

Decision No. C14-1452

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0359CP

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

STACEY JAENKE A/K/A STACEY DVORAK D/B/A GREELEY TAXI,

RESPONDENT.

**DECISION DENYING EXCEPTIONS
AND ADOPTING RECOMMENDED DECISION**

Mailed Date: December 9, 2014

Adopted Date: December 3, 2014

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of exceptions to Decision No. R14-1069 (Recommended Decision) filed by Staff of the Colorado Public Utilities Commission (Staff) on October 8, 2014. Ms. Stacey Dvorak (Respondent) did not file a response to the exceptions. Consistent with the discussion below, we deny the exceptions and adopt the Recommended Decision.

B. Background

2. In Count 1 of Civil Penalty Assessment Notice No. 108977 (CPAN), Staff charged Respondent with “operating or offering to operate as a motor carrier in intrastate commerce without authorization from the PUC,” citing § 40-10.1-104, C.R.S.¹ In Count 2, Staff charged Respondent with failure to maintain and file with the Commission evidence of financial responsibility, in violation of § 40-10.1-107(1), C.R.S.

3. The following facts found by the Administrative Law Judge (ALJ) are not in dispute.²

4. In 2013, Staff investigated a complaint and determined that Respondent was operating a white minivan displaying “Greeley Taxi” and a phone number. Staff determined that neither Respondent nor Greeley Taxi had a permit or authority from the Commission or proof of financial responsibility on file with the Commission. Staff also determined that Respondent had a business license to operate a taxi service called Greeley Taxi from the City of Greeley.

¹ Section 40-10.1-104, C.R.S., states, “A person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article.”

² Decision No. R14-1069, mailed September 4, 2014 (Recommended Decision), ¶¶ 8-40.

5. On August 2, 2013, Staff sent Respondent a “violation warning” letter (Hearing Exhibit 3) informing her that she was illegally operating without a Commission permit. The letter cited and quoted § 40-10.1-201(1)(a), C.R.S. (prohibiting a person from operating as a common carrier without a Commission permit); § 40-10.1-302(1), C.R.S. (prohibiting a person from operating as a limited regulation carrier in intrastate commerce without a Commission permit); and Commission Rules 6007(a)(1) and 6007(f) (requiring vehicle liability coverage and proof of such coverage on file with the Commission). The letter also informed Respondent that she was required to cease and desist advertising, offering, and operating Greeley Taxi, or she would be subject to a \$13,000 fine and possible criminal prosecution.

6. Upon receipt of Staff’s letter, Respondent’s husband (on behalf of Greeley Taxi) called Staff seeking clarification. Staff explained that a license from the city was insufficient, and that Greeley Taxi must also have a permit from the Commission to continue operating. At the conclusion of the conversation, Staff believed that Respondent would apply for a Commission permit.

7. In early 2014, Staff investigated two complaints about Greeley Taxi’s continued advertisements, including a flyer and a website. Staff determined that no permit applications had been filed, and the Commission did not have any proof of insurance on file for Respondent or Greeley Taxi. One of Staff’s investigators obtained an offer from Greeley Taxi for a ride between two locations in Greeley for a \$15 flat fee each way. Staff then issued the CPAN to Respondent.

8. Respondent also testified at the hearing, and she admitted to operating a taxi service without Commission approval. She stated that she initially believed that she was operating legally with only a City of Greeley license, and she did not know that the Commission required a separate permit. She also stated that after she received the warning letter from Staff,

she chose not to apply for a Commission permit because it was expensive, it could take up to a year to obtain, and her vehicle was over ten years old.³ She asserted that she was no longer offering taxi service; she was only giving rides to friends who would sometimes reimburse her for gas.

9. The ALJ found that Staff's evidence "conclusively pointed to common carrier transportation as that is referenced by § 40-10.1-201(1)[]." ⁴ However, Count 1 of the CPAN did not charge Respondent with violating § 40-10.1-201(1), C.R.S. Instead, it charged her with violating § 40-10.1-104, C.R.S., which states, "[a] person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article." The ALJ found that citing to § 40-10.1-104, C.R.S., alone did not comply with § 40-7-116(1)(b)(II), C.R.S., which requires CPANs contain "[a] citation to the specific statute or rule alleged to have been violated."⁵

10. Staff argued that the narrative in the CPAN, entitled "Nature of Violation," adequately described the Respondent's illegal conduct under Count 1 as "[o]perating or offering to operate as a motor carrier in intrastate commerce without authorization from the PUC." The ALJ found that this description does not inform Respondent of the specific statutory provision she is accused of violating, because it does not identify the type of carrier or the elements necessary to prove the violation.⁶

³ Commission Rule 6254(b) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, requires taxis operating within Weld County to be no more than ten model years old.

⁴ Recommended Decision, ¶ 58.

⁵ *Id.* at ¶ 59.

⁶ *Id.* at ¶ 54.

11. The ALJ thus concluded that Count 1 of the CPAN did not comply with § 40-7-116(1)(b)(II), C.R.S., and Respondent's due process right to notice, and dismissed Count 1 with prejudice.⁷

12. As to Count 2, the ALJ found that Respondent violated § 40-10.1-107(1), C.R.S., by acting as a common carrier and not maintaining and filing proof of financial responsibility with the Commission.⁸ The ALJ assessed a civil penalty of \$1,200 for Count 2, and she ordered Respondent and Greeley Taxi to cease and desist operating as a common carrier in the state without Commission authorization.⁹

13. Staff timely filed exceptions to the ALJ's dismissal of Count 1. Respondent did not respond to Staff's exceptions.¹⁰

C. Exceptions

14. Staff argues in its exceptions that: (a) CPANs citing § 40-10.1-104, C.R.S., do not violate a respondent's due process right as long as the respondent has a hearing; (b) CPANs citing § 40-10.1-104, C.R.S., comply with § 40-7-116(1)(b), C.R.S., because § 40-10.1-104, C.R.S., is a specific statute that can be violated; and (c) requiring CPANs to cite a more specific statute imposes an undue burden on Staff investigators.¹¹

⁷ *Id.* at ¶ 59.

⁸ *Id.* at ¶ 72.

⁹ *Id.* at ¶¶ 80-81.

¹⁰ In fact, the recommended decision was returned as undeliverable and we do not have a forwarding address for Ms. Dvorak.

¹¹ *See* Exceptions filed by Staff of the Colorado Public Utilities Commission on October 8, 2014 (Exceptions).

1. Statutory Notice Requirement

15. We deny Staff's exceptions, because the statute cited in Count 1 does not comply with § 40-7-116(1)(b)(II), C.R.S., which requires CPANs to contain a citation to the specific statute or rule alleged to have been violated.

16. Section 40-10.1-104, C.R.S., is not a "specific statute" within the meaning of § 40-7-116(1)(b)(II), C.R.S., because it does not identify the elements of the carrier's obligations or impose any specific statutory requirements. Citing § 40-10.1-104, C.R.S., in the CPAN does not provide the Respondent with information about the statutory requirements she is alleged to have violated or the proof required.¹²

17. On the other hand, CPANs citing the statutes pertaining to common carriers, § 40-10.1-201(1), C.R.S., contract carriers, § 40-10.1-202(1)(a), C.R.S., or limited regulation carriers, § 40-10.1-302(1)(a), C.R.S., identify the type of service Staff believes the Respondent provided or offered without the proper permit. In short, granting Staff's exceptions would render the phrase "specific statute" in § 40-7-116(1)(b), C.R.S., meaningless.

2. Responsibility of Staff Investigators

18. Staff argues that requiring its investigators to determine, before issuing a CPAN, the type of motor carrier a person is operating, and the specific statute she or he is violating, may be unduly burdensome in cases where the respondent does not already have a Commission permit.¹³

19. This argument is not applicable to the facts here. The ALJ found that the investigators had sufficient evidence to prove Respondent violated the common carrier statute,

¹² See Recommended Decision, ¶ 59.

¹³ Exceptions, 9, 12, 14-16.

§ 40-10.1-201, C.R.S.¹⁴ Additionally, the “violation warning” letter Staff issued to Respondent cited the common carrier statute. Staff has the burden to gather facts and perform analyses showing a violation of a specific statute before issuing a CPAN. Based on Staff’s evidence, the CPAN here could have cited the common carrier statute without any undue burden.

20. The exceptions are denied and the Recommended Decision is affirmed and adopted by the Commission.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed on October 8, 2014, by Staff of the Colorado Public Utilities Commission are denied consistent with the discussion above.

2. Recommended Decision No. R14-1069, issued September 4, 2014, is affirmed and adopted as a Decision of the Commission.

3. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

¹⁴ Recommended Decision, ¶ 58.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 3, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.