

Decision No. R24-0681

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0213TO

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

TOWING OPERATIONS, LLC DOING BUSINESS AS WYATT'S TOWING,

RESPONDENT.

**RECOMMENDED DECISION
APPROVING SETTLEMENT AGREEMENT**

Issued Date: September 20, 2024

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision approves the Unanimous Comprehensive Settlement Agreement filed September 18, 2024 ("Settlement Agreement" or "Agreement") without modification; grants the Joint Motion to Approve Settlement Agreement, to Vacate the Evidentiary Hearing and Upcoming Procedural Deadlines, and for Waiver of Response Time filed September 18, 2024 ("Joint Motion"); assesses a civil penalty of \$3,795 against Towing Operations, LLC, doing business as Wyatt's Towing ("Wyatt's" or "Respondent") for Civil Penalty Assessment Notice No. 138973 ("CPAN"); vacates the October 24, 2024 hearing and all remaining procedural deadlines; and closes this Proceeding.

B. Procedural History¹

2. On May 16, 2024, Colorado Public Utilities Trial Staff (“Staff”) Staff initiated this matter by filing the CPAN alleging that Wyatt’s violated Rule 6007(j) and (l) and Rule 6508(b)(I) of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6.²

3. On June 17, 2024 the Commission referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

4. On August 13, 2024, with the parties’ input, the ALJ scheduled an in-person evidentiary hearing on the merits of the CPAN for October 24, 2024 and established procedures and filing deadlines relating to the hearing.³

5. On September 18, 2024, Staff filed the Joint Motion with the Settlement Agreement as Attachment A thereto.

II. FINDINGS AND CONCLUSIONS**A. Relevant Law and Findings**

6. Under § 40-7-101, C.R.S., the Commission has both the authority and responsibility to enforce the provisions of article 10.1 of title 40, Colorado Revised Statutes. Commission enforcement personnel have authority to issue CPANs per § 40-7-116, C.R.S., for violations of provisions in article 10.1 of title 40, §§ 40-7-112 and 113, C.R.S.⁴

7. As the proponents of an order, the parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.⁵ This

¹ Only the procedural history necessary to understand this Decision is included.

² CPAN at 1.

³ Decision No. R24-0580-I at 3-4 (issued August 13, 2024).

⁴ See §§ 40-7-113(1) and 116, C.R.S.; Rule 6018(a), of the Commission’s Rules Regulation Transportation by Motor vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

⁵ § 24-4-105(7), C.R.S.; Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.⁶ The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.⁷

8. Staff must serve a CPAN on the named respondent; this may be accomplished by certified mail or by personal service.⁸ The CPAN's content must provide adequate notice of the alleged violations.⁹ As relevant here, a CPAN must include: the name and address of the person cited; a citation to the specific statute or rule alleged to have been violated; a brief description of the alleged violation (including the date and approximate location of the alleged violation); the maximum penalty amounts for the violation, including any surcharge imposed per § 24-34-108(2), C.R.S.; the date of the notice; a place for the respondent to sign to acknowledge receipt and liability for the CPAN; and other information as may be required by law to constitute notice of a complaint to appear for hearing if the penalty is not paid within ten days.¹⁰

9. The Commission encourages settlement of contested proceedings.¹¹

10. The ALJ assesses the Settlement Agreement with these principles and legal standards in mind.

11. Under Rule 1403(a), the Commission may decide an application or petition without a hearing and without further notice on its own motion or a party's when the matter is uncontested or unopposed; a hearing is not requested or required; and when the application or petition is

⁶ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

⁷ *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P.*, 949 P.2d at 585.

⁸ § 40-7-116(1)(b), C.R.S.

⁹ § 40-7-116(1), C.R.S. See § 24-4-105(2)(a), C.R.S.

¹⁰ § 40-7-116(1)(b), C.R.S. See Rule 6018(b), 4 CCR 723-6.

¹¹ Rule 1408(a), 4 CCR 723-1.

accompanied by a sworn statement verifying sufficient facts and has sufficient record support.¹² Although the Rule applies to proceedings involving applications and petitions, the ALJ finds this is persuasive authority and applies it here, except that, to the extent necessary, the ALJ waives the requirement that the matter be supported by a sworn statement given that the parties essentially stipulate to the key facts via the Agreement.¹³

12. As an initial matter, based on the foregoing authorities, the CPAN and Settlement Agreement, the ALJ finds that the Commission has jurisdiction and authority to decide this matter. In addition, because the Agreement is unanimous and comprehensive; the parties seek a ruling on the Agreement without an evidentiary hearing; and the record provides sufficient support for the Agreement, the ALJ finds that a hearing is unnecessary.¹⁴ As such, the ALJ decides whether to approve the Agreement without a hearing based on the record.

13. Based on Wyatt's actual notice of the CPAN, Wyatt's participation in this matter, and the CPAN itself, the ALJ finds that Wyatt's was properly served with the CPAN and the CPAN provides proper notice of the alleged violations and maximum penalties, consistent with relevant legal authority (discussed above).¹⁵

B. Settlement Agreement¹⁶ and Relevant Background

14. The CPAN asserts that Wyatt's committed the following three violations of Commission Rules:

- Count 1: Violation of Rule 6007(j), 4 CCR 723-6 on December 27, 2023 by making or causing to be made a fraudulent or intentionally false tow authorization record (an email) to Commission Staff for a 2014 Volkswagen Jetta with Colorado temporary

¹² See Rule 1403(a). 4 CCR 723-1.

