

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 13G-0808CP
Civil Penalty Assessment Notice No. 106969

STIPULATION AND SETTLEMENT AGREEMENT

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

Snow Limousine Inc.,

Respondent.

Staff of the Public Utilities Commission ("Staff") and Snow Limousine Inc. ("Respondent") (collectively "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.

Background

On July 8, 2013, the Commission issued Respondent a Civil Penalty Assessment Notice No. 106969 ("the CPAN") seeking civil penalties of \$5,087.50 (or \$2,543.75 if paid within 10 days). The CPAN alleged the following nine violations: 1) one violation of 49 CFR §391.25(a), for failing to make an inquiry into the driving records from applicable state agencies at least every 12 months and failing to maintain such in a file; 2) one violation of 49 CFR §391.25(b), for failing to review the driving record of each driver to determine minimum requirements and failing to note such a review in a file; 3) one violation of 49 CFR §391.27, for permitting persons to drive who have not furnished Snow Limousine with a list of their traffic violations every 12

months; 4) one violation of 49 CFR §382.115(a), for failing to implement an alcohol and/or controlled substances testing program; 5) one violation of 4 CCR 723-6-6105(g)(1), for permitting driver Fred Tittle to drive when he had not submitted his fingerprints to the PUC for a background check; 6) one violation of 4 CCR 723-6-6105(g)(1), for permitting driver Steven Burkholder to drive when he had not submitted his fingerprints to the PUC for a background check; 7) one violation of 4 CCR 723-6-6105(g)(1), for permitting driver Calvin Vagneur to drive when he had not submitted his fingerprints to the PUC for a background check; 8) one violation of 4 CCR 723-6-6105(g)(1), for permitting driver Curtis Vagneur to drive when he had not submitted his fingerprints to the PUC for a background check; and 9) one violation of 4 CCR 723-6-6105(g)(1), for permitting driver Laurie McFarland to drive when she had not submitted her fingerprints to the PUC for a background check.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability for the violations set forth in the CPAN.
2. Respondent agrees to immediately cease and desist from the actions that led to the violations set forth in the CPAN.
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 Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The Parties submit that the public interest is served by assessing Respondent a reduced civil penalty of \$3,300.00 under the

terms herein. In reducing the penalty, the Parties considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing and apologized to the Commission for the violations.
- b. Respondent admits the maximum level of culpability for the violations set forth in the CPAN.
- c. Respondent asserts that it is determined to be in compliance with all relevant PUC rules.
- d. Respondent has implemented an alcohol and/or controlled substances testing program that complies with all relevant PUC rules.
- e. Respondent will not permit Fred Tittle, Steven Burkholder, Calvin Vagneur, Curtis Vagneur, or Laurie McFarland to drive until their fingerprints are submitted to the PUC for a background check.
- f. Respondent fully cooperated with Staff in resolving this matter without the need for a litigated evidentiary proceeding.
- g. Assessing Respondent a civil penalty of \$3,300.00 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission rules on a going-forward basis.

4. In consideration of Respondent's admission of liability in paragraph 1 and agreement in paragraph 2, and for the reasons expressed in paragraph 3, Staff agrees that reducing the amount of the civil penalty from \$5,087.50 to \$3,300.00 is appropriate and in the public interest.

5. The \$3,300.00 settlement amount includes a 10% surcharge pursuant to § 24-34-108, C.R.S. and the breakout is as follows: \$3,000.00 is the civil penalty and \$300.00 is the 10% surcharge.

6. Respondent agrees to pay the reduced penalty of \$3,300.00 in three payments of \$1,100.00 each. The first \$1,100.00 payment shall be due within ten (10) calendar days after this Agreement becomes final. The second \$1,100.00 payment shall be due within forty (40) calendar

days after this Agreement becomes final. The third \$1,100.00 payment shall be due within seventy (70) calendar days after this Agreement becomes final. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the administrative law judge approving or modifying this Agreement becomes a decision of the Commission.

7. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this Proceeding, Staff finds any violations of the same rules or statutes or of a similar nature as any of the violations for which the Respondent has admitted liability, Respondent shall be liable for the full civil penalty, less payments made. In this event, the remaining full civil penalty will be due immediately. Respondent and Staff agree that the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

8. Respondent agrees that the failure to timely pay any of the three \$1,100.00 payments, as provided herein will result in Respondent being liable for the full civil penalty less payments made without any further hearing or administrative or adjudicatory process.

9. Respondent agrees and stipulates that the failure to complete its payment obligations as set forth in this Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration or any other form of appeal. This result will mean neither the Commission nor Staff will incur additional time and expense to prosecute the full civil penalty.

10. The Parties agree all 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 Commission.

11. 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 Docket 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this [insert date] day of October 2013.

Approved as to form:

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

JOHN W. SUTHERS,
ATTORNEY GENERAL

By: 

Cliff Pinson
Manager, Investigations & Compliance
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

By: 

Paul J. Kyed, #37814*
Assistant Attorney General
Colorado Department of Law
Revenue & Utilities Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, Colorado 80203
Telephone: (720) 508-6332
Facsimile: (720) 508-6038
paul.kyed@state.co.us

COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION

*Counsel of Record



Calvin Vagneur
~~Manager, Fleet~~
Snow Limousine Inc,
135 West Main St.
Aspen, CO 81612



Charles J. Kimball, #1319*
Kimball & Nespor, P.C.
5400 Ward Road, Building III, Suite 150
Arvada, CO 80002
Telephone: (303) 940-3333
Facsimile: (303) 940-8832
knpco@qwestoffice.net

COUNSEL FOR SNOW LIMOUSINE, INC.

*Counsel of Record