

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21C-0151-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S) AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008 OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: May 10, 2021

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I. STATEMENT AND SUMMARY

1. This Recommended Decision grants the relief sought in the Public Utilities Commission Staff's (Staff or Commission Staff) Complaints against the motor-carrier Respondents listed in Appendix A to this Recommended Decision, revoking Respondents' authorities and permits based on the failure to keep currently effective proof of financial responsibility on file with the Commission. This Recommended Decision also provides avenues for Respondents listed in Appendix A to avoid revocation by taking action before this Recommended Decision becomes effective.

II. BACKGROUND, FINDINGS, LAW, ANALYSIS, AND CONCLUSIONS

A. Background.

2. Commission Staff instituted the cases in this proceeding by "Order of Summary Suspension and Complaint and Notice of Hearing" (Complaints) against the motor carrier-Respondents¹ in this proceeding on April 9, 2021. Hearing Exhibit 2.

3. The Complaints against each of the Respondents allege that the Commission received notice from the Respondents' insurance or surety carriers that the Respondents' insurance or surety coverage will be cancelled as specifically identified in each Complaint. *Id.* The Complaints further notify Respondents that their authorities or permits have been, or will be, summarily suspended on the date specified in each Complaint and informs Respondents that a hearing will be held by video-conference on April 28, 2021, at 12:00 p.m. to determine whether their authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage with the Commission. Hearing Exhibits 2-3.

¹ This proceeding involves numerous Respondents against whom the Commission initiated Complaints by sending them each an "Order of Summary Suspension and Complaint and Notice of Hearing." Hearing Exhibit 2. Each of those Complaints, which is assigned a unique "Case No.," specifies the grounds unique to each Respondent. And, each of those case numbers are part of this single proceeding.

4. On April 27, 2021, Staff made a filing stating that Hearing Exhibits 1 through 5 were served on Respondents by e-mail. *See* Notice Concerning the Service of Exhibits 1-5 for the April 28, 2021 Show Cause Hearing on Respondents (Notice), filed on April 27, 2021.

5. As noticed in the Complaints, on April 28, 2021, at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints by video-conference. Ms. Vanessa Condra appeared and testified on behalf of Commission Staff; counsel also appeared on behalf of Commission Staff. Mr. Kevin Harrold appeared on behalf of Corporate Transportation Inc. (Corporate Transportation), and Cowen Enterprises. Mr. Zachary Gresl appeared on behalf of Walt's Towing Inc. (Walt's Towing).² No other Respondent appeared. During the hearing, Ms. Vanessa Condra testified on behalf of Staff, Mr. Gresl testified on behalf of Walt's Towing, and Mr. Harrold testified on behalf of Corporate Transportation and Cowen Enterprises. And, Hearing Exhibits 1 through 5 were admitted into evidence.

B. Factual Findings.

1. Staff's Evidence.

6. Ms. Condra is responsible for reviewing Commission records and coordinating with other Commission Staff to commence proceedings against motor carriers to suspend and revoke their permits and authorities when they do not have currently effective proof of insurance or surety coverage on file with the Commission. Ms. Condra assisted with initiating this proceeding against Respondents because the Commission received notice from each of the

² Messrs. Harrold and Gresl are not attorneys. Based on the information that Messrs. Harrold and Gresl provided and the record in this matter, the ALJ determined that they may represent their respective companies in this proceeding consistent with Rule 1201(b)(II), 4 *Code of Colorado Regulations* 723-1, of the Commission's Rules of Practice and Procedure, and allowed them to do so.

Respondents' insurance or surety carriers of the imminent cancellation of their insurance or surety coverage. Hearing Exhibits 1-3.

7. Ms. Condra testified that on April 27, 2021, Hearing Exhibits 1 through 5 were served on Respondents who remained out of compliance as of that date at their e-mail addresses on file with the Commission. *See* Notice. She also explained that the Respondents provided those e-mail addresses to the Commission.

