

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13V-1136EC

IN THE MATTER OF JOHN HAFFER DBA A CUSTOM COACH, FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6305(B) (AGE OF VEHICLES) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**DECISION DENYING APPLICATION
AS UNTIMELY FILED**

Mailed Date: January 21, 2014
Adopted Date: January 15, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a request for rehearing, reargument, or reconsideration (RRR) of Decision No. C13-1534 (Application) filed on January 3, 2014, by John Hafer, doing business as A Custom Coach (Custom Coach).

2. Now being duly advised, we deny the Application as untimely filed.

B. Background

3. By Decision No. C13-1534, mailed December 13, 2013 (Decision), the Commission denied A Custom Coach's request to waive Rule 6305(b) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The waiver was requested for a 2001 Ford E 350, VIN No. IFBSS31SX1HB09397 from September 6, 2013 through September 6, 2018. The Commission found that A Custom Coach did not demonstrate how granting this waiver would remedy hardship, enhance equity, or advance more efficient implementation of policy. In addition, the Commission found that the vehicle for which the

waiver was sought is not luxurious enough to justify a waiver of Rule 6305(b). The Decision stated that the 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for RRR shall begin on the first day after the Commission mails the Decision.

4. Through its Application filed January 3, 2014, A Custom Coach contends it will experience a financial hardship due to six waivers before the Commission being denied.¹ No additional substantive arguments are raised.

C. Findings and Conclusions

5. Rule 1204(b) of the Commission's Rules of Practice and Procedure 4 CCR 723-1, specifies that "[a]ll filings must be received at the Commission's office during normal business hours, 8:00 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. Any document received for filing after normal business hours shall be deemed filed as of 8:00 a.m. Mountain Time, the following business day." The Application was received January 3, 2014, after the time period for filing RRR expired at 5:00 p.m., January 2, 2014.

6. Section 40-6-114(1), C.R.S., states:

After a decision has been made by the commission...any party thereto may within twenty days thereafter, or within such additional time as the commission may authorize upon request made within such period, make application for rehearing, reargument, or reconsideration of the same or of any matter determined therein.

It is well settled that if the language of a statute is plain and its meaning is clear, as is the case here, it must be applied as written. *See In Interest of A.R.W.*, 903 P.2d 10, 14 (Colo. App. 1994). Further, the language in the statute that indicates that a party must request an extension of time

¹ A Custom Coach recently filed seven petitions for waiver before the Commission, one of which was granted, in part (*see*, Proceeding No. 13V-1133EC), and six of which were denied (*see*, Proceeding Nos. 13V-1130EC, 13V-1132EC, 13V-1134EC, 13V-1135EC, 13V-1136EC, and 13V-1137EC).

if he or she wishes to file an Application for RRR outside of the 20-day period also indicates that this time period is mandatory.

7. The Commission has previously rejected late-filed Applications for RRR.² In Decision No. C04-0973, in response to an argument that *pro se* parties should be treated with leniency, the Commission noted that: “[w]hile the Commission may occasionally waive its rules, it may not waive statutory requirements. In this instance, there are no exceptions to the 20-day requirement, and the Commission may not create one where none exists.” In this case too, despite the harsh result, we cannot waive the RRR deadline because it is contained in a statute as opposed to a Commission rule.³

8. The Commission also repeatedly stated that *pro se* parties are bound by the same procedural rules as attorneys. *See Karr v. Williams*, 50 P.3d 910, 913-914 (Colo. 2002); *Negron v. Golder*, 2004 WL 2744605 (Colo. App. 2004). While Mr. John Hafer filed the Application *pro se*, he is still bound to the deadlines set forth in Commission rules. If he chooses to mail or otherwise provide the Application close to the deadline, he assumes the risk that the Application may not be received by the Commission on time.

9. Now, being fully advised in the matter and consistent with the discussion above, we deny the Application as untimely.

² See, Decision No. C04-0933, issued in Proceeding No. 04G-067EC on August 16, 2004, and Decision No. C04-0973, issued in Proceeding No. 04A-120CP-Extension on August 17, 2004.

³ Similarly, courts have held that a party that fails to file an appeal timely forfeits its appellate rights. *People v. Boespflug*, 107 P.3d 1118, 1120 (Colo. App. 2004) (Defendant forfeited a right to appellate review of his sentence because he failed to file a notice of appeal within the time period required by statute. Defendant’s failure to perfect an appeal deprived the Court of Appeals of jurisdiction over the claim); *see also Country View Care Center, Inc. v. Colo. Dep’t of Soc. Servs.*, 703 P.2d 1334, 1335 (Colo. App. 1985) (mandatory time limits for commencing administrative appeals are generally treated as jurisdictional).

II. ORDER

A. The Commission Orders That:

1. The request for rehearing, reargument, or reconsideration of Decision No. C13-1534 filed on January 3, 2014, by John Hafer, doing business as A Custom Coach is denied, consistent with the discussion above.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 15, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners