

Decision No. R20-0189

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20C-0093TR

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S) AND PERMIT(S) OF MOTOR CARRIERS PURSUANT TO §40-10.1-112, C.R.S., AND RULE 6009, 4 CCR 723-6, OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, CONCERNING THE ANNUAL FEE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MOTION TO DISMISS
PROCEEDING WITHOUT PREJUDICE**

Mailed Date: March 20, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

1. On March 6, 2020, Public Utilities Commission Staff's (Staff or Commission Staff) instituted the cases against the motor-carrier Respondents¹ by issuing and filing the Notice of Hearing (Notice) in this proceeding. The Notice, also a complaint, against each Respondent alleges that the Respondent has failed to pay the annual fee required by § 40-10.111, C.R.S., and Rule 6009 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.² The Notice seeks to revoke Respondents' permits or certificates for failing to pay the required annual fee, as authorized by § 40-10.1-112, C.R.S.

¹ As referenced in this Decision, motor carriers are carriers who hold a Commission permit, authority, or certificate.

² This proceeding involves numerous Respondents against whom the Commission initiated complaints by sending them each a Notice of Hearing. Each of those is assigned a unique "Case No." which specifies the grounds unique to each Respondent. And, each of those case numbers are part of this single proceeding.

2. The Notice informs all Respondents that a hearing will be held on March 25, 2020 at 12:15 p.m., at a Commission hearing room on whether Respondents' permits or certificates should be permanently revoked.

3. On March 18, 2020, Commission Staff filed a Motion to Dismiss Proceeding Without Prejudice (Motion). The Motion states that after the Notices were served, Staff realized that a change in Commission rules, effective May 19, 2019, requires it to reevaluate the process for ensuring motor carriers have the proper stamps and that the current process may not comply with relevant Commission rules. Motion at 1. Commission Staff also state that based on Colorado Governor Jared Polis's declaration of a state of emergency based upon COVID-19, Staff does not wish to move forward with revoking permits and certificates during this unprecedented time. Commission Staff asks that this proceeding be dismissed without prejudice before the upcoming hearing date.

4. As an initial matter, the Administrative Law Judge (ALJ) finds that good cause exists to waive the response time to the Motion, as permitted under Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Specifically, the hearing is closely approaching (in seven days), leaving little time for parties to respond to the Motion before the hearing. No party will be prejudiced by waiving the response time given that the Motion seeks to dismiss this proceeding. As such, the ALJ waives the response time to the Motion.

5. For the reasons Staff provides, the ALJ finds that Staff has established that it is appropriate to dismiss the Notices against each Respondent in this proceeding without prejudice. Dismissal without prejudice means that Staff may bring another action against each of the Respondents arising out of the same facts and circumstances here.

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

II. ORDER

A. The Commission Orders That:

1. The Notice(s) of Hearing against each Respondent-motor carrier in this proceeding is dismissed without prejudice. The hearing scheduled for March 25, 2020 at 12:15 p.m. at a Commission hearing room is vacated and will not take place.

2. Proceeding No. 20C-0093TR is closed.

3. This Recommended Decision will 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.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will 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 will 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 may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director