8. Ms. Condra explained that the Commission served the Complaints and Attachment A to the Complaints upon the Respondents by United States mail on April 9, 2021, at the addresses, and upon the persons identified as designated agents for the Respondents, as provided in the Commission's files. Hearing Exhibits 1-4.

9. Respondents provided the Commission the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding. The Certificate of Service for the Complaints demonstrate that the Commission served the Respondents by mailing the Complaints addressed as indicated in the "Hearing Cycle Listing." Hearing Exhibit 4. The referenced Hearing Cycle Listing is Hearing Exhibit 1. *See* Hearing Exhibits 1 and 4. Hearing Exhibit 1 includes those carriers listed in Hearing Exhibit 5, their designated agents and addresses as on file with the Commission as of April 9, 2021, whose insurance or surety faced imminent termination as of that same date. *See also* Hearing Exhibit 2.

10. On April 27, 2021, Ms. Condra searched Commission records to determine whether any Respondents took other action rendering it unnecessary to revoke their permits, such as coming into compliance with their financial responsibility obligations, cancelling their permits, or initiating a Commission proceeding which may impact this one (*e.g.*, application seeking to suspend a permit). She identified Respondents who came into compliance with their

financial responsibility obligations or took other action rendering it unnecessary to revoke their permits after the Complaints were mailed. She created an updated list of Respondents who remained out of compliance with the Commission's financial responsibility requirements as of April 27, 2021. That list is Hearing Exhibit 5.³

11. On the day of the hearing, April 28, 2021, Ms. Condra again reviewed Commission records to determine if any Respondents in Hearing Exhibit 5 took action to eliminate the need to revoke their permits. She discovered that Colorado Xplorer LLC (Colorado Xplorer) filed an application to suspend its Permit No. 55864. Based on this, she asked that the Complaint against Colorado Xplorer be dismissed. Ms. Condra asks that the permits and authorities of the remaining Respondents listed in Hearing Exhibit 5 be revoked for Respondents' failure to meet their financial responsibility obligations.

2. Respondents' Evidence.

12. Mr. Kevin Harrold manages Corporate Transportation and Cowen Enterprises. Corporate Transportation owns Permit No. 4006 and Cowen Enterprises owns Permit No. 47137. Hearing Exhibit 2 at 4-5. The Complaints against Corporate Transportation and Cowen Enterprises allege that they failed to file proof of liability insurance. *Id.* Mr. Harrold testified that both companies have not been operating. Because neither company was operating, he submitted applications to suspend both companies' permits in February 2021 by U.S. mail. For the same reasons, he allowed the insurance to lapse for both companies. Mr. Harrold explained that he first attempted to submit the applications through the Commission's E-Filing system but had technical

³ In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on April 9, 2021. As the difference in the number of carriers listed in Hearing Exhibits 1 and 5 make evident, many carriers came into compliance since the Commission issued the Complaints. All the carriers listed in Hearing Exhibit 5 are listed in Hearing Exhibit 1.

difficulties, prompting him to mail the applications instead. He received no response from the Commission. Mr. Harrold promised to follow-up with Commission Staff to resubmit the applications to suspend both permits.

13. Mr. Zachary Gresl manages and operates Walt's Towing, which owns Permit No. T-1511. Hearing Exhibit 2 at 15. The Complaint against Walt's Towing alleges that it failed to file proof of cargo and garage keeper's insurance. *Id.* Mr. Gresl testified that Walt's Towing's insurance provider does not allow it to automatically renew its policy. Instead, the company must resubmit an application to renew the policy each time it expires. He explained that the company's policy was timely renewed and that it faced no lapse in coverage. He also testified that he confirmed with this insurance company that it submitted proof of insurance to the Commission the day before the hearing, April 27, 2021. He also clarified that his insurance provider sent that proof of insurance to the Commission by email, and not through the Commission's filing system for proof of insurance. Mr. Gresl committed to following up with his insurance provider to ensure that it submits proof of insurance to the Commission in the form and manner required.

