

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14C-0946TR

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IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES  
AND COMMISSION RULES RELATING TO THE FILING OF ANNUAL REPORTS BY  
MOTOR VEHICLE CARRIERS HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY OR A CONTRACT CARRIER PERMIT TO OPERATE IN THE STATE OF  
COLORADO.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
REVOKING CERTIFICATES AND PERMITS  
AND DISMISSING COMPLAINTS  
AGAINST IDENTIFIED CARRIERS**

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Mailed Date: October 21, 2014

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**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. On September 22, 2014, the Public Utilities Commission (Commission) mailed its “Formal Complaint and Notice of Hearing” (Complaint) to the carriers listed in Appendix A to that Decision. Decision No. C14-1161. The Complaints were issued to determine whether the relevant regulated carriers failed to file an annual report for the calendar year ending

December 31, 2013 in compliance with Rule 6212 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, and whether the Commission should take appropriate action, including a decision assessing a civil penalty and revoking the carrier's authorities pursuant to Rule 6008, 4 CCR 723-6. Decision No. C14-1161. The carriers listed in Appendix A to Decision No. C14-1161 are the Respondents in this proceeding.<sup>1</sup>

2. The same Decision scheduled a hearing in this proceeding for October 20, 2014 at 10:00 a.m., to be held in front of an administrative law judge (ALJ), and ordered trial Staff (Staff) to file two copies of a witness list and all exhibits it intends to introduce at hearing at least 30 days prior to the hearing date. *Id.* All motor carriers listed as Respondents in Attachment A to the Complaint were ordered to file their witness list and copies of their exhibits at least 20 days prior to the hearing date. *Id.* However, the Commission's decision setting these deadlines was not mailed until *after* Staff's deadline had already expired. Based on this, and Staff's "Motion to File Out of Time Staff's Exhibit and Witness Lists for Hearing," on October 1, 2014, the ALJ amended the deadlines set by Decision No. C14-1161. Decision No. R14-1204-I. Staff filed and served its witness list and exhibits on September 30, 2014. Although the Respondents' deadline was amended by Decision No. R14-1204-I to allow more time to file their witness list and exhibits, no Respondent filed a witness list or exhibits.

3. At the date, time and location designated, October 20, 2014 at 10:00 a.m. at the Commission's office, the ALJ convened the hearing on the Complaint. Gary Gramlick testified

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<sup>1</sup> Reference to Respondents is a referenced to all motor carriers identified as Respondents in Appendix A to Decision No. C14-1161.

on behalf of Staff. No Respondent appeared. During the course of the hearing, Hearing Exhibits 1 through 6 were identified, offered, and admitted into evidence.

**A. Relevant Legal Authority.**

4. Section 40-3-110, C.R.S., authorizes the Commission to propound questions to public utilities, and requires that such public utilities must provide a report answering all the questions propounded to it by the Commission. In short, § 40-3-110, C.R.S., authorizes the Commission to require public utilities to file annual reports which answer specific questions set forth by the Commission.

5. The Commission has implemented § 40-3-110, C.R.S., by creating an annual report form for public utilities to complete, and by passing Rule 6212, 4 CCR 723-6. Under Rule 6212(a), all motor carriers regulated by the Commission must file a completed annual report with the Commission for the preceding calendar year by April 30th of the current year.

6. Under § 40-10.1-112, C.R.S., and Rule 6008(c), 4 CCR 723-6, after hearing upon notice to the holder of any certificate or permit, and upon proof of violation, the Commission may revoke a motor carrier's certificate or permit if it has failed to comply with any statute, order, or rule concerning the motor carrier. This process is commonly followed by issuance of a complaint setting forth allegations, the opportunity to respond to the allegations, and notice of a hearing, which is served upon those accused of violating a Commission rule, order or statute.

7. Rule 1205(b) of the Rules of Practice and Procedure, 4 CCR 723-1, permits service of complaints upon those who have registered with the Commission's E-Filing system through the E-Filing system. Indeed, when carriers register with the E-Filing system, they expressly agree to accept service through the E-Filing system. In addition, service may also be accomplished by the United States mail. Rule 1205(a), 4 CCR 723-1.

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.

