
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 2, 2007

Agenda ID #7038

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-209

This draft resolution resolves the appeal of Field Citation 104 (FC-104), issued to Lincoln Limousine Services Inc. by the Commission's Consumer Protection and Safety Division on May 10, 2007 and will be on the agenda at the November 1, 2007 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than October 22, 2007, and reply comments shall be served no later than October 26, 2007. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Walwyn at cmw@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-209
Administrative Law Judge Division
November 1, 2007

R E S O L U T I O N

RESOLUTION ALJ-209. Affirming Citation FC-104 issued to Lincoln Limousine Services, Inc.

This Resolution resolves the appeal of Field Citation 104 (FC-104), issued to Lincoln Limousine Services Inc. (Lincoln Limousine) by the Commission's Consumer Protection and Safety Division (CPSD) on May 10, 2007. FC-104 was issued with a fine in the amount of \$1,250 for limousine service operations after the expiration of Commission authority and failure by Lincoln Limousine to have its employees covered under workers' compensation insurance requirements, subject to the Department of Motor Vehicles' (DMV) pull notice program, and enrolled in a mandatory drug testing program.

Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, CPSD is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal. The procedures governing the appeal of CPSD's citations are set forth in Resolution ALJ-187.

The Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311, subdivision (g).

Findings of Fact

1. On May 10, 2007, CPSD served FC-104 (the citation) on Raymond L. Sprague, President, Lincoln Limousine. On June 20, 2007, CPSD sent Mr. Sprague a response to his request for an explanation of the citation and the factors considered in determining the amount of the fine. On July 22, 2007, Mr. Sprague, on behalf of Lincoln Limousine, served a Notice of Appeal on CPSD.

2. In accordance with the procedures set forth in Resolution ALJ-187, Administrative Law Judge Christine M. Walwyn heard the appeal on September 4, 2007, in San Francisco. At the conclusion of the hearing, the case was submitted.

3. At the hearing, respondent stipulated to all violations except the eight counts of operation as a charter-party carrier after expiration of operating authority in violation of Public Utilities Code Section 5379 (Section 5379).¹ The stipulated violations are:

- a. Failure to obtain workers' compensation insurance for employee drivers in violation of Section 5379 – two counts.
- b. Failure to enroll employee drivers in the Department of Motor Vehicles' (DMV) Pull Notice System in violation of Section 5374(a)(2), Part 5.02 of Commission General Order 157-D (GO 157-D), and Vehicle Code Section 1808.1 – two counts.²
- c. Failure to enroll employee drivers in a mandatory alcohol and controlled substance testing certification program in violation of Section 5374(a)(2) and GO 157-D, Item 10.02 – two counts.
- d. Failure to complete the waybill as required, in violation of GO 157-D, Section 3.01 – one count.

4. The record establishes that the operating authority of Lincoln Limousine expired on June 5, 2006. Lincoln Limousine operated without authority on eight separate days between June 6, 2006 and the new permit issuance date of June 29, 2006. CPSD confirmed at hearing that eight counts of a violation of operating without authority occurred rather than the nine counts contained in FC-104.

5. Mr. Sprague contests the charge of operating after expiration of operating authority because he asserts (1) he did not receive the original renewal application from CPSD and (2) when he later received notice that his operating authority had expired, he promptly contacted CPSD and renewed the authority. The evidentiary record indicates that the renewal application, sent by first-class mail in a large brown and green

¹ All section references are to the Public Utilities Code unless otherwise specified. The stipulation is on the hearing transcript at page 4 (Transcript at 4).

² The citation references GO 157-C; this is corrected to GO 157-D in the June 20, 2007 letter sent to respondent and in the case documents served, Exhibits 2 and 3. GO 157-D was adopted by the Commission in D.05-02-033.

envelope with the Commission's printed return address, may have been mistaken for junk mail and disposed of unopened.³ The envelope was not returned to CPSD. We find Mr. Sprague's testimony that he intended to timely renew his operating authority and to operate in compliance with the Commission's rules and regulations credible.

6. The record shows there have been no previous citations issued to Lincoln Limousine and it has operated in good standing for over three years.