C. Applicable Law.

1. Financial Responsibility Requirements and the Commission's Authority to Revoke Permits and Authorities.

14. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain and file evidence of financial responsibility with the Commission in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest. § 40-10.1-107(1), C.R.S. (2020); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Motor carriers must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Commission Rule 6008, 4 CCR 723-6,

identifies the amount, type of protection, and form for the insurance or surety coverage that motor carriers must maintain at all times in order to safeguard the public interest.

15. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I), 4 CCR 723-6. In addition to motor vehicle liability coverage, towing carriers and household goods movers must maintain and keep cargo liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I) and (III), 4 CCR 723-6. Towing carriers must obtain and keep worker's compensation insurance in force at all times; and towing carriers providing storage must obtain and keep garage keeper's liability insurance in force at all times. Rule 6008(a)(IV) and (V), 4 CCR 723-6. And, in addition to motor vehicle liability and cargo liability coverage, household good movers must obtain and keep general liability insurance or surety coverage in force at all times. Rule 6008(a)(VI), 4 CCR 723-6.

16. Motor carriers are responsible for maintaining and filing evidence of the required financial responsibility coverage with the Commission. § 40-10.1-107(1), C.R.S., and Rule 6008(a), 4 CCR 723-6. They must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Insurers and sureties must notify the policy or bond holder *and* the Commission when terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid. § 40-10.1-107(4), C.R.S. As a result, the Commission receives notice from insurance or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission. *Id.*

17. Notice of cancellation from a motor carrier's insurance or surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the

Commission. Rule 6008(e), 4 CCR 723-6. Failure to have proof of current and effective insurance or surety coverage on file with the Commission creates a rebuttable presumption that the carrier is in violation of the financial responsibility requirements. *Id.*

18. Section 40-10.1-112(1)(a) and (c), C.R.S., provides that a Commission-issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission at a properly-noticed hearing that the holder of that authority or permit has violated Article 10.1, Title 40 of the Colorado Revised Statutes, or any applicable Commission rule. Rules 6009 and 6011, 4 CCR 723-6, also provide the Commission authority to revoke a permit or authority in the circumstances here.

2. Notice and Service Requirements.

19. The Commission must provide Respondents with notice of the Complaints against them, including sufficient facts to adequately advise Respondents of the relief sought and how they are alleged to have violated the law, as well as the time affixed for a hearing on the Complaints. §§ 40-10.1-112(1) and 40-6-108, C.R.S.; Rule 1302(h), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure; *see also* § 24-4-105(2), C.R.S. Such notice must be served upon the Respondents, which may be accomplished by mail. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1; *see also* § 24-4-104(10), C.R.S.

20. Regulated motor carriers must provide the Commission "its designation of the name, mailing address, and physical address of a Person upon whom service may be made of any lawful notice, order, process, or demand." Rule 6006(a), 4 CCR 723-6. That person is the motor carrier's designated agent upon whom the Commission may serve complaints and other notices. *Id.*; Rule 1205(a) and (d), 4 CCR 723-1. And, regulated motor carriers are responsible for updating the Commission on changes to their designated agent, including the agent's mailing and

email addresses, within two days of the change. Rule 6006(b), 4 CCR 723-6. Service on a motor carrier's designated agent on file with the Commission is service upon the carrier and is "prima facie evidence" that the carrier received notice. Rule 6006(c) and (d), 4 CCR 723-6. A certificate of service issued by the Commission's Director is *prima facie* evidence that service has been obtained. § 40-6-108(3), C.R.S.

21. In addition, Commission Rule 1205(a), 4 CCR 723-1, requires that a person filing any pleading or other document with the Commission must serve all other parties; the same rule allows parties to serve pleadings and documents by e-mail.

