

Decision No. R14-1115

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0851TR

IN RE: THE MATTER OF MOTOR CARRIERS LISTED ON APPENDIX A TO THIS
DECISION, RESPONDENTS.

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

Mailed Date: September 11, 2014

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I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 1) were instituted by a separate “Complaint[s] and Notice of Hearing” (Complaints or Complaint) issued by the Commission Director and served upon each of the Respondents¹ listed in Appendix A on

¹ Reference herein to the Respondents is a reference to each of the Respondents listed in Appendix A to this Decision.

August 12, 2014 (Hearing Exhibit 2) by United States mail, at the most recent addresses on file with the Public Utilities Commission (Commission) for Respondents.

2. The Complaints provide notice of the nature of the allegations against the Respondents. Hearing Exhibit 2. In particular, the Complaints allege that the Commission's records indicate that each of the Respondents has failed to pay an annual fee as required by § 40-10.1-111, C.R.S., and Rule 6009 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The Complaints explain that each Respondent is required to pay an annual fee to the Commission of \$5 for each of the vehicles it owns, controls, operates or manages, and that the Commission will hold a hearing regarding whether the Respondents' permits should be revoked for their failure to pay the annual fee. The Complaints notify the Respondents of the date, time, and location of said hearing.

3. On the designated date, time, and location (September 9, 2014 at 12:00 p.m.), the undersigned Administrative Law Judge (ALJ) called the cases for hearing in a Commission Hearing Room, 1560 Broadway, Suite 250, Denver, Colorado.

4. Commission staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). No Respondent appeared.

5. Hearing Exhibits 1, 2 and 3 were identified, offered, and admitted into evidence during the hearing.

A. The Requirement to Pay an Annual Fee to the Commission.

6. Pursuant to § 40-10.1-111(1)(f), C.R.S., and Rule 6009 4 CCR 723-6, every motor carrier shall pay an annual fee as set by the Commission before the first day of January of each calendar year, for each motor vehicle that the motor carrier owns, operates, controls, or manages within the State of Colorado. The Commission issues a stamp for each vehicle for which the fee has been paid on an annual basis. Rule 6009(e), 4 CCR 723-6.

B. Governing Legal Standards.

7. Section 40-10.1-112, C.R.S., and Rule 6008, 4 CCR 723-6, provide that, after hearing upon notice to the holder of any certificate, authority or permit (collectively, “permit”), and upon proof that the holder has violated any applicable statute, rule, regulation, or Commission decision, the Commission may revoke the holder’s permit. Rule 6008(c), 4 CCR 723-6; *see* § 40-10.1-111(2), C.R.S.

8. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations of the Complaint are true. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

C. Evidence in Support of Complaints

9. The evidence is undisputed.

10. The Complaints were served upon the Respondents listed on Appendix A by United States mail on August 12, 2014, at the most recent addresses on file with the Commission.² Hearing Exhibit 2 and 3. The addresses on file with the Commission were provided by the Respondents.

11. Ms. Condra testified that the Commission's records indicate that the Respondents have failed to pay the annual fee required by § 40-10.1-111(1)(f), C.R.S., and Rule 60094 CCR 723-6 for 2014. Staff requested and recommended that the Respondents' authorities or permits be revoked for this failure, as they have been notified of their non-compliance, have been provided an additional opportunity to come into compliance with the referenced statute and rule, and have continued to fail to comply.

D. Conclusions.

12. The ALJ finds and concludes that the Complaints are in compliance with § 40-10.1-112(1), C.R.S., and Rule 6008(a), 4 CCR 723-6 because the Complaints provide notice of the nature of the allegations and the relief sought against the Respondents, provide notice of the hearing on the Complaints, provide opportunities for Respondents to respond to the allegations, and were served upon the Respondents by United States mail, at the most recent addresses on file with the Commission. Hearing Exhibit 2. The ALJ further finds that service upon each of the Respondents is proper. §§ 40-6-108(3) and 40-10.1-112(5), C.R.S.

² Hearing Exhibit 2 includes a certificate of service indicating that the attached Complaint letters were served upon the Respondents at the address listed on the Complaint letters. The Complaint letter in Hearing Exhibit 2 for Echo Transportation LLC (Echo Transportation) does not include an address at which it was served. Ms. Condra explained that this is an error, and that the Complaint letter was indeed mailed to Echo Transportation at the last known address provided by the company to the Commission. Hearing Exhibit 3 is a copy of the Complaint letter sent to Echo Transportation.

13. The Respondents failed to appear for the properly noticed hearing as ordered by the Commission. No Respondent has shown good cause for that failure.

14. At hearing, Staff established by a preponderance of the evidence that the Commission's records do not reflect that the Respondents paid the annual fee set by the Commission for each motor vehicle that the motor carrier owns, operates, controls, or manages within the State of Colorado. § 40-10.1-111(1)(f), C.R.S.; Rule 6009(a), 4 CCR 723-6 for 2014. Consequently, Staff has met its burden of proof to show that the Respondents referenced in Appendix A violated § 40-10.1-111(1)(f), C.R.S., and Rule 6009(a), 4 CCR 723-6.

15. Because the Respondents listed in Appendix A have violated § 40-10.1-111(1)(f), C.R.S., and Rule 6009(a), 4 CCR 723-6 by failing to pay the required annual fee, and failed to show good cause for such failure, the authorities and permits listed in Appendix A should be revoked. §§ 40-10.1-112(1)(a) and 40-10.1-111(1)(f), C.R.S.; Rule 6009(a), 4 CCR 723-6.

16. 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 the below 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 pays the required annual fee to the Commission before the effective date of this Recommended Decision.

3. Proceeding No. 14C-0851TR 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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge