

Decision No. R14-0579-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0433CP

COLORADO PUBLIC UTILITIES COMMISSION

COMPLAINANT,

V.

MKBS LLC DOING BUSINESS AS METRO TAXI &/OR TAXIS FIESTA,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
SETTING HEARING ON JOINT MOTION
TO APPROVE STIPULATION
AND SETTLEMENT AGREEMENT**

Mailed Date: May 30, 2014

I. STATEMENT

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondent, MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta (Metro Taxi).

2. On May 13, 2014, Staff's Notice of Settlement in Principle and Unopposed Motion to Stay was filed. Based upon the parties reaching a settlement in principle, Staff requests that the proceeding be stayed, including any setting of a hearing date or related prehearing deadlines.

3. On May 22, 2014, the Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time was filed by Staff and Metro Taxi

(collectively, the Parties). The Parties request that the Commission approve the Stipulation and Settlement Agreement (Settlement Agreement) filed on the same date.

4. Good cause shown for the unopposed request, the request to stay the proceeding will be granted. A hearing on the merits will not be scheduled on the civil penalty assessment notice pending resolution of the pending motion.

5. The undersigned Administrative Law Judge (ALJ) will schedule a hearing to consider the Motion and Settlement Agreement. The Parties should come to the hearing prepared to provide testimony in support of the requested approval of the Settlement Agreement.

6. In addition to the general issues in ¶ 5 *supra*, the ALJ informs the Parties of the following questions regarding the Settlement Agreement:

- a) While acknowledging that approval of any settlement has no precedential affect upon other Commission matters, are the parties aware of circumstances in other proceedings where the Commission approved suspension of the entire civil penalty imposed in such proceeding?
- b) The Settlement Agreement addresses a safety and compliance audit in 2011. With regard thereto, what “frequency of violations” was found by Staff in such audit? Did Staff issue a CPAN as a result of such audit? If so, was a civil penalty imposed with regard thereto? What violations were found by the Commission? If there were violations of drivers’ hours of service exceeding 80 hours in any rolling 8 consecutive day period found, how many violations were found?
- c) The Settlement Agreement states: “Respondent will be combining the Automated Vehicle Identification (“AVI”) dispatch records with Respondent's own records onto one sheet, which will eliminate any miscalculation of hours.” Regarding this provision, what geographic locations are included in AVI dispatch records? How are dispatches recorded? What is a dispatch? How are AVI dispatch records accessed? What is the “one sheet” referred to?
- d) How does a driver being inactive for more than 30 days affect historical hours of service violations?
- e) The parties request suspension of the entire civil penalty proposed to be assessed under the Settlement Agreement. Paragraph 4 of the Settlement Agreement establishes the conditions of the suspension. In part, it describes “violations of the same nature.” The agreement appears to define the

same nature as violations greater than 6 percent of the audited drivers. With regard to this provision:

- i. Provide more detail as to what 6 percent refers to. Does 6 percent refer to the number of drivers audited, number of days audited by any number of audited drivers, hours worked in violation of hours audited, or otherwise?
 - ii. Is the intent of the phrase “violations of the same nature” that the civil penalty remain suspended if Staff finds the same level of compliance within the next 12 months that was found in the audit that led to issuance of the CPAN?
 - iii. Do the violations alleged in the CPAN equate to “six percent of the audited drivers’ hours of service exceed[ing] 80 hours in any 8 day period” found in the safety and compliance audit that led to this proceeding? If not, what percent was found according to Staff?
 - iv. Does Staff consider a 6 percent margin of error to be an acceptable level of compliance with Commission rules?
- a) If “violations of the same nature” are found “within that twelve-month period” will this trigger only the violation of this settlement agreement or could the violations result in issuance of an additional CPAN?
 - b) When does the 12-month timeframe discussed in the settlement agreement begin and end?
 - c) The CPAN alleged 129 violations of 4 *Code of Colorado Regulations* (CCR) 723-6-6103(d)(II)(D). How do the violations alleged relate to the level of compliance found by Staff during the safety and compliance audit that led to this proceeding?

7. The stipulating Parties are encouraged to file a written response to the foregoing questions to supplement the Settlement Agreement. If concerns are adequately addressed, the need to conduct a hearing may be reconsidered.

8. Having expressed questions raised by the Stipulation, the Parties remain free to present the Stipulation as they choose. The ALJ also notes and understands that certain portions of the Stipulation may purely reflect a compromise for settlement purposes.

9. The Parties should note that, at the hearing, the ALJ may have additional questions or areas of inquiry.

10. The Motion being filed by all Parties, it appears that no party opposes the Commission's approving the Settlement Agreement as filed. Therefore, it is appropriate that response time to the Motion be waived.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Stay filed May 13, 2014, is granted.
2. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time is waived.
3. A hearing on the Joint Motion to Approve Stipulation and Settlement Agreement is scheduled at the following date, time, and place:

DATE: June 25, 2014

TIME: 1:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

4. This Decision is effective immediately.

(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