

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20C-0091-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S) AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008 OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINTS WITHOUT PREJUDICE**

Mailed Date: April 28, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

1. Only the procedural history relevant to understand this Decision is included. On March 6, 2020, Commission Staff (Staff) instituted the cases against the motor-carrier Respondents¹ by issuing and filing the “Order[s] of Summary Suspension and Complaint[s] and Notice of Hearing” (Complaints) and other documents in this proceeding. The Complaints² against each of the Respondents in this proceeding allege that the Commission received notice from the Respondents’ insurance or surety carriers that the Respondents’ insurance or surety coverage has been or will be cancelled, as specifically identified in each Complaint.

2. The Complaints further notify Respondents that their authorities or permits have been, or will be summarily suspended on the date specified in each Complaint, and that a hearing will take place on March 25, 2020 at 12:00 p.m. at the Commission’s office to determine whether

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 an Order of Summary Suspension and Complaint and Notice of Hearing.

their authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage on file with the Commission.

3. Based on Staff's Motion to Continue Insurance Show Cause Hearing to April 22, 2020, filed on March 18, 2020, the Administrative Law Judge (ALJ) continued the March 25, 2020 hearing to April 22, 2020. Decision No. R20-0190-I issued March 20, 2020. On April 13, 2020, Staff filed a Motion to Dismiss Insurance Show Cause Hearing Set for April 22, 2020 (Motion). The title of the Motion is unclear, but the Motion clarifies that Staff seeks to dismiss this proceeding, set for a hearing on April 22, 2020. The Motion sought to dismiss the proceeding, while also continuing the summary suspensions for Respondent-motor carriers who remained out of compliance with the Commission's financial responsibility requirements. The ALJ granted and denied the Motion in part, and converted the in-person April 22, 2020 hearing to a remote hearing to address the merits of the Complaints against carriers who remain out of compliance, and whose Complaints were still pending. Decision No. R20-0258-I issued April 15, 2020.

4. Just before 5:00 p.m. on April 21, 2020, Staff filed a "Notice to Dismiss Complaint and Summary Suspensions" (Motion to Dismiss), citing Rule 1001 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure, and Colorado Rule of Civil Procedure (C.R.C.P.) 41(a)(1)(A). The ALJ construes this filing and a motion to dismiss and refers to it as such. The Motion to Dismiss states that Staff has concluded that the better course of action at this time is to dismiss all charges in this proceeding without prejudice. Motion to Dismiss at ¶ 3. Staff plans to continue to communicate with Respondents to confirm or require proof of financial responsibility but does not intend to pursue the outstanding Complaints in this proceeding at this time.

5. Given that the Motion was filed less than one business day prior to the April 22, 2020 12:00 p.m. remote hearing, the ALJ was unable to rule on the Motion prior to the hearing. As such, the ALJ called the hearing as noticed. Staff and counsel appeared. No Respondent appeared. Staff confirmed its desire to dismiss the Complaints in this proceeding.

6. Rule 1001 allows the ALJ to seek guidance from the C.R.C.P. when not otherwise inconsistent with a specific statute or Commission rule. As noted during the hearing, in ruling on the Motion to Dismiss, the ALJ declines to rely on C.R.C.P. 41 for guidance. Instead the ALJ finds Commission Rule 1309(d) informative, though not on point. 4 CCR 723-1. That rule requires the Commission to find good cause for dismissal of an application or petition when sought less than 45 days prior to the first day of hearing, and that dismissal does not prejudice other parties. While this matter does not involve an application or petition, the ALJ finds Rule 1309(d) helpful and applies its principles here.

7. The ALJ finds that Staff has establish good cause to dismiss the Complaints in this proceeding without prejudice, and that doing so does not prejudice any party.

8. 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. All outstanding “Order[s] of Summary Suspension and Complaint[s] and Notice of Hearing” in this proceeding are dismissed without prejudice.

2. Proceeding No. 20C-0091-INS 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.

5. 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