

Decision No. R14-0309

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0063EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

FLEET LOGISTICS & FLORENCE NWANETO INDIVIDUALLY IN HER OFFICIAL
CAPACITY AS OWNER/OPERATOR OF FLEET LOGISTICS,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
APPROVING SETTLEMENT AGREEMENT;
MODIFYING TERMS OF CPAN; IMPOSING
CIVIL PENALTY ASSESSMENT; AND
WAIVING RESPONSE TIME TO MOTION**

Mailed Date: March 21, 2014

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 108230 issued by Staff of the Public Utilities Commission (Staff) on December 19, 2013 against Fleet Logistics and Florence Nwaneto Individually in her Official Capacity as Owner/Operator of Fleet Logistics (Respondent). The CPAN alleges five violations of *Rule 6105(c), of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations (CCR) 723-6*, and one violation of *Rule 6309(c), 4 CCR 723-6*. The total amount of the CPAN for these violations is \$2,612.50, including an additional 10 percent surcharge.

2. On February 5, 2014, counsel for Staff filed his entry of appearance in the above captioned proceeding.

3. On February 5, 2014, the Commission also referred the matter to an administrative law judge (ALJ) to decide the merits of the CPAN.

4. By Interim Decision No. R14-0229-I, issued March 3, 2014, an evidentiary hearing was scheduled for April 14, 2014.

5. On March 18, 2014, the parties filed their Stipulation and Settlement Agreement and Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time.

6. According to the terms of the Settlement Agreement, Staff and Respondent agree to the following:

- a) Respondent admits liability to all the violations in the CPAN.
- b) Respondent agrees to comply with all Colorado and federal statutes and rules concerning common carriers and motor carriers, including but not limited to rules concerning the timely submittal of fingerprints by drivers employed by or contracting with Respondents, and concerning the prohibitions against stationing a vehicle in front of a hotel without a completed charter order.
- c) Staff agrees to reduce the amount of the civil penalty from \$2,612.50 to \$1,306.25.

7. The \$1,306.25 settlement amount includes a 10 percent surcharge pursuant to § 24-34-108, C.R.S.

8. Respondent agrees to pay the reduced penalty of \$1,306.25 in two installments. The first installment of \$653.13 is due within 10 days of the Commission's final order approving this settlement agreement and the balance of \$653.12 is due 30 days following the first installment due date. Failure to make any installment payment when due shall cause the

Respondent to be immediately liable for the full amount of the CPAN (\$2,612.50) less any amounts paid.

9. Respondent agrees that during any investigation conducted by Staff, within 12 months of the date of a final Commission decision in this Proceeding, the Commission finds any violations of the same rules or statutes, or rules or statutes of a similar nature as the violations the Respondent has admitted liability to in this proceeding, Respondent shall be liable for the full civil penalty in this proceeding, less payments made.

10. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the ALJ approving or modifying this Agreement becomes a decision of the Commission.

11. Respondent agrees that the failure to timely pay the settlement amount as provided herein will result in Respondent being liable for the full civil penalty less payments made without any further hearing or administrative or adjudicatory process.

12. Respondent agrees and stipulates that the failure to complete its payment obligations as set forth in the Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration any other form of appeal.

13. The parties additionally agree that the Settlement Agreement has been reached to avoid the costly expense of litigation and that the Settlement Agreement promotes administrative efficiency by avoiding the time and expense that would be required to hear this matter.

14. Finally the parties considered the following mitigating factors:

a) The Respondent acknowledged wrongdoing;

- b) The Respondent admits the maximum level of culpability for all violations in the CPAN;
- c) The Respondent actively and timely contacted Staff to resolve the issue; and
- d) The Respondent has subsequently corrected all violations in the CPAN.

II. FINDINGS AND CONCLUSIONS

15. The undersigned ALJ finds good cause to grant the Motion to approve the Stipulation and Settlement Agreement. It is found that the civil penalty of \$1,306.25 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

16. The ALJ finds it is in the public interest to conserve valuable resources by adopting the terms of the Stipulation and Settlement Agreement and avoiding a hearing in this matter.

17. Therefore pursuant to the terms of the Stipulation and Settlement Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$1,306.25 payable according to the terms of the Stipulation and Settlement Agreement as delineated above. Failure to abide by the agreement will result in reinstatement of the full civil penalty amount of \$2,612.50 less any amounts already paid, due immediately.

18. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement shall be waived.

19. Approval of the settlement will not have a precedential affect upon other Commission matters. *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).

20. 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. The Motion to Approve Amended Stipulation and Settlement Agreement is granted.

2. The evidentiary hearing scheduled for April 14, 2014 is vacated.

3. The Stipulation and Settlement Agreement entered into between Staff of the Commission and Respondent Fleet Logistics LLC and Florence Nwaneto individually in her official capacity as owner/operator of Fleet Logistics, is approved. A copy of the Agreement, attached hereto as Appendix A, is incorporated herein by reference. Parties shall comply with the terms of the Agreement.

4. Fleet Logistics LLC and Florence Nwaneto individually in her official capacity as owner/operator of Fleet Logistics is assessed a penalty of \$2,612.50, however, \$1,306.25 of the civil penalty assessed, including the corresponding 10 percent surcharge is suspended on the conditions set forth above.

5. Respondent shall pay a total of \$1,306.25 in two installment payments. The first payment of \$653.13 shall be made no later than 10 days following the Commission's final decision in this proceeding and the second payment of \$653.12 will be due 30 days following the first installment due date.

6. In the event that Fleet Logistics LLC and Florence Nwaneto individually in her official capacity as owner/operator of Fleet Logistics, should default on the terms of the Settlement Agreement as described above, the full amount of the civil penalty assessment of \$2,612.50 shall become immediately due and payable, less any amounts paid pursuant to the terms of the Stipulation and Settlement Agreement.

7. The Request for Waiver of Response Time is granted.
8. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement is waived.
9. Proceeding No. 14G-0063EC is closed.
10. 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.
11. 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.

12. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director