

Decision No. R14-0476

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1190TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

PROCEEDING NO. 13G-1166TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

PROCEEDING NO. 13G-1165TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

PROCEEDING NO. 14G-0220TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

NITRO TOWING AND RECOVERY INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ACCEPTING SETTLEMENT AND ASSESSING AND
PARTIALLY SUSPENDING CIVIL PENALTY**

Mailed Date: May 13, 2014

I. STATEMENT AND FINDINGS

1. This is a civil penalty assessment proceeding brought by Staff of the Public Utilities Commission (Staff) against the Respondent, Nitro Towing and Recovery, Inc. (Nitro or Respondent).

2. On October 29, 2013, Staff issued Civil Penalty Assessment (CPAN) No. 107879 against Nitro. The CPAN was assigned to Proceeding No. 13G-1190TO. Nitro was charged with one violation of Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6512(b)(II) of the Commission's Rules Regulating Transportation by Motor Vehicle (failure to release a motor vehicle to the owner during normal business hours). A civil penalty of \$275.00 was sought for this violation. Pursuant to § 24-34-108, C.R.S., an additional 10 percent surcharge was added to the violation. The total penalty sought is \$302.50.

3. On December 3, 2013, counsel for Staff entered his appearance in Proceeding No. 13G-1190TO.

4. The Commission assigned this proceeding to an Administrative Law Judge (ALJ) on November 26, 2013 by Minute Order.

5. On June 10, 2013, Staff issued CPAN No. 106595 against Nitro. The CPAN was assigned Proceeding No. 13G-1166TO. Nitro was charged with one violation of 4 CCR 723-6-6511(d)(II) (rates and charges for nonconsensual tows) and four violations of 4 CCR 723-6-6005(c)(I)(A) (failure to provide records immediately upon request). A civil penalty of \$275.00, plus a 10 percent surcharge, was sought for each violation. The total penalty sought is \$1,815.00.

6. On November 15, 2013, counsel for Staff entered his appearance in Proceeding No. 13G-1166TO.

7. The Commission assigned this proceeding to an ALJ on November 26, 2013 by Minute Order.

8. On October 11, 2013, Staff issued CPAN No. 107548 against Nitro. The CPAN was assigned to Proceeding No. 13G-1165TO. Nitro was charged with one violation of 4 CCR 723-6-6508(b)(I) (authorization) and ten violations of 4 CCR 723-6005(c)(I)(C) (failure to provide records upon request). A civil penalty of \$1,100.00 was sought for the authorization violation and \$275.00 was sought for each of the other ten violations. A 10 percent surcharge was added to each violation. The total penalty is \$4,235.00.

9. On November 15, 2013, counsel for Staff entered his appearance in Proceeding No. 13G-1165TO.

10. The Commission assigned this proceeding to an ALJ on November 26, 2013 by Minute Order.

11. On February 25, 2014, Staff issued CPAN No. 108589 against Nitro. The CPAN was assigned to Proceeding No. 14G-0220TO. Nitro was charged with eight violations of § 40-10.1(1)(a), C.R.S. (operating as a towing carrier without a valid permit issued by the Commission). A civil penalty of \$1,100.00 plus a 10 percent surcharge was sought for each violation. The total penalty sought is \$9,680.00.

12. On March 26, 2014, counsel for Staff entered his appearance in Proceeding No. 14G-0220TO.

13. The Commission assigned this proceeding to an ALJ on March 26, 2013 by Minute Order.

14. By Decision No. R14-0017-I, issued January 7, 2014, Proceeding Nos. 13G-1190TO, 13G-1166TO, and 13G-1165TO were consolidated. Proceeding No. 13G-1190TO was designated as the primary proceeding.

15. By Decision No. R14-0339-I, issued March 28, 2014, Proceeding No. 14G-0220 was also consolidated with this proceeding. Proceeding No. 13G-1190TO remained the primary proceeding.

16. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. STIPULATION AND SETTLEMENT

17. On April 29, 2014, Respondent and counsel for Staff filed a Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time (Joint Motion).