3. Burden of Proof.

22. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations in the Complaints are true and that the Complaints were properly served on each of the Respondents. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, tips in favor of that party. *Schocke v. State, Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

D. Findings, Analysis, and Conclusions.

23. The ALJ concludes that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints and Attachment A thereto upon each of the Respondents listed in Hearing Exhibit 5 by mailing them to the designated agents and addresses on file with the Commission for each of the Respondents. Hearing Exhibits 1 through 5; § 40-6-108(3),

C.R.S.; Rules 1205(a) and (d) and 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

24. The ALJ finds that the Complaints and Attachment A thereto comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has received insurance or surety cancellation notices for each Respondent and the effective date of such cancellation; (b) advise Respondents that their authorities or permits are summarily suspended as of the coverage cancellation date; (c) notify Respondents that they may not conduct operations under their authorities or permits after the coverage cancellation and summary suspension date; (d) inform Respondents that the Commission has initiated a proceeding to permanently revoke their permits or authorities for failing to maintain and provide proof of effective insurance or surety coverage; (e) notify Respondents of the date, time, and means to attend the remote hearing on the Complaints at which Respondents have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought. Hearing Exhibits 1, 2, and 4; Rule 6009(e), 4 CCR 723-6; *see* §§ 40-6-108 and 24-4-105(2), C.R.S.

25. In addition, the ALJ concludes that on April 27, 2021, Staff served Hearing Exhibits 1 to 5 on Respondents listed in Hearing Exhibit 5 at the e-mail addresses which Respondents provided. As such, Respondents had the opportunity to review those exhibits before and during the hearing.⁴ *See* Rule 1205(a), 4 CCR 723-1; *see* Notice and Exhibit A to Notice; Hearing Exhibit 5.

⁴ Exhibits were displayed on the video-conference screen during the hearing and were available to download during the hearing.

26. The ALJ finds that Staff established by a preponderance of the evidence that the Commission received notice from the insurance or surety providers for the motor carriers identified in Hearing Exhibit 5 that their insurance or surety coverage was or will be cancelled or terminated. Hearing Exhibit 2. This creates the rebuttable presumption that the relevant Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6. No evidence rebutted this presumption.

27. The ALJ finds Messrs. Harrold's and Gresl's testimony credible. The ALJ accepts that both have taken steps to avoid revocation of their companies' permits. That said, the preponderance of the evidence simply does not show that the required proof of insurance was filed with the Commission as of the time of the hearing, or that they took other action rendering it unnecessary to revoke their companies' permits.

28. Instead, the evidence established that the Respondents listed in Hearing Exhibit 5, including Corporate Transportation, Cowen Enterprises, and Walt's Towing, are out of compliance with their respective financial responsibility requirements set forth in § 40-10.1-107(3), C.R.S., and Rule 6008, 4 CCR 723-6 as of the time of the hearing. The ALJ finds that Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including but not limited to motor vehicle liability, general liability, garage keeper's liability coverage, worker's compensation coverage, and cargo liability coverage in such form and in such manner as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6, for those remaining Respondents identified

in Hearing Exhibit 5. As such, the ALJ finds that Staff met its burden of proof to show by a preponderance of the evidence that the allegations in the Complaints are true.⁵

29. The ALJ finds that Colorado Xplorer filed an application to suspend its permit, rendering it unnecessary to revoke its permit in this proceeding. As such, the Complaint, (Case No. 11988-INS), against Colorado Xplorer will be dismissed.

30. The Commission's only means of performing its important duty to the public to ensure that persons who hold an active motor carrier authority meet their financial responsibility obligations is to require documentation of carriers' current and effective insurance or surety furnished in a uniform format to the Commission. The holder of the authority is responsible for ensuring that documentation is provided to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. Respondents listed in Hearing Exhibit 5 have failed to do so. Except for Colorado Xplorer, this failure warrants revocation of their permits or authorities.

31. However, Respondents may take action before the effective date of this Decision to avoid revocation. First, carriers may avoid revocation by: (a) obtaining insurance or surety coverage as required by Rule 6008, 4 CCR 723-6; and (b) causing proof of that insurance to be filed with the Commission in the form and manner required by Rule 6008, 4 CCR 723-6, before the effective date of this Decision. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked.

