

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0050-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S)
AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL
RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008
OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS
PURSUANT TO COMPLAINT**

Mailed Date: January 31, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 1) were instituted by “Order of Summary Suspension and Complaint and Notice of Hearing,” (Complaint), issued by the Commission Director and served upon the Respondents on January 10, 2014 (Hearing Exhibit 2) by United States mail, at the most recent addresses on file with the Commission for the Respondents. The Complaint provided notice of the date, time, and location of the hearing regarding the Complaint. At the designated date, time, and location, January 28, 2014 at 12:00 p.m., the undersigned Administrative Law Judge called the cases for hearing in a Commission Hearing Room, at 1560 Broadway, Suite 250, Denver, Colorado.

2. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). No Respondent appeared. No Respondent has shown cause for its failure to appear.

3. Hearing Exhibits 1 and 2 was identified, offered, and admitted into evidence during the hearing. The ALJ notes that Hearing Exhibit 2 was admitted by administrative notice, and was pre-filed in this proceeding. Staff did not offer a marked exhibit, but instead offered the electronic, pre-filed exhibit. The electronic document is not marked or identified as “Hearing Exhibit 2” in the filing. However, it has been admitted and will be referred to as Hearing Exhibit 2 in this Decision. All references to Hearing Exhibit 2 are to the document titled “Revocation of Authorities,” which was electronically filed in this proceeding on January 13, 2014.

4. Pursuant to § 40-10.1-107, C.R.S., and Rule 6007 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, every motor carrier must keep and maintain evidence of financial responsibility in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest.

5. In addition, § 42-20-202(2)(a), C.R.S., requires that motor carriers with a Commission permit to transport hazardous materials must maintain and file proof of liability insurance. At any time said insurance lapses, the Commission “shall” revoke the permit. *Id.*

6. Section 40-10.1-112, C.R.S., and the Commission’s rules implementing that section, provide that, after hearing upon notice to the holder of any certificate or permit, and upon proof of violation, a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission that the holder of that authority or permit has violated any applicable statute, rule, regulation, or Commission decision. Rule 6008, 4 CCR 723-6; *see* Hearing Exhibit 2.

7. Complaints and Notices of Suspension and Hearing in compliance with Rule 6008(a)(II), 4 CCR 723-6, were served upon the Respondents listed on Hearing Exhibit 1, attached to this Recommended Decision as Appendix A, at the most recent addresses on file with the Commission. Hearing Exhibit 2. Service was proper.

8. At hearing, Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including hazardous materials transportation carriers' liability insurance, in such form and in such manner as required for the Respondents as stated in Appendix A. §§ 40-10.1-107, C.R.S.; 42-20-202(2)(a), C.R.S.; Rule 6007, 4 CCR 723-6.

9. The Commission's only means of performing the important health and safety function of guaranteeing that persons who hold an authority or permit from the Commission have current, effective insurance, including hazardous materials transportation carriers' liability insurance, is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for providing that documentation to the Commission. §§ 40-10.1-107 and 42-20-202(2)(a), C.R.S.; Rules 6007(f), (g), and (i), 4 CCR 723-6.

10. Because the Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission, including hazardous materials transportation carriers' liability insurance, and none have shown good cause for such failure, the authorities and permits listed in Appendix A should be revoked.

11. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. ORDER

A. The Commission Orders That:

1. The Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who files the required Certificate of Insurance with the Commission before the effective date of this Recommended Decision.

3. Proceeding No. 14C-0050-INS is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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

MELODY MIRBABA

Administrative Law Judge