

Decision No. R23-0507-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0186TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SERGIO CORNEJO DOING BUSINESS AS MMS TOWING LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
WAIVING RESPONSE TIME AND
GRANTING MOTION TO AMEND CPCN**

Mailed Date: July 31, 2023

I. STATEMENT

A. Procedural and Factual Background

1. This proceeding concerns Civil Penalty Assessment Notice No. 133217 (CPAN), issued by Commission Staff on April 7, 2023 against Respondent Sergio Cornejo doing business as MMS Towing LLC (MMS Towing). The CPAN seeks to assess civil penalties against MMS Towing for six violations of Commission rules and three violations of Title 40 of the Colorado Revised Statutes.

2. On May 1, 2023, counsel for the Trial Staff of the Colorado Public Utilities Commission (Staff) filed Its Notice of Intervention as of Right by Staff, Entry of Appearance, and Notice Pursuant to Rule 1007(A) And Rule 1401.

3. On May 10, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

4. By Decision No. R23-0369-I, issued May 31, 2023, the ALJ, among other things, scheduled a hearing in this matter for August 7, 2023.

5. On July 25, 2023, Staff's Motion to Amend CPAN (Motion to Amend) was filed by Staff. Staff states that it has been unable to confer with MMS Towing regarding the Motion to Amend and seeks to amend the CPAN "to change the penalty amounts for violations 7, 8, and 9 and reduce them from \$1,100.00 to \$275.00"¹ "and include the applicable surcharge of \$41.25..."² Staff explains that subsection (e) of Rule 6514 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, states that violating any provision of Title 40 relating to towing carriers may result in a civil penalty of up to \$275.00 for each violation. Staff further explains that § 24-34-108(2), C.R.S. and Rule 6018, 4 CCR 723-6 provide for a fifteen percent surcharge for any civil penalty assessed.

B. Motion to Amend

6. Section 40-7-116(2), C.R.S., provides, in part, that "[a]ny defect in the content of a civil penalty assessment notice... may be cured by a motion to amend the same filed with the commission prior to hearing on the merits."

¹ Motion to Amend at 2. Violation nos. 7, 8, and 9 in the CPAN allege violations of Title 40 of the Colorado Revised Statutes. *See* CPAN at 2.

² Motion to Amend at 3.

7. The ALJ finds that Staff's requested amendments of the CPAN neither alter the nature of the violations asserted, nor increase the civil penalties that may be assessed, against MMS Towing. Therefore, ALJ finds that no harm will come to MMS Towing as a result of the granting of the relief sought by Staff in the Motion to Amend. Because no harm will come to MMS Towing as a result of the granting of the relief sought in the Motion to Amend, response time to the Motion to Amend will be waived *sua sponte*, as ordered below.

8. Staff stated good cause for its requested relief in the Motion to Amend. Accordingly, the Motion to Amend will be granted, as ordered below. Accordingly, the CPAN will be amended to reduce the requested penalty amount for violations nos. 7, 8, and 9 from \$1,100.00 to \$275.00 for each violation, and include the requested surcharge amount of \$41.25 for a total of \$316.25 for each such violation, as ordered below.

II. ORDER

A. It Is Ordered That:

1. Response time to the Motion to Amend CPAN (Motion to Amend), filed July 25, 2023 by Trial Staff of the Colorado Public Utilities Commission (Staff), is waived.
2. The Motion to Amend is granted.
3. Civil Penalty Assessment Notice No. 133217 (CPAN) issued by Commission Staff on March 29, 2023 is amended to reduce the requested penalty amount for violation nos. 7, 8, and 9 from \$1,100.00 to \$275.00 for each violation, and include the requested surcharge amount of \$41.25 for a total of \$316.25 for each such violation.

4. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director