32. In addition, limited regulation carriers (including luxury limousine carriers),⁶ household goods movers, towing carriers, and hazardous materials carriers who submit a form to

⁵ Hearing Exhibit 5 is attached to this Recommended Decision as Appendix A.

⁶ Limited regulation carriers are defined as carriers who provide transportation service by charter bus, children's activity bus, fire crew transport, luxury limousine, Medicaid client transport, or off-road scenic charter. Rule 6001(qq), 4 CCR 723-6.

cancel their permits or authorities before the effective date of this Decision may avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Permit cancellation forms are available on the Commission's website at:

https://drive.google.com/file/d/0B3u7jb_duOQ2QWlrMFlvUDJoNjQ/view?.authuser=0.

33. Fully regulated intrastate carriers, including common carriers operating a shuttle service, sightseeing service, charter service, taxicab service, and contract carriers who submit an application to suspend their authority under Rule 6205, 4 CCR 723-6, before the effective date of this Recommended Decision may also avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Applications to suspend a common carrier authority are available at: https://drive.google.com/file/d/0B3u7jb_duOQ2dXZ0UTNIXzBvRIU/view. Applications to suspend a contract carrier authority are available at:

https://drive.google.com/file/d/0B3u7jb_duOQ2U2JQS2dvek5HWm8/view.

34. Having a permit revoked or cancelled does not always mean that a carrier's business is permanently terminated. Generally, Commission rules allow many types of motor carriers, including luxury limousine, household goods movers, and towing carriers, to obtain new permits without difficulty by filing an application.⁷ For the most part, such permits may be obtained by completing an application that can be submitted to the Commission online,

⁷ It is the ALJ's understanding that carriers may request that a prior permit number be reinstated as part of the carrier's application for a permit.

providing related supporting information and proof of financial responsibility, and paying a fee.⁸ Rule 6302 (luxury limousine application and permit); Rule 6503 (towing carrier application and permit); Rule 6603 (household goods mover carrier application and permit). Applications for luxury limousine, towing, or household goods mover permits are available at the following link: <https://doraapps.state.co.us/puc/TransportationApplications/>. Referenced carrier types who voluntarily cancel their permits or whose permits are revoked may reapply for a permit.

35. As provided below, this Recommended Decision will not become effective for 20 days after the date the Decision is mailed, and only then if no party appeals this Decision by filing exceptions. This allows ample time for Respondents to take action to avoid a final Commission decision revoking their permits or authorities.

36. Pursuant to § 40-6-109, C.R.S., the ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, except for the Respondents listed in paragraph 2 below, the authorities and permits listed in Appendix A, attached hereto, are revoked as of the effective date of this Recommended Decision.

2. As discussed above, the Complaint against Colorado Xplorer LLC, Permit No. 55864 (Case No. 11988-INS) is dismissed.

⁸ Carriers concerned about their ability to comply with application requirements may request that the Commission waive an application requirement, per Rule 1003(a), 4 CCR 723-1. That rule allows parties to request a waiver of a Commission rule; in deciding whether to waive a rule, the Commission may consider hardship, equity, or more effective implementation of a rule on an individual basis. 4 CCR 723-1. Such requests are decided on an individual and case-by-case basis and are outside the scope of this proceeding. *See* Rule 1003(a), 4 CCR 723-1.

3. Ordering Paragraph No. 1 will be void and the Complaint dismissed as to any Respondent who takes one of the following actions before the effective date of this Recommended Decision:

- a. files the required Certificate of Insurance or surety with the Commission;
- b. files an Application to Suspend their permit or authority with the Commission, if allowed by Commission rule; or
- c. submits a permit cancellation form to the Commission, if allowed by Commission rule.

4. Proceeding No. 21C-0151-INS is closed.

5. This 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 § 40-6-109, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

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

b) If a party seeks to amend, modify, annul, or reverse basic findings 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.

7. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director