

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

PROCEEDING NO. 13G-1190TO

Civil Penalty Assessment Notice No. 107879

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

NITRO TOWING AND RECOVERY INC.,

Respondent.

PROCEEDING NO. 13G-1166TO

Civil Penalty Assessment Notice No. 106595

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

NITRO TOWING AND RECOVERY INC.,

Respondent.

PROCEEDING NO. 13G-1165TO

Civil Penalty Assessment Notice No. 107548

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

NITRO TOWING AND RECOVERY INC.,

Respondent.

PROCEEDING NO. 14G-0220TO

Civil Penalty Assessment Notice No. 108589

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

NITRO TOWING AND RECOVERY INC.,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (“Staff”) and Respondent Nitro Towing and Recovery, Inc. (“Respondent”) (collectively, the “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in the above-referenced consolidated Dockets as a complete and final resolution of all issues that were or could have been raised in this consolidated proceeding. John Peden, shareholder and Treasurer, is authorized to enter into this Agreement on behalf of Respondent.

Background

In Proceeding No. 13G-1190TO, on October 29, 2013, the Commission issued Respondent Civil Penalty Assessment Notice No. 107879 (“CPAN 107879”) seeking civil penalties of \$302.50 (or \$151.25 if paid within 10 days). CPAN 107879 alleged

one violation of 4 *Code of Colorado Regulations* (“CCR”) § 723-6-6512(b)(II). CPAN 107879 was served by certified mail on November 1, 2013.

In Proceeding No. 13G-1166TO, on June 10, 2013, the Commission issued Respondent Civil Penalty Assessment Notice No. 106595 (“CPAN 106595”) seeking civil penalties of \$1,815.00 (or \$907.50 if paid within 10 days). CPAN 106595 alleged one violation of 4 CCR § 723-6-6511(d), and four violations of 4 CCR § 723-6-6005(c)(I)(A). CPAN 106595 was served by certified mail on October 25, 2013.

In Proceeding No. 13G-1165TO, on June 10, 2013, the Commission issued Respondent Civil Penalty Assessment Notice No. 107548 (“CPAN 107548”) seeking civil penalties of \$4,235.00 (or \$2,117.50 if paid within 10 days). CPAN 107548 alleged one violation of 4 CCR § 723-6-6508(b)(I), and 10 violations of 4 CCR § 723-6-6005(c)(I)(C). CPAN 107548 was served by certified mail on October 25, 2013.

In Proceeding No. 14G-0220TO, on March 11, 2014, the Commission issued Respondent Civil Penalty Assessment Notice No. 108589 (“CPAN 108589”) seeking civil penalties of \$9,680.00 (or \$4,840.00 if paid within 10 days). CPAN 108589 alleged eight violations of section 40-10.1-401(1)(a). CPAN 108589 was served by certified mail on October 25, 2013.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to all violations in each of the CPANs.
2. Respondent agrees to comply with all Colorado and federal statutes and rules concerning towing.

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 Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring the payment by Respondent of a civil penalty in the amount of \$7,500.00 under the terms of this Agreement. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.
- b. Respondent admits the maximum level of culpability for all violations in the CPAN.
- c. Respondent has refunded the total cost of all the tows in question to each vehicle owner.
- d. This settlement will resolve all four of the pending proceedings which have been consolidated.
- e. Respondent had previously discussed settlement in one or more of the cases with counsel for Staff, prior to the consolidation of all the cases.
- f. The total amount of the four CPANs would cause Respondent financial hardship due to Respondent's inability to pay the entire CPAN amounts.
- g. Assessing Respondent a civil penalty of \$7,500 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

4. In consideration of Respondent's admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$16,032.50 to \$7,500 is appropriate and in the public interest. This \$7,500 settlement

amount consists of a \$6,818.18 penalty, plus a ten-percent surcharge of \$681.82 pursuant to section 24-34-108, C.R.S.

5. Respondent shall pay the total amount of \$7,500 in three installments. The first installment of \$2,500 is due within 15 days of the Commission's final order approving this settlement agreement, and each successive installment payment of \$2,500 is due 30 days following the prior installment's due date.

6. If Respondent fails to make any of the installment payments when due, Respondent shall be liable for the full civil penalty amount of \$16,032.50 less any payments made, which amount will be due immediately.

7. All matters that were raised or could have been raised in these consolidated Dockets 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.

8. Respondent's 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 to file any other form of appeal.

9. 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 days of entry of such

Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

Executed this 29th day of April, 2014.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

By: 
Cliff Hinson

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