

Decision No. R04-0368-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NOS. 04G-065EC AND 04G-096EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

MARLA DASHIELL,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTION TO CONSOLIDATE
PROCEEDINGS AND DENYING
MOTION TO DISMISS COMPLAINT
IN DOCKET NO. 04G-096EC**

Mailed Date: April 9, 2004

I. STATEMENT

1. The captioned proceedings were initiated on February 21, 2004, when the Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) Nos. 28504 and 28213 to the Respondent, Marla Dashiell (Dashiell).

2. On March 24, 2004, the Commission issued an Order setting Docket No. 04G-065EC for hearing on May 11, 2004, commencing at 9:00 a.m. On the same day it issued an Order setting Docket No. 04G-096EC for hearing on May 11, 2004, commencing at 1:00 p.m.

3. On March 24, 2004, Staff filed a Motion to Consolidate Docket No. 04G-096EC into Docket No. 04G-065EC (Motion to Consolidate). In support of the Motion to Consolidate,

Staff states that the issues involved in both proceedings are similar, if not identical, and that consolidation of both into one proceeding will promote administrative efficiency. Dashiell did not respond to the Motion to Consolidate.

4. On March 25, 2004, Dashiell filed a Motion to Dismiss in Docket No. 04G-096EC (Motion to Dismiss). In support of the Motion to Dismiss, Dashiell asserts that she was not offering a “service” as contemplated by § 40-16-103, C.R.S., as a result of her employment as a driver of a motor vehicle; that this statute does not require a driver of a motor vehicle to register with the Commission as an exempt carrier; that § 40-16-104, C.R.S., does not require a driver of a motor vehicle to assume responsibility for maintaining insurance; and that the Commission lacks jurisdiction in this matter for various reasons. Staff submitted its response in opposition to the Motion to Dismiss on April 7, 2004.

5. Rule 79(a) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-79(a), authorizes proceedings to be consolidated when the issues are substantially the same and the parties will not be prejudiced. Here, two of the charges brought against Dashiell in Docket No. 04G-096EC are identical to the two charges brought against her in Docket No. 04G-065EC. The parties are the same in both dockets and they are both scheduled for hearing on the same day. In addition, Dashiell has not opposed consolidation. Therefore, the Motion to Consolidate will be granted.¹

6. The Motion to Dismiss is without merit and will be denied. Section 40-16-103, C.R.S., provides, in pertinent part, that “[N]o person may offer services pursuant to this article

¹ As a practical matter, this will result in the hearing commencing on May 11, 2004, at 9:00 a.m. and continuing until concluded. Staff’s case-in-chief will encompass the allegations contained in both CPAN No. 28504 and CPAN No. 28213. Dashiell will then have an opportunity to present her case-in-chief addressing the allegations contained in both CPANs.

unless he is registered with the public utilities commission of this state.” The “services” described in Article 16 involve various types of deregulated property and passenger transportation services. The act of driving a motor vehicle in furtherance of offering such services is clearly a “service” encompassed by § 40-16-103, C.R.S. In addition, the term “person” is defined by § 40-16-101(6), C.R.S., to include an “individual.” Therefore, an individual driver may potentially be found liable for violating § 40-16-103, C.R.S. *See also*, § 40-7-114(3), C.R.S. (any civil penalty against an owner shall be in addition to and not in lieu of any civil penalty against the actual driver of the vehicle) and § 40-7-116, C.R.S. (investigative personnel of the commission shall have authority to issue civil penalty assessments by giving the person operating the motor vehicle notice of such violation).

7. Section 40-16-104(2), C.R.S., provides, in pertinent part, that “[E]ach motor carrier exempt from regulation as a public utility shall maintain with the public utilities commission of this state adequate written documentation that such carrier maintains a general liability insurance policy....” Section 40-16-101(4), C.R.S., defines a motor carrier exempt from regulation as a public utility as “persons who offer services as property carriers by motor vehicle or who offer charter or scenic buses, luxury limousines, off-road scenic charters, and children’s activity bus services.” Again, the term “person” is defined by § 40-16-101(6), C.R.S., to include an “individual.” Therefore, an individual driver may potentially be found liable for violating § 40-16-104, C.R.S. *See also*, §§ 40-7-114(3), C.R.S., and § 40-7-116, C.R.S., cited above.

8. The jurisdictional arguments advanced by the Motion to Dismiss are unavailing. The Commission clearly has jurisdiction to initiate enforcement actions against those suspected of violating public utilities law, including those cited in the subject CPANs. *See*, § 40-7-101, C.R.S. (duty of the Commission to enforce statutes affecting public utilities); §§ 40-16-102(2)

and 40-16-107(3), C.R.S. (motor vehicle carriers exempt from regulation as public utilities are subject to regulation and civil penalties under § 40-7-112, C.R.S. through § 40-7-116, C.R.S.); and §§ 40-10-112 and 40-11-110, C.R.S. (Commission may impose civil penalties against motor common and contract carriers). As correctly pointed out by Staff, the jurisdiction granted to the courts by § 40-16-108, C.R.S., does not limit the civil enforcement authority granted to the Commission by these statutes.

II. ORDER

A. It Is Ordered That:

1. The Motion to Consolidate Docket No. 04G-096EC into Docket No. 04G-065EC submitted by the Staff of the Colorado Public Utilities Commission is granted.
2. The Motion to Dismiss submitted in Docket No. 04G-096EC by Marla Dashiell is denied.
3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge