

Decision No. R04-1505

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-457CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MESA VERDE COMPANY,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION, ACCEPTING
STIPULATION, ASSESSING CIVIL PENALTY,
WAIVING RESPONSE TIME, AND CLOSING DOCKET**

Mailed Date: December 16, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

1. The issuance of Civil Penalty Assessment Notice No. 71166 (CPAN) commenced this proceeding. The CPAN alleges that Mesa Verde Company (Respondent) violated 49 *Code of Federal Regulations* (CFR) § 382.301(a) (six dates in February, April, and May 2004), §§ 382.413(a)(1) and (b) (three dates in April 2004), § 382.413(g) (15 dates in February and March 2004), and § 391.21(b) (five dates in April and May 2004). These sections of the CFR are incorporated by reference into the *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties* by Rule 4 *Code of Colorado Regulations* (CCR) 723-15-2.1. The CPAN contains a total of 29 alleged violations and seeks the maximum civil penalty of \$5,800.

2. On September 2, 2004, Staff of the Commission (Staff) issued the CPAN to Respondent. Staff and Respondent are the only parties in this proceeding.

3. On September 30, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing. That Order established a hearing date of November 17, 2004. By Decision No. R04-1412-I the undersigned Administrative Law Judge, to whom this matter is assigned, granted a joint motion to vacate the hearing date because the parties had reached an agreement in principle to settle this case. That Order also required the parties to file, on or before December 13, 2004, a written settlement agreement and advised the parties that a hearing on the settlement might be held.

4. On December 13, 2004, a Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion) and for Waiver of Response Time was filed. A copy of a Stipulation and Settlement Agreement (Stipulation) accompanied the Joint Motion. The Joint Motion states good cause, and granting the Joint Motion will not prejudice any party. The Stipulation contains sufficient information to provide a basis for review of the Stipulation and is sufficient to support a determination that the Stipulation is just, is reasonable, and is in the public interest.¹ In addition, given the content of the Stipulation, no hearing on the Stipulation is necessary. The Joint Motion will be granted. The Stipulation will be approved.

5. Because the motion at issue is a Joint Motion, the request to waive response time will be granted. Response time to the Joint Motion will be waived.

¹ For example and importantly, although Respondent has operated in Colorado for over 24 years, this is the first CPAN which has been issued to Respondent.

6. Respondent does not dispute the Commission's jurisdiction. The Administrative Law Judge (ALJ) finds and concludes that the Commission has subject matter jurisdiction over this case and personal jurisdiction over the Respondent.

7. Respondent admits (Stipulation at ¶ 7), and on that basis the ALJ finds and concludes, that, on February 1, April 1, April 9, April 18, April 30, and May 2, 2004, Respondent violated the provisions of 49 CFR § 382.301(a) and of Rule 4 CCR 723-15-2.1, as stated in counts 1 through and including 6 of the CPAN.

8. Respondent admits (Stipulation at ¶ 7), and on that basis the ALJ finds and concludes, that, on April 2, April 5, and April 17, 2004, Respondent violated the provisions of 49 CFR §§ 382.413(a)(1) and (b) and of Rule 4 CCR 723-15-2.1, as stated in counts 7 through and including 9 of the CPAN.

9. Respondent admits (Stipulation at ¶ 7), and on that basis the ALJ finds and concludes, that, on February 1, 2, 3, 4, 5, 6, 9, 10, 11, 17, 18, 24, and 25, 2004 and March 2 and 3, 2004, Respondent violated the provisions of 49 CFR § 382.413(g) and of Rule 4 CCR 723-15-2.1, as stated in counts 10 through and including 24 of the CPAN. Each of these violations rests on Respondent's use of the same driver.

10. Respondent admits (Stipulation at ¶ 7), and on that basis the ALJ finds and concludes, that, on February 1, April 1, April 9, April 18, and May 2, 2004, Respondent violated the provisions of 49 CFR § 391.21(b) and of Rule 4 CCR 723-15-2.1, as stated in counts 25 through and including 29 of the CPAN.

11. Respondent and Staff have agreed that, in view of Respondent's admission of liability and in view of Respondent's history of compliance (as well as other factors stated in the Stipulation), a civil penalty of \$4,000 ought to be assessed. Stipulation at ¶ 8.

12. The ALJ concurs. First, with the exception of this CPAN, the record shows that Respondent has an excellent compliance history extending over more than two decades. Second, \$4,000 is sufficient to impress upon Respondent and other carriers similarly situated the seriousness of the violations and so should act as a deterrent. Third, through its admissions, Respondent has taken responsibility for the violations. Fourth, the civil penalty achieves the following purposes underlying civil penalty assessments: (a) deterring future violations, whether by other similarly-situated carriers or by the Respondent; (b) motivating Respondent to come into compliance with the law; and (c) punishing Respondent for its past illegal behavior. The civil penalty and CPAN also trigger increased civil penalties in the event Respondent violates these provisions in the future. *See* §§ 40-7-113(3) and 113(4), C.R.S. For these reasons, the ALJ finds and concludes that the civil penalty in this case will be \$4,000.

13. The ALJ finds and concludes that this docket will be closed.

14. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Stipulation and Settlement Agreement is granted.
2. The Stipulation and Settlement Agreement filed on December 13, 2004, is approved.
3. A civil penalty is assessed against Mesa Verde Company in the amount of \$4,000 *provided* Mesa Verde pays this amount in full within ten days after the effective date of this Recommended Decision.

4. In the event that Mesa Verde Company does not pay the \$4,000 in full within ten days of the effective date of this Recommended Decision, Mesa Verde Company immediately shall become liable for \$5,800, which it shall pay within 20 days of the effective date of this Recommended Decision.

5. The Joint Motion for Waiver of Response Time is granted.

6. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement is waived.

7. Docket No. 04G-457CP is closed.

8. 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.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall 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 shall 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.

10. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge