

Decision No. R14-0772-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0373CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLORADO CAB COMPANY LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO AMEND CIVIL
PENALTY ASSESSMENT NOTICE; GRANTING
JOINT MOTION FOR SECOND EXTENSION
OF TIME TO FILE CASE MANAGEMENT ORDER;
AND SCHEDULING PREHEARING CONFERENCE**

Mailed Date: July 8, 2014

I. STATEMENT

1. On April 24, 2014, the Public Utilities Commission's Staff (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 109241 against Colorado Cab Company LLC (Colorado Cab or Respondent). The CPAN alleged over 700 violations against Colorado Cab.

2. On May 5, 2014, Respondent filed its Entry of Appearance Request for a Hearing and Request to set a Prehearing Conference.

3. On May 21, 2014, the Commission referred this matter to an administrative law judge (ALJ) for disposition.

4. On May 21, 2014, Staff filed its Entry of Appearance, Joinder in Request for a Prehearing Conference and Notice Pursuant to Rule 1007(A).

5. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision in context.

6. On June 17, 2014, Staff filed its Motion to Amend Civil Penalty Assessment Notice No. 109241 (Motion). In its Motion, Staff states that it became aware of errata and wishes to amend CPAN No. 109241.

7. Pursuant to § 40-7-116(2), C.R.S., Staff requests to amended CPAN No. 109241. The amendments would change the dates of 15 alleged violations and dismiss 31 alleged violations. The total number of alleged violations would be reduced to 688.

8. Staff argues that the Respondent would not be prejudiced by these amendments since the proceeding is at its earliest stages, prior to disclosures of evidence, written discovery, depositions, or any dispositive motions.

9. On July 1, 2014, Colorado Cab filed its Response to Trial Staff's Motion to Amend its CPAN and Motion to Dismiss Certain Violations. Colorado Cab does not object to the portion of the Motion concerning the dismissal of 31 alleged violations. Colorado Cab does object to the portion of the Motion amending 15 alleged violations.

10. Colorado Cab argues that the changing of the date of the alleged violations would create a new allegation which would require a "new set of facts" and "is no mere technical defect that can be fixed through amendment." *Colorado Cab Response p. 2.*

11. In support of its proposition that the Motion requests the addition of new alleged violations rather than amending the alleged violations contained in CPAN No. 109241, Colorado Cab cites Commission Decision No. R13-1290, Proceeding No. 13G-0667EC issued October 15,

2013. Colorado Cab argues that § 40-7-116(2), C.R.S., only provides for typographical errors to be amended, not the addition of new allegations.

12. Colorado Cab finally argues that the granting of the Motion would be prejudicial due to the additional work that would be generated.

13. On July 3, 2014, the Parties filed their Joint Motion for Second Extension of Time to File Case Management Order (Joint Motion). In the Joint Motion the Parties state that negotiations have continued to narrow the disputed issues and further meetings are planned. The Joint Motion asks that the deadline to file a Case Management Order be extended until July 31, 2014 to allow for further discussions.

II. DISCUSSION

A. Motion to Amend

14. Under : § 40-7-116(2), C.R.S.:

A civil penalty assessment notice shall not be considered defective so as to provide cause for dismissal solely because of a defect in the content of such civil penalty assessment notice. Any defect in the content of a civil penalty assessment notice . . . may be cured by a motion to amend the same filed with the commission prior to hearing on the merits. No such amendment shall be permitted if substantial rights of the person cited are prejudiced.

15. The Commission has allowed amendments to CPANs prior to hearing on many occasions,¹ including amending the alleged date of a violation. None of the allowed amendments have been deemed an additional or new violation. All of these amendments were allowed before an evidentiary hearing.

¹ In Decision No. R12-1355-I, allowing the amendment of a different named Respondent; in Decision No. R13-0105-I, allowing the amendment of a different subsection of a rule; in Decision No. R12-0841-I, allowing the amendment of the date of the alleged violation; in Decision No. R12-0242-I, allowing the amendment of a different rule.

16. The granting of any Motion to amend a CPAN is by its very nature going to change the necessary facts that need to be proven. The proposed amendments to 15 of the alleged violations are not new alleged violations.

17. Decision No. R13-1290² is distinguished from the instant proceeding by the fact that no motion was ever filed to amend the CPAN, before, during, or after the hearing in that proceeding. The clerical error contained within the CPAN³ went unnoticed during the hearing, it was not until the ALJ issued his recommended decision that the issue was addressed. The ALJ dismissed the charges with the incorrect violation date since the hearing had been held and § 40-7-116(2), C.R.S., was no longer applicable.

18. This Motion is filed well in advance of the evidentiary hearing, which as of the date of this Decision, has not yet been set. The undersigned finds that there is no prejudice to the Respondent by the granting of the Motion to amend the CPAN and will promote efficiency in the resolution of this proceeding.⁴

19. Good cause has been found to grant the Motion.

B. Joint Motion for Second Extension

20. The undersigned ALJ is encouraged that discussions have occurred that may narrow the issues in the evidentiary hearing, although the Parties should remember that the filing of a proposed Case Management Order does not in any way prohibit further negotiations.

² It is important to note that the Commission is not bound by the doctrine of *stare decisis*, although its prior decisions are entitled to great weight in subsequent proceedings. See, e.g., *B&M Serv., Inc. v. Pub. Utils. Comm'n*, 429 293, 295 (Colo. 1967).

³ The CPAN listed the violation date for two violations as having occurred in the year, 2103.

⁴ It should also be noted that if the Motion to Amend the CPAN was denied, Staff could simply file an additional CPAN with the 15 amended charges, create a new proceeding, and then move to consolidate the two proceedings. Any additional work generated by the granting of this Motion would be the same amount of work generated by the filing of a new proceeding.

21. Good cause is found to grant the Joint Motion to extend the deadline to file a Case Management Order until July 31, 2014.

22. To ensure that this proceeding moves forward, a prehearing conference shall be held on July 31, 2014.

III. ORDER

A. The Commission Orders That:

1. The Motion to Amend Civil Penalty Assessment Notice No. 109241, filed by the Public Utilities Commission's Staff on June 17, 2014 shall be granted.

2. Exhibit 1, filed with the Motion to Amend Civil Penalty Assessment No. 109241, filed by Public Utilities Commission's Staff on June 17, 2014, shall replace Civil Penalty Assessment No. 109241 filed on April 4, 2014.

3. The Joint Motion for Second Extension of Time to File Case Management Order filed by the Parties on July 3, 2014 is granted.

4. The deadline to file a proposed Case Management Order is extended until July 31, 2014.

5. A prehearing conference is scheduled in this matter for

DATE: July 31, 2014

TIME: 9:00 a.m.

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

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director