7. A witness for CPSD testifies that the \$1,250 fine issued to Lincoln Limousine is at the lower level of fines for these types of violations. In setting fines, CPSD takes into consideration the company's operating history, the type of violation(s), whether a safety factor is involved, and the length of time the violation(s) occurs. Very seldom is a fine below a thousand dollars, and then it is for only one serious violation. There are four violations considered serious for Lincoln Limousine: operating without authority, failure to enroll employees in a drug testing program, failure to enroll employees in the DMV pull notice program, and failure to have workers' compensation insurance for employees. The first three violations all involve safety issues that place the public at risk.⁴

8. Mr. Sprague testifies that he has taken steps to correct all violations since the citation. He now has only one employee and he has enrolled her in DMV's pull notice program and has provided workers' compensation insurance; he has not yet enrolled her in the mandatory drug and alcohol testing program.⁵ A check by CPSD of Commission files reflects that the Commission has not yet received verification of workers' compensation insurance and DMV's pull notice enrollment for Lincoln Limousine's employee driver, and only Mr. Sprague is enrolled in a mandatory alcohol and controlled substance testing certification program.⁶

³ Mr. Sprague testifies that he never saw the renewal application and that the second CPSD envelope he received looked similar to a great deal of the junk mail he regularly receives for his main business. Transcript at 39-40.

⁴ Transcript at 17 and 23. The DMV's pull notice program is a check to ensure that all drivers have DMV licenses and to notify the company if any licenses are suspended or revoked. The drug testing program provides for random testing of all drivers for controlled substances and alcohol.

⁵ Transcript at 47-48.

⁶ Transcript at 51-52.

Conclusions of Law

1. Respondent Lincoln Limousine Services, Inc. operated as a charter-party carrier after expiration of operating authority for eight days between June 6 and June 29, 2006 in violation of Public Utilities Code Section 5379 (Section 5379).
2. Respondent failed to obtain workers' compensation insurance for employee drivers in violation of Section 5379.
3. Respondent failed to enroll employee drivers in the Department of Motor Vehicles' (DMV) Pull Notice System in violation of Section 5374(a)(2), Part 5.02 of Commission General Order 157-D (GO 157-D), and Vehicle Code Section 1808.1.
4. Respondent failed to enroll employee drivers in a mandatory alcohol and controlled substance testing certification program in violation of Section 5374(a)(2) and GO 157-D, Item 10.02.
5. Respondent failed to complete the waybill as required, in violation of GO 157-D, Section 3.01.
6. Operating as a charter-party carrier in California is a privilege and this privilege carries with it a responsibility to fully comply with all the regulations and laws of the State of California.
7. The citation fine of \$1,250 under Section 5378 is reasonable. Mitigating factors that could lessen this fine are Mr. Sprague's prompt action in renewing Lincoln Limousine's operating authority when he received notice of expiration and his stated intent to conduct future operations in full compliance with all regulations and laws. The Commission should reduce the fine to \$1,000 when it receives documentation of the enrollment of all Lincoln Limousine employee drivers in the DMV pull notice program and in a mandatory alcohol and controlled substance testing certification program, and proof of workers' compensation insurance.
8. Respondent should pay the fine in full within 30 days of this resolution or begin to make payments within 30 days of this resolution based on an approved payment plan with the CPSD. All checks should be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment the fine should be deposited in the State Treasury to the credit of the General Fund.

9. If the respondent fails to pay the fine as provided herein, the CPSD should take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.

IT IS THEREFORE ORDERED that:

1. Citation FC-104 is affirmed except as provided herein.
2. Respondent Lincoln Limousine Services, Inc. shall pay a fine of \$1,250 pursuant to Public Utilities Code Section 5378. This fine shall be reduced to \$1,000 upon receipt by the Commission's Consumer Protection and Safety Division of documentation of the enrollment of all Lincoln Limousine employee drivers in the DMV pull notice program and in a mandatory alcohol and controlled substance testing certification program, and proof of workers' compensation insurance.
3. Respondent shall pay the fine in full within 30 days of this resolution or begin to make payments within 30 days of this resolution based on an approved payment plan with the Commission's Consumer Protection and Safety Division. All checks shall be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment the fine should be deposited in the State Treasury to the credit of the General Fund.
4. If the respondent fails to pay the fine as provided herein, the Commission's Consumer Protection and Safety Division shall take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.
5. The appeal process for this citation is closed.
6. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, 2007, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Service List

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