¹³ See *id.* Applying the Rule to this Proceeding also finds support in § 40-6-109(5), C.R.S., which gives the Commission authority to promulgate rules to allow it to take evidence in uncontested or unopposed proceedings without a formal hearing.

¹⁴ See Settlement Agreement at 1-4 and CPAN.

¹⁵ See CPAN at 1-2.

¹⁶ This Decision does not outline general agreement terms as unnecessary.

license plate 5642957, towed from Dahlia Street Apartments at 3301 Dahlia Street, Denver, Colorado on September 27, 2023.¹⁷

- Count 2: Violation of Rule 6007(l), 4 CCR 723-6 on December 27, 2024 by producing or retaining false tow authorization record (an email) or tow authorization record known or should have been known to be false or inaccurate for a for a 2014 Volkswagen Jetta with Colorado temporary license plate 5642957, towed from Dahlia Street Apartments at 3301 Dahlia Street, Denver, Colorado on September 27, 2023.¹⁸
- Count 3: Violation of Rule 6508(b)(I), 4 CCR 723-6 on September 27, 2023 by failing to have proper authorization prior to performing a nonconsensual tow at Dahlia Street Apartments at 3301 Dahlia Street, Denver, Colorado. The CPAN alleges that this tow was not authorized by the property owner or its authorized agent, and that Quincy Williams did not receive the email and did not send a reply authorizing the tow.¹⁹

15. The Settlement Agreement is intended to resolve all issues raised in this Proceeding.²⁰ In the Settlement Agreement, Wyatt's admits to violating Rule 6508(b)(I), 4 CCR 723-6, as set forth in the CPAN.²¹ The Agreement requires Respondent to pay \$3,795, which includes a \$3,300 civil penalty plus a 15 percent surcharge of \$475, per § 24-34-108, C.R.S.²² The Under the Agreement, Wyatt's must pay \$3,795 to the Commission within seven calendar days of a final Commission decision approving the Settlement Agreement. The Agreement states that If Wyatt's fails to timely make the payment required under the Agreement, Wyatt's is liable for the full penalty amount of \$3,795 less any payments made, which will be due immediately.²³

16. The Settling Parties agree Wyatt's issued a \$424.73 refund check payable to the vehicle owner at issue in the CPAN in late March 2024 but multiple attempts to deliver the refund were unsuccessful.²⁴

¹⁷ CPAN at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Settlement Agreement at 1.

²¹ *Id.*

²² *Id.* at 2.

²³ *Id.*

²⁴ *See id.*

17. In the Joint Motion, the Settling Parties acknowledge that the Agreement requires Wyatt's to pay the full civil penalty amount alleged in the CPAN, which comprehensively resolves the issues in the Proceeding, and promotes administrative efficiency by avoiding further litigation.²⁵ They submit that the Agreement serves the public interest because it holds a regulated towing carrier accountable, who has agreed to pay the full penalty amount in the CPAN.²⁶ Because the Joint Motion is unopposed, the Settling Parties request that the response time to it be waived.²⁷

18. Since the Joint Motion is unopposed, the ALJ waives the response time to it.²⁸ For the reasons discussed, the ALJ finds that the preponderance of the evidence establishes that the Agreement should be approved without modification. Specifically, the CPAN asserts three violations with sufficient facts to support the Agreement's requirement that Wyatt's pay the full civil penalty amount alleged in the CPAN, even though Wyatt's only admits to violating CPAN Count Three.²⁹ What is more, Wyatt's admits to CPAN Count Three.³⁰ For the reasons in the Joint Motion (discussed above), the ALJ finds that the Agreement serves the public interest. For these reasons, and those in the Agreement and the Joint Motion, the ALJ approves the Settlement Agreement without modification.

19. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written recommended decision and recommends that the Commission enter the following order.

²⁵ Joint Motion at 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Rule 1400(b), 4 CCR 723-1.

²⁹ CPAN at 1. See Settlement Agreement at 2.

³⁰ Settlement Agreement at 2.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the Unanimous Comprehensive Settlement Agreement filed September 18, 2024 (“Settlement Agreement” or “Agreement”) is approved without modification and the Joint Motion to Approve Settlement Agreement, to Vacate the Evidentiary Hearing and Upcoming Procedural Deadlines, and for Waiver of Response Time filed September 18, 2024 is granted.

2. Based on the Agreement and the admissions by Towing Operations, LLC, doing business as Wyatt’s Towing (“Respondent”), Respondent is assessed a civil penalty with the applicable surcharge of \$3795 for Civil Penalty Assessment Notice No. 138973, which is resolved in its entirety. Respondent must pay this penalty consistent with the terms of the Settlement Agreement.

3. The October 24, 2024 hearing and all remaining procedural deadlines are vacated.

4. This Proceeding is closed.

5. The Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

8. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded. Responses to exceptions are due within seven days of the date exceptions are served.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director