

Decision No. C24-0267

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24C-0042-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.

**COMMISSION DECISION GRANTING MOTION, IN
PART, AND AMENDING DECISION NO. R24-0105
PURSUANT TO § 40-6-112, C.R.S.**

Mailed Date: April 26, 2024
Adopted Date: April 10 and April 17, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, and as discussed further below, the Letter of Appeal for Reinstatement (Letter of Appeal) filed by AES Enterprises, d.b.a. Canna CabanaBus (CabanaBus), on March 12, 2024, is construed as an application for Rehearing, Reargument, or Reconsideration (RRR) under § 40-6-114, C.R.S., and, due to timing, is denied by operation of law. The response filed by Staff of the Colorado Public Utilities Commission (Staff) on March 26, 2024, is permitted and considered.

2. However, in consideration of these filings and the record of this Proceeding, the Commission grants, in part, the Motion for Waiver, Request for Stay of Revocation and Request for Reinstatement (Motion) filed by CabanaBus on March 29, 2024, requesting that its common carrier authority be reinstated. As permitted by § 40-6-112, C.R.S., in the unique circumstances presented in this case, the Commission finds good cause to amend Administrative Law Judge

(ALJ) Alenka Han's Recommended Decision No. R24-0105 (Recommended Decision), which revoked CabanaBus's common carrier authority, and to reinstate CabanaBus's authority effective as of the mailed date of this Decision.

B. Background

3. On January 19, 2024, Staff initiated this Proceeding by filing an Order of Summary Suspension and Complaint and Notice of Hearing (Complaints) against the motor carriers identified in Appendix A to the Recommended Decision. CabanaBus was one of the motor carrier-respondents (Respondents) listed in Staff's Complaints, identified by Permit No. 55990.¹

4. The Complaints stated the Commission had received notice from the Respondents' respective insurance or surety carriers indicating that their coverage would soon be cancelled.² The Complaints also provided notice to the Respondents that their authorities or permits have been or will be summarily suspended on the specified date, and informed Respondents that the Commission would hold a hearing on February 14, 2024, to determine whether the Respondents' authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage with the Commission.³

5. The ALJ held the hearing as noticed on February 14, 2024. At hearing, Staff requested that the Commission revoke the permits and authorities of all of Respondents who remained not in compliance with their financial responsibility obligations. In the Recommended Decision, the ALJ found Staff had established, by a preponderance of the evidence, that it had properly served the Complaints upon the respondents, filed notice of insurance cancellation with the Commission, and that the Respondents (including CabanaBus) were not in compliance with

¹ Appendix A to Decision No. R24-0105, p. 1.

² See Hearing Exhibits 1-5.

³ Recommended Decision, ¶¶ 1-2.

the financial responsibility requirements under § 40-10.1-107, C.R.S., and Rule 6008 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6.⁴

6. The Recommended Decision did not become effective for 20 days after the date the Decision was mailed on February 20, 2024, allowing time for Respondents to take action to avoid a final Commission decision revoking their permits or authorities. The Recommended Decision became effective on March 11, 2024.

7. CabanaBus filed a Letter of Appeal on March 12, 2024, stating that its initial insurer was not registered or approved with the Commission, and was having trouble getting approved. Therefore, the company switched insurers in order to comply with the Commission's deadline. CabanaBus also stated that it was properly insured by Progressive Insurance by the 20-day deadline of March 11, 2024, as demonstrated by its proof of insurance uploaded alongside the Letter of Appeal, but was unable to upload the documentation to the Commission's website. CabanaBus further claims that it has been attempting to comply for four weeks now, with daily attempts to solve the issue, and that it does "have insurance and ha[s] had insurance."⁵

8. On March 26, 2024, Staff filed a Response to Respondent's Exceptions to Recommended Decision No. R24-0105 or in the Alternative Staff's Motion for Leave to Respond to Respondent's Application for Rehearing, Reargument, or Reconsideration (Response). Staff argues that CabanaBus was properly notified of its impending lapse of insurance coverage and failed to appear at the show cause hearing held by the ALJ on February 14, 2024.⁶ Additionally, Staff asserts that CabanaBus had 20 days to provide proof of insurance after the

⁴ *Id.* at ¶¶ 33–37.

⁵ Letter of Appeal for Reinstatement. The Letter of Appeal further asserts that CabanaBus tried many times, without success, to upload the documentation and contacted PUC personal who "were not helpful in getting this [issue] resolved."

⁶ Staff's Response, pp. 2–3.

Recommended Decision was issued, and despite ample opportunity given, CabanaBus still filed its proof of insurance in an untimely manner.⁷ Staff further contends the Recommended Decision revoking authorities and permits is supported by law and CabanaBus' common carrier authority was properly revoked under § 40-10.1-112(1)(a) and (c), C.R.S., and Rule 6009, 4 CCR 723-6.⁸

9. Staff also, in the alternative, moved to file a response if the Commission considers CabanaBus' Letter of Appeal to be an Application for RRR. As the basis for its request to respond, Staff, citing Rule 1506(b), 4 CCR 723-6, argues CabanaBus is attempting to introduce facts not in evidence when it describes the events surrounding its difficulty in uploading the documents to the Commission's website.⁹

10. On March 29, 2024, CabanaBus filed its Motion for relief. In essence, the Motion elaborates on the same arguments that CabanaBus made in its Letter of Appeal. CabanaBus explains that, after paying \$3,900 in premiums and fees to bind an insurance policy with Kinsail Insurance Company, it was notified that this insurer's policy was unable to be uploaded to the Commission's E-filing portal since the insurer was not on the previously approved list from the Colorado Division of Insurance. CabanaBus contends that once it realized its insurance carrier would not be able to receive approval from the Division of Insurance and upload the required documentation by the deadline, it paid \$2,353.40 to bind another insurance carrier that was already approved by the Division of Insurance.¹⁰ However, CabanaBus asserts, its new insurer was unable to upload the documentation to the Commission's E-filing system, which showed that its authority was already revoked.¹¹

⁷ *Id.* at 7.

⁸ *Id.* at 6. Moreover, Staff "vehemently denies any allegations related to an inability to assist [CabanaBus]" and states that it responded to multiple calls to assist and provide information. *Id.* at 9.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.*

11. CabanaBus states that, while it recognizes the importance of the imposed timelines, it has maintained insurance coverage throughout the process and that, were it not for difficulties experienced in uploading the documentation, it would have timely complied with the Commission's deadlines.¹² CabanaBus requests the Commission stay the revocation, open the Commission E-filing portal to allow uploading of the proper documentation, and reinstate its common carrier authority.¹³

C. Findings and Conclusions

12. Because CabanaBus filed its Letter of Appeal on March 12, 2024, one day after the 20-day deadline to submit exceptions under § 40-6-109(2), C.R.S., and Rule 1505(a), 4 CCR 723-1, we necessarily construe its Letter of Appeal as an application for RRR. Accordingly, we also grant Staff's alternative motion for leave to respond to RRR, pursuant to Rule 1506(b), 4 CCR 723-1.

13. During deliberations on April 10, 2024, the Commission reviewed the filings and stated its intention to reinstate CabanaBus's common carrier authority. While we appreciate Staff's response and agree that proper notice and deadlines were provided, given that CabanaBus had been properly insured by the 20-day deadline of March 11, 2024, demonstrated by its proof of insurance uploaded on March 12, 2024, we reasoned that CabanaBus had substantially complied with Rule 6008, 4 CCR 723-6, governing financial requirements for motor carriers. CabanaBus made a good faith effort to comply with the deadline and, had it not been for its difficulties in uploading the documentation, would have timely complied with the applicable Commission rules. In this case, CabanaBus was properly insured by the deadline, but uploaded its documentation one day late due to technical difficulties.

¹² *Id.* at 4.

¹³ *Id.*

14. However, because the Commission was unable to issue a decision by the 30-day deadline under § 40-6-114, C.R.S., CabanaBus's March 11, 2024, filing that was necessarily construed as RRR was therefore denied by operation of law.

15. Accordingly, on April 17, 2024, the Commission reconsidered CabanaBus's Motion filed on March 29, 2024.¹⁴ The Motion elaborates on the steps CabanaBus took to comply with Commission Rules, including switching insurers and its attempts to upload the requisite insurance documentation. In light of this Motion, and consistent with deliberations on April 10, 2024, we grant CabanaBus's Motion, in part, and reinstate CabanaBus's common carrier authority. To grant the relief sought in the Motion, we find good cause to amend the Recommended Decision, as permitted by § 40-6-112, C.R.S., and hereby reinstate CabanaBus's common carrier authority, effective on the Mailed Date of this Decision.

16. While we are reinstating CabanaBus's common carrier authority in this case, we expect all future filings with the Commission to be timely and in compliance the imposed deadlines.

II. ORDER

A. The Commission Orders That:

1. The Letter of Appeal for Reinstatement filed on March 12, 2024, by AES Enterprises, d.b.a. Canna CabanaBus (CabanaBus) is construed as an application for rehearing, reargument, and reconsideration, and denied by operation of law, as discussed above.

2. The motion for leave to respond to the application for rehearing, reargument, and reconsideration filed on March 26, 2024, by Public Utilities Commission Staff is granted.

¹⁴ At the April 10, 2024, Commissioners' Weekly Meeting because we had decided to grant CabanaBus's RRR, the Commission found this subsequent motion to be moot. However, since a decision was not able to be issued on the statutory deadline that same day, we found it appropriate to revisit and reconsider this motion in order to reach the same substantive result.

3. The Motion for Waiver, Request for Stay of Revocation and Request for Reinstatement filed on March 29, 2024, by CabanaBus is granted, in part, consistent with the discussion above.

4. The Commission, under § 40-6-112, C.R.S., amends Recommended Decision No. R24-0105, issued February 20, 2024, and reinstates CabanaBus's common carrier authority, effective as of the Mailed Date of this Decision.

5. 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.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS
April 10 and April 17, 2024.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners