

Decision No. C14-0326

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 DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: March 27, 2014

Adopted Date: March 12, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) to Decision No. C14-0147 filed on February 26, 2014 by Mr. Harvey Mabis and Mr. Henry Harness on behalf of H&K Towing (Petitioners). We deny the RRR.

2. On January 22, 2014, Petitioners filed a petition for declaratory order pursuant to Rule 1304(i)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 to “investigate, charge and prosecute” a criminal complaint against unnamed Commission employees. Petitioners claimed that, in the course of investigating a Civil Penalty Assessment Notice (CPAN) against H&K Towing in Proceeding No. 13G-1332TO, several Commission Staff members represented themselves as criminal investigators and peace officers even though they do not have the peace officer status. Petitioners allege that this conduct amounts to impersonating a peace officer, conspiracy, official misconduct, and other criminal offenses. Petitioners also urged a reversal of the fine imposed in Proceeding No. 13G-1332TO.

3. The Commission declined to accept the petition and closed this proceeding. The Commission noted its lack of authority to charge or prosecute criminal offenses. In addition, the Commission found a petition for declaratory order is not a proper venue to challenge a CPAN. The Commission took administrative notice of the filings in Proceeding No. 13G-1332TO, where H&K Towing paid one half of the total amount of charged penalty to resolve the CPAN without a hearing. The CPAN stated “[b]y making the prescribed payments, you are deemed to have acknowledged liability.”¹ The Commission concluded that the issuance of a declaratory order will not terminate a controversy or remove an uncertainty affecting petitioners.²

4. On RRR, petitioners reiterate their prior arguments that Commission employees committed criminal offenses prohibited by Title 18 and that the tow at issue in Proceeding No. 13G-1332TO was lawful.³ However, petitioners *do not* contest: (1) the facts on which the Commission based its conclusion that H&K Towing admitted liability in Proceeding No. 13G-1332TO; (2) that a petition for declaratory order is not a proper procedural vehicle for attempting to reopen a closed matter; or (3) that the Commission does not have the authority to charge or prosecute criminal offenses under Title 18.

5. We deny the RRR because we find no grounds under Colorado Revised Statutes or Commission Rules to open the requested petition for declaratory order. Title 40 and the public utilities law do not grant the Commission authority over alleged criminal offenses under Title 18. Thus, issuance of a declaratory order will not terminate a controversy or remove an uncertainty

¹ The Commission then closed Proceeding No. 13G-1332TO by minute entry on January 2, 2014.

² Decision No. C14-0147 issued February 7, 2014, ¶ 4.

³ Mr. Harvey Mabis submitted the RRR. Rule 1201(b)(II), 4 *Code of Colorado Regulations* 723-1 requires a petitioner or an applicant to demonstrate its non-attorney representative may represent its interests in the initial petition or application. H&K Towing did not demonstrate that Mr. Harvey Mabis may represent its interests in the initial petition for declaratory order, but attempted to do so in subsequent filings.

affecting petitioners. In addition, H&K Towing admitted liability in Proceeding No. 13G-1332TO and received a reduced penalty in exchange. Thus, we find no extraordinary circumstances justifying reopening of that proceeding pursuant to § 40-6-112(1), C.R.S.⁴ We reiterate that the CPAN proceeding is administratively final and closed, because the time to file RRR petition for judicial review has passed.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration to Decision No. C14-0147 filed on February 26, 2014 by Mr. Harvey Mabis and Mr. Henry Harness on behalf of H&K Towing is denied, and this proceeding is closed.
2. This Decision is effective upon its Mailed Date.

⁴ Section 40-6-112(1), C.R.S., permits the Commission to rescind, alter, or amend its prior decisions. But, that authority should only be used in extraordinary circumstances. Decision No. C05-1472, ¶ 2, issued December 5, 2005 in Proceeding No. 05A-161E.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 12, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners