

Decision No. R20-0838

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

PROCEEDING NO. 20G-0370CP

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COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

HERMOSA TOURS, LLC,

HERMOSA TOURS.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
GRANTING JOINT MOTION TO APPROVE  
SETTLEMENT AGREEMENT, APPROVING SETTLEMENT  
AGREEMENT, VACATING PREHEARING CONFERENCE  
AND HEARING, AND CLOSING PROCEEDING**

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Mailed Date: December 4, 2020

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**I. STATEMENT****A. Procedural history**

1. On September 4, 2020, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 126663, which alleges that Hermosa Tours, LLC (Hermosa Tours) violated §§ 40-10.1-107 & 201 on August 11, 2020. CPAN No. 126663 states that the civil penalty assessed for the alleged violations is \$12,100, plus an additional 15 percent surcharge, for a total of \$13,915, but that if Hermosa Tours pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$6,957.50. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$13,915.<sup>1</sup> The CPAN also states that the Commission may order Hermosa Tours to cease and desist from violating statutes and Commission rules.<sup>2</sup>

2. The CPAN states that the Commission served the CPAN by U.S. Mail.

3. Hermosa Tours has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

4. On September 23, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

5. On October 16, 2020, counsel for Trial Staff of the Commission (Staff) entered an appearance in this proceeding.

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<sup>1</sup> CPAN No. 126663 at 2.

<sup>2</sup> *Id.*

6. Also on October 16, 2020, the ALJ issued Decision No. R20-0728-I that established a prehearing procedural schedule and scheduled a remote prehearing conference for January 8, 2021 at 1:00 p.m. and the remote hearing for January 22, 2021 at 9:00 a.m.

7. On November 24, 2020, the parties filed a Stipulated Motion to Approve the Joint Stipulation and Settlement Agreement and Waive Response Time (Joint Motion) and attached the Joint Stipulation and Settlement Agreement (Settlement Agreement).

**B. Joint Motion and Settlement Agreement**

8. The Joint Motion and Settlement Agreement state that Staff and Hermosa Tours have agreed upon a settlement that resolves all issues in the proceeding. According to Staff and Hermosa Tours, the Settlement Agreement promotes administrative efficiency by avoiding the expenditure of the time and expense necessary to hear this matter<sup>3</sup> and is in the public interest.<sup>4</sup> They also acknowledge that the Settlement Agreement will not have precedential effect on any other Commission matters.<sup>5</sup>

9. According to the terms of the Settlement Agreement, Hermosa Tours agrees: (a) to apply for a certificate of public convenience and necessity (CPCN) by January 15, 2021 and to comply with §§ 40-10.1-107, 40-10.1-201(1), C.R.S.; (b) not to advertise, offer to perform, agree to perform, or perform the services of a common carrier and for which a CPCN is required under § 40-10.1-201(1), C.R.S., if the Commission does not approve Hermosa Tours' application for a CPCN.<sup>6</sup> In return, Staff agrees to: (a) dismiss this proceeding and CPAN No. 126663; and (b) issue a warning letter in lieu of CPAN No. 126663. In so doing, Staff has considered as mitigating

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<sup>3</sup> Joint Motion at 3 (¶ 8); Settlement Agreement at 4 (¶ 9).

<sup>4</sup> Joint Motion at 3 (¶ 8); Settlement Agreement at 4 (¶ 10).

<sup>5</sup> Joint Motion at 3 (¶ 9).

<sup>6</sup> Settlement Agreement at 4 (¶ 7.B).

factors Hermosa Tours' cooperation "with Staff's investigation and promptly responded to its requests for information [and] with the settlement process and provided the necessary information to Staff to accomplish the settlement" and Hermosa Tours' statement that "the penalty imposed in [the] CPAN would cause irreparable harm to its business, including requiring it to cease all business operations and lay off several employees."<sup>7</sup>

10. Additionally, Hermosa Tours stipulates that its failure to timely complete its obligations under the Settlement Agreement shall be deemed a waiver by Hermosa Tours of any and all rights to file exceptions and/or all rights to file an application for rehearing, reargument, or reconsideration or any other form of appeal of this Decision.<sup>8</sup>

11. Staff and Hermosa Tours agree that all matters that were raised or could have been raised in this proceeding have been resolved by the Settlement Agreement.<sup>9</sup>

12. Staff and Hermosa Tours also agree that

Should this Settlement Agreement be modified or not approved in its entirety by the 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 such order. In this event, this Settlement Agreement shall be void and this matter [shall be reset] for hearing.<sup>10</sup>

13. Finally, in the Joint Motion, the parties request that the Commission issue an order (a) approving the Settlement Agreement; (b) stating the agreement in paragraph 12 above; and (c) waiving response time to the Joint Motion.

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<sup>7</sup> *Id.* at 3 (¶ 7.A).

<sup>8</sup> *Id.* at 5 (¶ 13).

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 5 (¶ 14).

## **II. FINDINGS AND CONCLUSIONS**

14. The undersigned ALJ finds good cause to grant the Joint Motion and accept the Settlement Agreement. It is found that Hermosa Tours' agreement to file an application for a CPCN and to comply with §§ 40-10.1-107, 40-10.1-201(1), C.R.S. in exchange for the dismissal of CPAN No. 126663 and issuance of a warning letter is fair, just, and in the public interest.

15. The ALJ further finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement. Accordingly, the Settlement Agreement are approved. Approval of the Settlement Agreement will not have a precedential effect on other Commission matters.<sup>11</sup>

16. Therefore, pursuant to the terms of the Settlement Agreement entered into between Staff and Hermosa Tours, Hermosa Tours will be ordered to file an application for a CPCN by January 21, 2021. Failure to file the application as agreed to in the Settlement Agreement will result in the waiver by Hermosa Tours of its rights to file exceptions or a request for rehearing, re-argument, and reconsideration, or to file any other form of appeal.

17. The request to waive response time to the Joint Motion is granted.

18. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

## **III. ORDER**

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

1. For the reasons stated above, the Stipulated Motion to Approve the Joint Stipulation and Settlement Agreement and Waive Response Time is granted.

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<sup>11</sup> See *Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

2. The Joint Stipulation and Settlement Agreement (Settlement Agreement) is accepted and approved. A copy of the Settlement Agreement, attached hereto as Appendix A, is incorporated herein by reference. The parties shall comply with the terms of the Settlement Agreement.

3. Hermosa Tours shall file an application for a certificate of public convenience and necessity by January 15, 2021.

4. The remote prehearing conference and remote evidentiary hearing scheduled for January 8, 2021 at 1:00 p.m. and January 22, 2021 at 9:00 a.m., respectively, are hereby vacated.

5. Proceeding No. 20G-0370TO is closed.

6. 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.

7. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.

8. If exceptions to this Recommended 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)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director