**B. Evidence in Support of Complaint.**

9. Mr. Gramlick is a staff member with the Commission. As a part of his job duties, he is responsible for monitoring regulated carriers' compliance with Rule 6212, 4 CCR 723-6. In this function, Mr. Gramlick reviews Commission records to determine which carriers have not filed the annual report required by Rule 6212. Mr. Gramlick ensured that a letter reminding carriers of their obligation to file an annual report was sent to all pertinent regulated motor required; the letter was mailed on February 7, 2014. Hearing Exhibit 1. Hearing Exhibit 1 is a sample of the letter sent to all regulated carriers. In addition to the above, the letter provides information on how to comply with the requirement to file an annual report. The letter was sent to the regulated carriers at the most recent address on file with the Commission for the carriers, as provided by the carriers themselves.

10. Mr. Gramlick initially discovered that 43 carriers had not complied with Rule 6212. As a result, on July 30, 2014, Staff mailed copies of a proposed Complaint and decision to the 43 carriers who had not filed their annual reports. Hearing Exhibits 3 and 4. These copies were mailed to the named carriers at the most recent addresses on file with the Commission for the carriers.

11. On September 10, 2014, during the Commission's weekly meeting, the Commission considered the proposed Complaints and decision. By then, many of the 43 carriers had come into compliance with Rule 6212, but twelve carriers remained non-compliant. The Commission approved the "Formal Complaint and Notice of Hearing," (Complaint) (Decision No. C14-1161) with Attachment A against the remaining 12 carriers. Hearing Exhibit 5. Those carriers, the Respondents in this proceeding, are listed in Attachment A to that Decision. The Decision was served upon the 12 Respondents on September 22, 2014, through the United States mail at the last address on file with the Commission (in some instances), and through the Commission's e-filing system (in other instances). Hearing Exhibit 6.

12. Since the time the Complaint was served on the Respondents, six more Respondents became compliant with Rule 6212. As a result, Staff requests that the Complaint against those compliant carriers be dismissed. Those carriers are: Cloud City Cab Company, G4S Secure Solutions, Inc., Homeward, Inc., Lodge and Spa at Cordillera, N A S Transit, LLC, and Sweet Pea Tours.

13. Staff seeks the certificates and permits of the remaining non-compliant carriers, (Almaz Transportation, LLC, American Transit Express, LLC, Aza Adult Day Care, LLC, Heart of the Rockies Tours, LLC., Little Stinker's Taxi Cab Service, and Spring Cab), be revoked. Although the Complaint states that a civil penalty may be assessed against the non-compliant carriers, Staff did not request that fines be assessed against the non-compliant carriers during the evidentiary hearing.

**C. Conclusions.**

14. The evidence was undisputed.

15. The ALJ finds and concludes that service of the Complaints upon each of the Respondents is proper. Hearing Exhibits 5 and 6; *see* Rules 1205(a) and (b), 4 CCR 723-1. The ALJ further finds that the Complaints are in compliance with 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 opportunities for Respondents to respond to the allegations, and provide notice of the hearing on the Complaints. Hearing Exhibits 5 and 6.

16. The Respondents were notified of the date, time, and location of the hearing on the Complaints, but none appeared at the hearing. Hearing Exhibits 5 and 6. No Respondent showed cause for their failure to appear.

17. The ALJ finds that Staff established by a preponderance of the evidence that the carriers identified in Appendix A to this Decision have failed to file an annual report for the 2013 calendar year as required by Rule 6212(a), 4 CCR 723-6, despite being reminded of their duty to file the report, and being given additional opportunities to come into compliance.

18. The ALJ finds that the certificates and permits of the Respondents listed in Appendix A to this Decision should be revoked for their failure to file an annual report as required by Rule 6212(a), 4 CCR 723-6. In addition, the Complaints should be dismissed with prejudice against the carriers who have come into compliance with Rule 6212(a), 4 CCR 723-6, since the time the Complaints were served upon them.

19. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Respondents' certificates or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. The "Formal Complaint and Notice of Hearing" is dismissed with prejudice against the following carriers: Cloud City Cab Company, G4S Secure Solutions, Inc., Homeward Inc., Lodge and Spa at Cordillera, N A S Transit, LLC, and Sweet Pea Tours.

3. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who files with the Public Utilities Commission the required complete annual report on the forms prescribed by the Commission before the effective date of this Recommended Decision.

4. Proceeding No. 14C-0946TR is closed.

5. 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.

6. 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.

7. 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

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Administrative Law Judge