

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14D-0080TO

IN THE MATTER OF THE PETITION OF H&K TOWING FOR A DECLARATORY ORDER
UNDER RULE 1304(I)(II).

**DECISION DECLINING TO ACCEPT
PETITION FOR A DECLARATORY ORDER**

Mailed Date: February 7, 2014

Adopted Date: February 5, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a petition for a declaratory order filed on January 22, 2014 by Mr. Harvey Mabis and Mr. Henry Harness on behalf of H&K Towing. Petitioners seek a declaratory order under Rule 1304(i)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1¹ to “investigate, charge and prosecute” a criminal complaint against unnamed Commission employees. Petitioners also request the Commission reverse and rescind a Civil Penalty Assessment Notice (CPAN) issued against H&K Towing in Proceeding No. 13G-1332TO.

2. In Proceeding No. 13G-1332TO, Staff of the Public Utilities Commission (Staff) issued a CPAN against H&K Towing for a violation of Rule 6511(i)(III) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.² The total civil penalty amount was \$302.50.

¹ Rule 1304(i)(II) states: “[t]he Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty affecting a petitioner with regard to any tariff, statutory provision, or Commission rule, regulation, or order.

² Rule 6511(i)(III) states “[s]ale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.”

H&K Towing also was given an opportunity to pay one half of the total amount (\$151.25) within ten calendar days to resolve the matter or contest the complaint and request a hearing. The CPAN states “[b]y making the prescribed payments, you are deemed to have acknowledged liability.” H&K Towing paid \$151.25 two days after the CPAN was issued. During the January 2, 2014 weekly meeting, the Commission acknowledged receipt of the penalty payment and closed Proceeding No. 13G-1332TO by minute entry.³

3. Petitioners allege that, in the course of investigating the CPAN in Proceeding No. 13G-1332TO, several Staff members represented themselves as criminal investigators and peace officers even though they do not have the peace officer status. Petitioners allege this conduct amounts to impersonating a peace officer, conspiracy, official misconduct, and other criminal offenses. Petitioners also claim H&K Towing did not violate Rule 6511(i)(III) and only paid the CPAN because of threat by Commission employees.

4. We exercise our discretion under Rules 1304(i)(II)-(III) and decline to accept this petition for declaratory order. The Commission has no authority to charge or prosecute criminal allegations. Further, a petition for declaratory order is not a proper venue to challenge a CPAN. H&K Towing had an opportunity to challenge the CPAN by requesting a hearing in Proceeding No. 13G-1332TO or simply not paying one half of the CPAN. H&K Towing chose to pay the discounted penalty and to acknowledge liability, and the proceeding was closed. Based upon the admission of liability, we decline to reopen the matter. In addition, no controversy over H&K Towing’s CPAN exists, and thus issuance of a declaratory order will not terminate a controversy or remove an uncertainty affecting petitioners.

³ We take administrative notice of the filings in Proceeding No. 13G-1332TO. Rule 1501(c).

II. ORDER

A. The Commission Orders That:

1. The Petition for declaratory order filed on January 22, 2014 by Mr. Harvey Mabis and Mr. Henry Harness on behalf of H&K Towing is not accepted, and this proceeding is closed.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING February 5, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners