: Mr. Lindgren,  
4 given the amount of that forfeiture, I think  
5 perhaps it would be good if we did have a  
6 witness to testify as to how it was calculated  
7 and so forth, just that it's out of the ordinary  
8 forfeiture for the amount of the forfeiture in  
9 most of the cases I hear.

10 So, with that in mind I guess some  
11 testimony from whoever can explain that would be  
12 helpful.

13 MR. LINDGREN: Very good. Then I  
14 would call Brad Long to the stand

15 (WITNESS SWORN)

16 - - -

17 BRADLEY LONG  
18 called as a witness, being first duly sworn,  
19 testified as follows;

20 DIRECT EXAMINATION

21 By Mr. Lindgren:

22 Q. Good afternoon, sir. Would you  
23 please state your full name and business address  
24 for the record?

25 A. Bradley E. Long, Public Utilities

1 Commission of Ohio. 180 East Broad Street,  
2 Columbus, Ohio 43215.

3 Q. And what is your position with the  
4 Public Utilities Commission of Ohio?

5 A. The Assistant Chief of Compliance in  
6 the Transportation section.

7 Q. And what are your duties in that  
8 position?

9 A. Maintain the records and files in  
10 the Compliance section, assist in supervising  
11 the compliance officers, issue the letters that  
12 go out to Respondents, maintain the files and  
13 records.

14 Q. Thank you. And are you involved in  
15 the assessment of forfeitures for motor vehicle  
16 violations?

17 A. I assist in the oversight of those,  
18 yes.

19 Q. Thank you. Would you explain how  
20 you go about assessing forfeitures?

21 A. Sure. This being a non-hazmat  
22 violation or a non-hazmat inspection, when the  
23 inspections are completed roadside by  
24 the officers, they come into our system. Our  
25 system automatically assesses these based on

1 groups, broken down into groups.

2 So there are five groups. There is  
3 Group 0 through 4. Group 0 violations never  
4 receive a fine.

5 Groups 1, 2 and 3 are typically your  
6 vehicle defect violations. Those only receive  
7 fines if the inspector marks those violations as  
8 out of service.

9 Group 4 violations are violations  
10 that pertain to vehicle, vehicle insurance,  
11 driver authority, driver licenses. So they are  
12 considered like driver violation, behavior  
13 violations. Those will always receive a fine  
14 regardless.

15 When this inspection came in the  
16 system pulled up the violations notice. There  
17 was a Group 1 violation that was marked as out  
18 of service, which was the ELD violation. The  
19 system automatically assessed that the violation  
20 amount was \$100, which it does for every case  
21 that comes through with that violation marked as  
22 out of service. It applies that principle and  
23 those violations and fines to them uniformly  
24 across the board.

25 MR. LINDGREN: Thank you. May I

1 approach the witness?

2 ATTORNEY EXAMINER: Yes, you can.

3 MR. LINDGREN: Thank you. Let the  
4 record reflect that I am handing the witness  
5 what I have marked for identification as Staff  
6 Exhibit 3.

7 Q. Mr. Long, do you recognize this  
8 document?

9 A. Yes. A copy of the Notice of  
10 Preliminary Determination.

11 Q. And what is the purpose of this  
12 document?

13 A. This document is provided to a  
14 Respondent once they have had their telephone  
15 conference with a compliance officer. If things  
16 cannot be worked out or settled at a phone  
17 conference with a reduction or making them  
18 understand the situation or the violations then  
19 the compliance officers then provided them this  
20 document which gives them instructions basically  
21 on what the fines were, and their opportunity  
22 and how to request an administrative hearing.

23 Q. Thank you. And could you explain  
24 the forfeiture amount that is contained in this  
25 document and how it was calculated?

1           A.     Sure.  So as you see the very first  
2     line, the operating a vehicle after driver or  
3     vehicle declared out of service, that is Group 4  
4     violation, as discussed earlier that always  
5     receives fines.  That fine is set at 3,174.  
6     That is applied to every case that comes across  
7     our desks with that violation written.

8                     Now, since there is another group 4  
9     of the same type we only assess one of those  
10    violations.  The system will only generate one  
11    fine, no matter if you write that two times or  
12    three times it's only going to receive one  
13    violation fine.

14                    So that 3,174 was applied one time  
15    to the first Group 4 violation.  The second  
16    Group 4 was given a zero dollar fine amount.

17                    Then the very last violation showing  
18    up in here was for a Group 1 ELD, no record of  
19    duty status.  So that Group 1 violation is \$100  
20    because it was marked as an out of service  
21    violation.

22            Q.     Thank you.  So was this amount  
23    correctly calculated for the violations in this  
24    case?

25            A.     That's correct, it is.

1 MR. LINDGREN: Thank you. Your  
2 Honor, I have no further questions, and I would  
3 move for the admission of Staff Exhibit 3 as  
4 well as the other exhibits.

5 ATTORNEY EXAMINER: Thank you.  
6 Before we do that I have a question, Mr. Long.

7 Was the reason for the violation  
8 for operating a vehicle that had been placed out  
9 of service, was that because there was no  
10 electronic logbook device on the vehicle to  
11 begin with?

12 THE WITNESS: That I don't know  
13 what the inspector wrote the out of service  
14 violation for. All I can tell you, sir, is when  
15 that violation comes into our system it was  
16 assessed properly. I would assume that would be  
17 the case, but again I would be making an  
18 assumption.

19 ATTORNEY EXAMINER: Well, thank you.  
20 I have no further questions. I will hold off on  
21 admitting the exhibits. If we could have Mr.  
22 Borawiec up here just for a moment, please.

23 (WITNESS SWORN)

24 - - -

25 INSPECTOR MCEI B. BORAWIEC

1 called as a witness, being first duly sworn,  
2 testified as follows:

3 EXAMINATION

4 By the Attorney Examiner:

5 Q. Inspector, again, if you could just  
6 explain the violations here. You have the  
7 driver out of service violation is no record of  
8 duty status. I am looking at the inspection  
9 report.

10 And then the operating a vehicle  
11 after driver declared out of service. That is  
12 actually not indicated as a driver violation.  
13 Is that a carrier violation?

14 A. Correct.

15 Q. Oh. Okay. And again was the out of  
16 service -- apparently the vehicle was out of  
17 service not only in Iowa, but in Ohio as well.  
18 And is that because there was no electronic  
19 logbook device on the vehicle?

20 A. That is correct.

21 ATTORNEY EXAMINER: All right. I  
22 see. Okay. We will go back, Mr. Long, you are  
23 still under oath, but I just have a question.

24 - - -

25 BRADLEY LONG

1 recalled as a witness, being previously duly  
2 sworn, testified as follows:

3 EXAMINATION

4 By the Attorney Examiner:

5 Q. Mr. Long, the violation 3,174, that  
6 is assessed against the driver?

7 A. Yes, because he operated the vehicle  
8 after being declared out of service.

9 ATTORNEY EXAMINER: Okay. All  
10 right. I don't believe I have anymore  
11 questions. Mr. Lindgren, do you have any  
12 questions for the inspector?

13 MR. LINDGREN: No, thank you, your  
14 Honor.

15 ATTORNEY EXAMINER: All right. I  
16 believe that is it. Thank you for your  
17 testimony.

18 With that being said, we will admit  
19 Staff Exhibits 1, 2 and 3 into evidence.

20 (EXHIBITS HEREBY ADMITTED INTO  
21 EVIDENCE)

22 ATTORNEY EXAMINER: And I want to  
23 thank everyone for appearing today as. As I  
24 said, I wouldn't really have asked for any  
25 testimony except this is such a large fine, much



1 out of the ordinary that is usually assessed  
2 against drivers.

3 So thanks everyone for being here,  
4 and for our court reporter for taking notes on  
5 everything.

6 I believe that wraps up the  
7 testimony for today. And everyone half a safe  
8 trip home. Thank you.

9 MR. LINDGREN: Thank you.

10 (At 1:37 P.M. the hearing was  
11 concluded)

12 - - -

CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the  
proceedings taken by me in this matter on June  
22, 2022, and carefully compared with my  
original stenographic notes.

\_\_\_\_\_  
Michael O. Spencer,  
Registered Professional  
Reporter.

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**This foregoing document was electronically filed with the Public Utilities  
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Summary: Transcript June 22nd 2022 In the Matter of Marcus Smith Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.