

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 18G-0645EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

FLYING J EXPRESS,

RESPONDENT.

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Respondent Flying J Express (Respondent) (collectively, the Parties) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Mohammad Amini has authority to enter this Agreement on behalf of Respondent.

BACKGROUND AND RECITALS

1. On September 17, 2018, Staff issued and filed Civil Penalty and Assessment or Notice of Complaint to Appear (CPAN) Number 122266. It was served on the Respondent by mail on September 19, 2018. The CPAN alleges five (5) violations of 4 CCR 723-6-6005(b)(I)(B) from August 20, 2018 through August 24, 2018 by the Respondent; one violation of 4 CCR 723-6-6105(c) on August 4, 2018 by Respondent; and two violations of 4 CCR 723-6-6107 on August 4 and August 5,

2018 by Respondent. The CPAN states that the civil penalty assessed for the alleged violations is \$3850.00, plus an additional 15 percent surcharge, for a total amount of \$4427.50. It further provides that if the Respondent pays the civil penalty within 10 calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$2213.75.

SETTLEMENT AND AGREEMENT

2. The Parties have reached a settlement in this matter. The settlement amount includes a penalty amount of \$2309.57 and a fifteen-percent surcharge amount of \$346.43, pursuant to Section 24-34-108(2), C.R.S., for a total amount of \$2656.00.

3. The Respondent admits liability for all violations in the CPAN.

4. In consideration of the following promises and agreements set out below in the Settlement and for other good and valuable consideration, the sufficiency and adequacy of which are acknowledged herein, the Parties have agreed to the following terms and conditions:

A. Performance by Staff:

- i. Staff will agree to reduce the amount of the penalty from \$4427.50 to \$2656.00.
- ii. Staff will agree to allow the Respondent to pay the settlement amount in four (4) payments of \$664.00.

iii. Staff will agree to consider the following mitigating factors, pursuant to Commission Rule 1302(b), in reducing the penalty amount:

- a. The Respondent contacted the PUC within the first 10 days in an effort to resolve the matter.
- b. Respondent is a small business of one car and one driver.
- c. Respondent is the sole provider for his family and his wife has numerous ongoing medical issues.
- d. Respondent has actively engaged with the PUC on several occasions to resolve the issues cited in the CPAN.
- e. Paying the full amount would cause financial hardship on Respondent's company.

B. Performance by the Respondent.

- i. Respondent will comply with all PUC rules and state statutes.
- ii. Respondent agrees to a cease and desist order for the admitted violations in the CPAN.
- iii. Respondent will pay approximately sixty percent (60%) of the total penalty amount, or \$2656.00.
- iv. The Respondent shall pay the penalty amount of \$2656.00 in four (4) payments of \$664.00, with the first payment of \$664.00 due within ten (10) days of the Commission's final

decision; the second payment shall be due 30 days after the first with subsequent payments each due 30 days after the prior payment.

- v. If the Respondent fails to make a timely payment according to the conditions of this settlement agreement within ten (10) days of the Commission's final decision, the full amount due (\$4427.50) will be owed immediately.
- vi. If the Respondent fails to make a timely payment according to the conditions in Paragraph 4(B)(iii) and 4(B)(iv), the full balance owed on the total penalty amount in the CPAN of \$4427.50, less any payments already made, will be due and owing immediately.
- vii. If the Respondent violates any of the terms in this Joint Stipulation and Settlement Agreement, or is found in violation of the admitted violation in this docket within one (1) year of the last payment received, the full amount of the balance owed for the penalty will be due and owing immediately.

5. This Settlement Agreement has been reached in the spirit of compromise and to avoid the uncertainties of trial and the costly expense of litigation.

6. This Settlement Agreement promotes administrative efficiency because it avoids the time and expense that necessarily would be devoted to preparing for and attending the hearing for this proceeding.

7. This Settlement Agreement serves the public interest because it requires the Respondent to pay a civil penalty of \$2656.00 according to the terms of paragraph 4.

8. The Parties agree that all matters that have been raised, or that could have been raised, in this proceeding have been resolved by this Settlement Agreement.

9. This Settlement Agreement may be signed in counterparts, each of which, taken together, shall constitute the entire agreement of the Parties.

10. This Settlement Agreement may not be modified by the Parties, except in writing, with express agreement of each Party, and with approval of the Commission.

11. The Respondent's failure to comply with the payment schedule and to complete the payment obligations described in paragraph 4 of the Settlement Agreement shall be deemed as a waiver by the Respondent of any rights and all rights to file exceptions, as well as a request for rehearing, reargument, and reconsideration, or to file any other form of the appeal.

12. Should this Settlement Agreement be modified or not approved in its entirety by an Administrative Law Judge or the Commission, either Party, at that Party's option, may withdraw from this Settlement Agreement by filing a notice

with the Commission in this proceeding within seven days of entry of such order. In this event, this Settlement Agreement shall be void and this matter be reset for hearing.

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Dated this 10 day of January 2019
~~December, 2018.~~

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: _____
Anthony Cummings
Lead Criminal Investigator, Investigations and Compliance Units
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FLYING J EXPRESS

By: Mohammad Amini
Mohammad Amini
Owner
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Approved as to form:

PHIL WEISER *PCW*
~~CYNTHIA H. COFFMAN~~
Attorney General

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Attorney for Colorado Public Utilities Commission Staff

Dated this ____ day of December, 2018.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

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