

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Proceeding No. 17G-0050TO

Civil Penalty Assessment Notice 117184

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

BEN E. PEARSON d/b/a COLORADO ROADSIDE POSSE,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (“Staff”) and Ben E. Pearson d/b/a Colorado Roadside Posse (“Respondent”) (collectively, the “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding.

Background

On January 11, 2017, the Commission issued Respondent Civil Penalty Assessment Notice No. 117184 (the “CPAN”) seeking civil penalties of \$6,325 (or \$3,162.50 if paid within 10 days). The CPAN alleged five (5) violations of 4 *Code of Colorado Regulations* (“CCR”) § 723-6-6508(b)(VI)(D). The CPAN was served on Respondent via certified mail on January 18, 2017.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to all the violations in the CPAN.
2. Respondent agrees to comply with all Colorado statutes and rules concerning the immediate delivery of vehicles removed from a property to a storage facility location on file with the Commission without delay.

3. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by requiring the payment by Respondent of a civil penalty in the amount of \$3,162.50 under the terms in this Agreement. In reducing the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledged wrongdoing.
- b. Respondent admitted the maximum level of culpability for all violations in the CPAN.
- c. Respondent operates a small towing business.
- d. Payment of the full amount of the CPAN would cause financial hardship on Respondent.
- e. Respondent realizes that all vehicles need to immediately be taken to their storage facility.
- f. Immediately upon receipt of the CPAN, Respondent actively engaged in discussion with the PUC to resolve this matter.

- g. Assessing Respondent a civil penalty of \$3,162.50 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

4. In consideration of Respondent's admission of liability, and for the reasons expressed above, Staff agrees that reducing the amount of the civil penalty from \$6,325 to \$3,162.50 is appropriate and in the public interest. This \$3,162.50 settlement amount consists of a \$2,688.13 penalty, plus a fifteen percent (15%) surcharge of \$474.37 pursuant to section 24-34-108, C.R.S.

5. Respondent shall pay the total amount of \$3,162.50 in three (3) installments. The first installment of \$1,054.17 is due within 10 days of the Commission's final order approving this settlement agreement. The second installment of \$1,054.17 is due 30 days following the first installment's due date. The balance of \$1,054.16 is due 30 days following the second installment's due date.

6. If Respondent fails to make any of the installment payments when due, Respondent shall be liable for the full civil penalty amount of \$6,325, less any payments made, which amount will be due immediately.

7. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this proceeding, the Commission finds any violations of rules or statutes of the same nature as any of the violations for which Respondent has admitted liability, Respondent shall be liable for the full civil penalty amount of \$6,325, less any payments made. In this event, the remaining full civil penalty will be due

immediately. Respondent and Staff agree that the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

8. Respondent agrees that failure to abide by any provision of this Agreement shall be objective and reasonable grounds that Respondent is guilty of deliberate and willful violation of a Commission order and that the public health, safety, or welfare imperatively require immediate action by the Commission, which is authorized to summarily suspend Respondent's license pursuant to section 24-4-104(4), C.R.S., and may immediately revoke Respondent's permit pursuant to section 40-10.1-401(3)(b), C.R.S.

9. All matters that were raised or could have been raised in this proceeding relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

10. Respondent's failure to complete his payment obligations as set forth in this 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, or to file any other form of appeal.

11. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this proceeding within seven days of entry of

such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

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Executed this 24 day of Feb, 2017.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

By: Tony Cummings
Tony Cummings
Lead Criminal Investigator, Investigations and Compliance
Colorado Public Utilities Commission
1560 Broadway Suite 250
Denver, Colorado 80202

RESPONDENT

By: Ben Pearson
Ben E. Pearson
12230 Brighton Road
Henderson, Colorado 80640
Phone: 720-385-8030

Approved as to form:

CYNTHIA H. COFFMAN
Attorney General

By: Brendon C. Reese
Brendon C. Reese, *39496
Assistant Attorney General
Revenue and Utilities Section
Colorado Department of Law
1300 Broadway, 8th Floor
Denver, Colorado 80203
Phone: (720) 508-6355
Fax: (720) 508-6038
Email: brendon.reese@coag.gov
*Counsel of Record

*Counsel for Staff of the
Public Utilities Commission*