A Stipulation and Settlement Agreement (Stipulation) was also filed on that date. In the Joint Motion, the parties reached a comprehensive settlement in the spirit of compromise. The parties contend that approving the Stipulation and granting the Joint Motion will mitigate the time and expense necessary to hearing this matter.

18. The joint motion being submitted by all parties to the proceeding, it is appropriate that response time be waived.

19. The total penalty sought for all CPANs at issue in this proceeding is \$16,032.50. The parties have agreed to reduce the amount of the penalty to \$7,500.

20. Staff considered the following mitigating factors for reducing the CPAN amount:

- 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 comprehensively resolve all four of the pending proceedings which have been consolidated.
- e. Respondent 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 ability to pay the entire CPAN amounts.
- g. Assessing respondent a civil penalty of \$7,500 under the stipulated terms is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules in a going-forward basis.

Stipulation at 4.

21. The parties request assessment of a reduced civil penalty in the amount of \$7,500, including the applicable 10 percent surcharge. Such amount would be payable in three monthly installments of \$2,500 each. The first payment would be due within 15 days of a final Commission decision accepting the Stipulation. Each successive installment payment of \$2,500

will be due 30 days following the prior installment's due date. As more specifically set forth in the Stipulation, the provisions address failure to make timely monthly payments.

22. Approval of the settlement will not have a precedential affect upon other Commission matters. *See Colorado Ute Elec. Ass’n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

23. To be acceptable, the Stipulation must be clear, understandable, and administratively enforceable. The Stipulation meets those requirements. The parties' agreement provides sufficient support to demonstrate that the Stipulation should be accepted.

24. The ALJ finds good cause to approve the Stipulation and grant the Joint Motion. Nitro acknowledges wrongdoing and admits the maximum level of culpability for all violations in the CPAN. The cost of all tows at issue has been refunded. It is in the public interest to conserve valuable resources by adopting the Stipulation. The ALJ believes that the \$7,500 civil penalty will motivate Respondent to remain in compliance with Commission rules and regulations in the future.

25. As set forth more fully in the Stipulation, failure to comply with the terms of the Stipulation will result in lifting the partial suspension of the assessment.

26. Pursuant to § 40-6-109., C.R.S., the Administrative Law Judge hereby issues the following Order.

III. ORDER

A. The Commission Orders That:

1. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time filed on April 29, 2014 by Nitro Towing and Recovery, Inc. (Nitro) and Staff of the Public Utilities Commission is waived, and the request is granted.

2. The Stipulation and Settlement Agreement (Stipulation) filed April 29, 2014, a copy of which is attached hereto as Appendix A, is approved.

3. To the extent not inconsistent with this Decision, the Stipulation is incorporated by reference and made an order of the Commission as if fully set forth herein. All parties shall comply with all terms of the Stipulation, except as modified or superseded by the remainder of this Decision.

4. Nitro is assessed a penalty of \$16,032.50 for all violations cited in Civil Penalty Assessment Notices at issue in this proceeding. However, \$8,532.50 of the civil penalty assessed is suspended on the condition that: payment in the amount of \$2,500 is received by the Commission within 15 days after the Commission's approval of the Stipulation becomes final plus an additional \$2,500 every 30 days thereafter until a total of \$7,500 (\$6,818.18 penalty, plus a 10 percent surcharge of \$681.82 pursuant to § 24-34-108, C.R.S.) has been paid (*i.e.*, a total of three payments with the second installment due no later than 30 days after the first installment payment (45 days after the Commission's final order), and the third installment shall be due no later than 30 days after the second installment payment (75 days after the Commission's final order)). Upon satisfaction of the conditional suspension, such amount shall be permanently suspended.

5. If Nitro violates any part of the condition for the suspension of a portion of the civil penalty, the suspension shall immediately expire and any remaining balance of the total assessed penalty shall be due and immediately payable to the Commission, less any amounts already paid pursuant to the terms of the Stipulation and Settlement Agreement.

6. 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.

7. 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.

8. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director