

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Proceeding No. 17G-0284TO

Civil Penalty Assessment Notice 117478

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

XY TOWING LLC AND YANIRA L. TORRES, AN INDIVIDUAL

Respondents.

AMENDED STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission ("Staff") and Respondent XY Towing LLC and Respondent Yanira L. Torres, as an individual, ("Respondents") (collectively, the "Parties") enter into this Stipulation and Settlement Agreement ("Agreement") in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Respondent Yanira L. Torres, the owner of Respondent XY Towing LLC represents that she has authority to enter into settlement on behalf of Respondent XY Towing LLC and herself.

Background

On May 4, 2017, the Commission issued Respondents Civil Penalty Assessment Notice No. 117478 (the "CPAN") seeking civil penalties of \$13,915.00

(or \$6,957.50 if paid within 10 days). The CPAN alleged one (1) violation of § 40-10.1-107(1), C.R.S. and one (1) violation of § 40-10.1-401(1)(a), C.R.S. The CPAN was served, via certified mail, return receipt requested, on May 6, 2017.

Settlement Agreement

Staff and Respondents hereby stipulate and agree as follows:

1. Respondents admit liability to all the violations in the CPAN.
2. Respondents agree to comply with all Colorado and federal statutes and rules concerning the maintaining and filing of documents regarding financial responsibility in sums as required by the Public Utilities Commission in accordance with § 40-10.1-107(1), C.R.S., as well as only operating as a towing carrier in intrastate commerce following receipt of a permit in accordance with § 40-10.1-401(1)(a), C.R.S.
3. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring the payment by Respondents of a civil penalty in the amount of \$6,957.50 under the terms in this Agreement. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):
 - a. Respondents acknowledge wrongdoing.
 - b. Respondents admit the maximum level of culpability for all violations in the CPAN.

- c. Respondent Yanira L. Torres immediately engaged Staff on behalf of Respondent XY Towing LLC and herself in settlement discussions and has been cooperative.
- d. Respondent Yanira L. Torres filed a towing carrier permit application on May 9, 2017, and a permit was issued to Respondent XY Towing LLC on 05/19/17..
- e. Payment of the total amount of the CPAN (\$13,915.00) would create a financial hardship on Respondents
- f. Assessing Respondents a civil penalty of \$6,957.50 under the terms herein is sufficient motivation for Respondents to remain in compliance with the Public Utilities Laws and Commission Rules on a going forward basis.
- g. Neither of the Respondents have been subject to any previous enforcement actions by the PUC.

4. In consideration of Respondents' admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$13,915.00 to \$6,957.50 is appropriate and in the public interest. This \$6,957.50 settlement amount consists of a \$6,050.00 penalty, plus a fifteen-percent (15%) surcharge of \$907.50 pursuant to § 24-34-108, C.R.S.

5. Respondents shall pay the total amount of \$6,957.50 in six (6) installments, according to the following payment schedule: the first installment of \$1,457.50 is due within 15 days of the Commission's final order approving this settlement agreement, which will be followed by five (5) additional payments of \$1,100.00, each of which will be due within thirty (30) days of the previous payment.

6. If either or both Respondents fail to make any of the installment payments when due as outlined immediately above, Respondents shall be jointly liable for the full civil penalty amount of \$13,915.00, less any payments made, which amount will be due immediately.

7. Both Respondents further agree that if, during any investigation(s) conducted by Staff within twelve (12) months of the date of a Commission final order in this proceeding, the Commission finds any violations of rules or statutes regarding Respondents' failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission in accordance with § 40-10.1-107(1), C.R.S., and/or is operating/offering to operate as a towing carrier in intrastate commerce without first having obtained a permit in accordance with § 40-10.1-401(1)(a), C.R.S., Respondents shall be jointly liable for the full civil penalty, less payments made. In this event, the remaining full civil penalty will be due immediately. Respondents and Staff agree the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

8. All matters that were raised or could have been raised in this proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

9. Respondents' failure to complete its and her payment obligations as set forth in this Agreement shall also be deemed a waiver by both Respondents of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.

10. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this proceeding within seven (7) days of entry of such Order. In that event, this Agreement shall be void and this matter shall be set for hearing in Denver, Colorado.

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Executed this 21st day of June, 2017.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

By: 

Cliff Hinson

Manager, Investigations and Compliance
Colorado Public Utilities Commission
1560 Broadway Suite 250
Denver, Colorado 80202

XY TOWING LLC

By: 

YANIRA L. TORRES, owner*

2131 6th Street
Greeley, CO 80631
Phone: 970-347-0440
Email: yaniratorres1983@yahoo.com
*On Behalf of Respondent
XY Towing LLC

By: 

YANIRA L. TORRES, as an individual
Respondent
2131 6th Street
Greeley, CO 80631
Phone: 970-347-0440
Email: yaniratorres1983@yahoo.com

Approved as to form:

CYNTHIA H. COFFMAN
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By: 

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