

Amended Stipulation and Settlement Agreement

This Amended Stipulation and Settlement Agreement (“Agreement”) is entered into by and between Trial Staff of the Commission (“Staff”) and Paul H. Epler, doing business as Action Towing (“Respondent”) as a result of Docket No. 10F-973TO, in which the Respondent, a towing carrier under PUC regulation, having been convicted of a felony under title 18 Colorado Revised Statute (C.R.S.) on September 25, 2009, is in violation of § 40-13-103(3) C.R.S.

1. This Respondent admits the allegations contained in the Formal Complaint and Notice of Proceeding that commenced this docket. Decision No. C10-1359. Respondent has also admitted to the facts submitted via the Stipulation and Agreement with Respect to Facts dated February 7, 2011. See Exhibit 2.
2. This Agreement has been reached in consideration of Respondent’s admissions found in Paragraph 1, above, in the spirit of compromise, in light of the uncertainties of trial, and to avoid the costly expense of litigation. The parties also agree that this Agreement promotes administrative efficiency by avoiding the time and expense necessary for full hearing on this matter, and in consideration of the amount of monies that would have been spent by either party on attorney’s fees and costs.
3. For these reasons, the parties have agreed to the following terms and conditions:
 - A. Respondent’s towing carrier permit, PUC Permit # T-2601, will be revoked as of the date of entry of a final Commission decision approving this Agreement;
 - B. Respondent will be ineligible to be issued another operating right for a period of one year from the date of entry of a final Commission decision approving this Agreement;
 - C. Respondent will cease and desist from operating as a towing carrier under Title 40, Article 13 for a period of one year from the date of entry of a final Commission decision approving this Agreement;
 - D. This agreement of revocation and to cease and desist operations applies to Mr. Epler personally and to his involvement in any manner with any towing

carrier that offers towing carrier services, including but not limited to, Mr. Epler's involvement as an owner, officer, agent, employee, manager, independent contractor or driver of any such carrier, and his involvement or employment in any storage lot used by a towing carrier;

- E. If at any time Staff has reason to believe Mr. Epler is in violation of this Agreement, then Staff may initiate an action before the Commission for a determination of whether a violation has occurred. Such action will not limit or stay in any manner any separate or simultaneous proceeding(s) (e.g., civil penalty proceedings) that Staff may initiate based on the same factual allegations.
 - F. In the event Mr. Epler is found by the Commission to be in violation of this Agreement, Mr. Epler agrees to be permanently ineligible to be issued another operating right;
 - G. In the event Mr. Epler is found by the Commission to be in violation of this Agreement, then Mr. Epler hereby consents and stipulates to the entry by a court of law of a permanent injunction enjoining Mr. Epler from operating as a towing carrier under Title 40, Article 13. Mr. Epler agrees that upon the effective date of a final Commission Decision finding that Mr. Epler violated this Agreement, the Commission may file a complaint for injunctive relief in Denver District Court. Mr. Epler further agrees that he will not challenge the filing of the complaint or the entry of an order for injunction and the Commission may present this Stipulation as conclusive evidence that Mr. Epler has consented to the entry of the injunction as set forth herein.
- 4. Respondent further agrees that if within three years of the date of entry of a final Commission decision in this docket approving this Agreement, Mr. Epler is charged with and subsequently convicted of, pleads guilty to, or pleads nolo contendere to, a felony as defined by title 18, C.R.S., then (a) any towing carrier permit held by Respondent at such time of charge and conviction, conviction or plea shall be automatically revoked; and (b) Respondent shall be permanently ineligible to be issued another operating right. Respondent and Staff agree that the specific intent of paragraph 4 is to prevent further violations of Commission rules.
 - 5. Respondent agrees and stipulates that failure to abide by any of the terms of this Agreement shall also be deemed as a waiver by Respondent of any and all rights to file exceptions or to all rights to file a request for rehearing, reargument and reconsideration or any other form of appeal to any matter brought before the Commission to enforce this Agreement. This result ensures that no additional administrative or adjudicatory time and expense be incurred by the Commission, Staff or the Respondent.

6. For purposes of determining whether a violation of this Agreement occurred within the applicable timeframe, the operative date of the one year period discussed in subparagraphs 3.B and 3.C and the three year period discussed in paragraph 4 of this Agreement, is the date of the alleged violation and not the date the action is initiated by the Commission, nor the date of conviction or entry of a plea.
7. The parties agree that all remaining matters that were raised or could have been raised in this docket 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 Public Utilities Commission.
8. This Agreement shall not become effective until the entry of a final Commission decision approving this Agreement, which order does not contain any modification of the terms and conditions of this Agreement that is unacceptable to the parties hereto. In the event that this Agreement is modified or not approved in its entirety in a manner that is unacceptable to either Staff or Respondent, such party that does not accept such modification may, at its option, withdraw from this Agreement by providing notice within seven (7) days of entry of the Commission decision to the other party and to the Commission. In the event such notice is provided, the parties agree that this matter shall be set for hearing.
9. Approval by the Commission of this Agreement shall constitute a determination that this Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the parties in this proceeding, unless as otherwise specifically noted in this Agreement.

EXECUTED this 8th day of April 2011.

**STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION**



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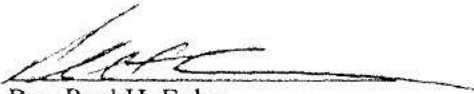


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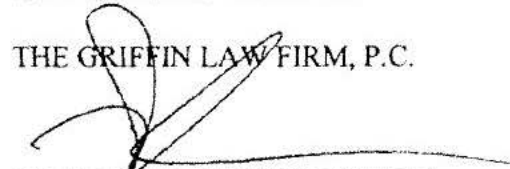
PAUL H. EPLER, RESPONDENT



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