

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14C-0893TR

IN RE: THE MATTER OF MOTOR CARRIERS LISTED ON APPENDIX A TO THIS
DECISION, RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS
PURSUANT TO COMPLAINT**

Mailed Date: September 12, 2014

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I. STATEMENT, FINDINGS, DISCUSSION, AND CONCLUSIONS

1. The cases listed on the attached Appendix A (Hearing Exhibit 1) were instituted by “Order of Complaint and Notice of Hearing” (Complaint or Complaints) issued by the Commission Director and served upon the Respondents¹ on August 27, 2014 by United States

¹ Reference herein to the Respondents is a reference to each of the Respondents listed in Appendix A to this Decision.

mail, at the addresses on file with the Public Utilities Commission (Commission) for the Respondents. Hearing Exhibit 2.

2. The Complaints provide notice of the nature of the allegations against the Respondents. Hearing Exhibit 2. In particular, the Complaints allege that the Federal Motor Carrier Safety Administration's (FMCSA) records indicate that each of the Respondents has failed to register for the calendar year 2014 with the United States Department of Transportation (USDOT) under the Unified Carrier Registration (UCR) system as required by § 40-10.5-102(1), C.R.S., and Rule 6402 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The Complaints explain that each Respondent, as a motor carrier operating in interstate or international commerce, is required to register annually with USDOT on the UCR system, as authorized by 49 U.S.C. § 14504a, and that the Commission will hold a hearing regarding whether the Respondents' permits should be revoked for their failure to register with USDOT on the UCR system as required by § 40-10.5-102(1), C.R.S., and Rule 6402 CCR 723-6. The Complaints notify the Respondents of the date, time, and location of said hearing.

3. On the designated date, time, and location (September 9, 2013 at 12:00 p.m.), the undersigned Administrative Law Judge (ALJ) called the cases for hearing in a Commission Hearing Room, 1560 Broadway, Suite 250, Denver, Colorado.

4. Commission staff member Cathy Lopez appeared through counsel and testified on behalf of the Staff of the Commission (Staff). No Respondent appeared.

5. Hearing Exhibits 1, 2 and 3 were identified, offered, and admitted into evidence during the hearing.

A. The Requirement to Register with the USDOT's UCR System and Pay an Annual Fee.

6. Colorado participates in the Federal Unified Carrier Registration Agreement (UCR Agreement). § 40-10.5-102(2)(a), C.R.S.; *see* 49 U.S.C. § 14504a. That Agreement allows state participants to enforce payment of mandatory registration fees for interstate motor carriers that have designated Colorado as their base-state under the UCR Agreement. 49 U.S.C. § 14504a(i)(4)(A)(ii). Such interstate motor carriers pay a fee to the Commission as a part of their mandatory annual UCR registration with the USDOT. 49 U.S.C. § 14504a(f)(4); *see* § 40-10.5-102(2)(c), C.R.S.

7. The Commission is vested with authority to administer the UCR agreement for the state of Colorado. § 40-10.5-102(2)(b), C.R.S.

8. An operator required to register under the UCR Agreement who has designated or is required to designate Colorado as his base-state, must register with the UCR system and pay the requisite registration fee each calendar year. Rule 6402(a), 4 CCR 723-6.

9. An operator required to register under the UCR Agreement “shall not operate without registering for the applicable registration year.” Rule 6402(a), 4 CCR 723-6. And, under § 40-10.5-102(1)(a), C.R.S., an operator required to register “shall not engage in, or contract for, any interstate transportation of persons or property on any public highway in this state without first so registering.”

B. Governing Legal Standards.

10. Section 40-10.1-112, C.R.S., and Rule 6008, 4 CCR 723-6, provide that, after a hearing upon notice to the holder of any certificate or permit, and upon proof that the holder has violated any applicable statute, rule, regulation, or Commission decision, the Commission may

revoke the holder's permit or authority. Rule 6008(c), 4 CCR 723-6; *see* § 40-10.1-111(2), C.R.S.

11. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations of the Complaint are true. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

C. Evidence in Support of Complaints.

12. The evidence in this proceeding is undisputed.

13. The Complaints were served upon the Respondents listed on Appendix A by United States mail on August 27, 2014, at the most recent addresses on file with the Commission. Hearing Exhibit 2. The addresses on file with the Commission were provided by the Respondents.

14. Ms. Lopez is a staff member with the Commission. As a part of her job duties, Ms. Lopez is responsible for tracking the motor carriers required to register annually with the USDOT's UCR system, determine if the motor carriers have registered, and ensure that the Commission takes action if pertinent carriers do not register annually as required. Before bringing the Complaints, Ms. Lopez first searched the Commission's records to locate the regulated carriers who operate in interstate or international commerce and who have designated Colorado as their base-state. Then, Ms. Lopez searched the database of the FMCSA to determine if the carriers have registered annually as required. The FMCSA database is called the "Safety and Fitness Electronic Records (SAFER) System" (SAFER).

15. SAFER shows the relevant motor carrier's most recent registration information with the USDOT's UCR system. Thus, a search in SAFER reveals whether and when each motor carrier has registered with the USDOT's UCR system.

16. In this case, based on a review of the Commission's records, Ms. Lopez discovered that the Respondents listed on Appendix A are carriers required to register with the USDOT's UCR system, as they have designated Colorado as their base-state or are required to do so. After searching SAFER, she discovered that the Respondents have failed to register with the USDOT's UCR system and pay the requisite annual fee for the 2014 calendar year. Hearing Exhibit 3. Ms. Lopez ran the search through SAFER on the day of the hearing in this proceeding, September 9, 2014, and verified that the Respondents still had not registered with the USDOT's UCR system, despite having received written notice of their failure to register. *Id.*

17. Staff requested and recommended that the Respondents' authorities or permits be revoked for this failure, as they have been notified of their non-compliance, have been provided an additional opportunity to come into compliance, and have continued to fail to comply.

D. Conclusions.

18. The ALJ finds and concludes that the Complaints are in compliance with § 40-10.1-112(1), C.R.S., and Rule 6008(a), 4 CCR 723-6 because the Complaints provide notice of the nature of the allegations and the relief sought against the Respondents, provide notice of the date, time and location for the hearing on the Complaints, provide opportunities for Respondents to respond to the allegations, and were served upon the Respondents by United States mail, at the most recent addresses on file with the Commission. Hearing Exhibit 2. The ALJ further finds that service upon each of the Respondents is proper. §§ 40-6-108(3) and 40-10.1-112(5), C.R.S.

19. The Respondents failed to appear for the properly noticed hearing as ordered by the Commission. No Respondent has shown good cause for that failure.

20. At hearing, Staff established by a preponderance of the evidence that the Respondents listed in Appendix A are carriers who are required to register with the USDOT's UCR system and have designated Colorado as their base-state or are required to do so. Hearing Exhibit 3; 49 U.S.C. § 14504a(f)(4); Rules 6402(a) and (b), 4 CCR 723-6.

21. Staff also established by a preponderance of the evidence that the Respondents failed to register with the USDOT's UCR system and pay the annual fee for 2014 as required by § 40-1.5-102(1)(a), C.R.S.; Rules 6402(a) and (b), 4 CCR 723-6, and 49 U.S.C. § 14504a(f)(4). Hearing Exhibit 3.

22. Consequently, Staff has met its burden of proof to show that the Respondents referenced in Appendix A violated § 40-1.5-102(1)(a), C.R.S. and Rules 6402(a) and (b), 4 CCR 723-6.

23. Staff recommended and requested the Respondents' authorities and permits be revoked for failure to comply with § 40-1.5-102(1)(a), C.R.S. and Rules 6402(a) and (b), 4 CCR 723-6 for the 2014 calendar year, as referenced in Appendix A.

24. The Commission is authorized to revoke or suspend permits and authorities of a motor carrier who violates any Commission rule. Section 40-10.1-112(1)(c), C.R.S.

25. Because the Respondents listed in Appendix A have failed to register with the USDOT's UCR system, and pay the annual fee for the 2014 calendar year as required by § 40-1.5-102(1)(a), C.R.S. and Rules 6402(a) and (b), 4 CCR 723-6, and have not shown cause for such failure, the authorities and permits listed in Appendix A should be revoked. § 40-10.1-112(1), C.R.S.

26. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge transmits the record of this proceeding, and recommends the Commission enter the below order.

II. ORDER

A. The Commission Orders That:

1. The Respondents' authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. Ordering Paragraph No. 1 shall be void and the case dismissed as to any affected Respondent who properly registers with the United States Department of Transportation's Unified Carrier Registration system and pays the required fee for 2014 before the effective date of this Recommended Decision.

3. Proceeding No. 14C-0893TR is closed.

4. 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.

5. As provided by § 40-6-109, 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 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 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 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director