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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

July 20, 2022

**Agenda ID #20821**

**TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-419:**

This is the draft Resolution of Administrative Law Judge (ALJ) Thomas J. Glegola resolving K.21-01-019. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

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. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution was mailed and published on the Commission's website [link], as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on ALJ Melvin at [mmv@cpuc.ca.gov](mailto:mmv@cpuc.ca.gov).

/s/ ANNE E. SIMON  
Anne E. Simon  
Chief Administrative Law Judge

AES:sgu

Attachment

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-419  
Administrative Law Judge Division  
[Date]

**RESOLUTION**

RESOLUTION ALJ-419 - Resolves K.21-01-019, the Appeal of Citation No. F-5694 of About Time Limousines, LLC (TCP 21892P).

**SUMMARY**

This resolution resolves the appeal of Citation No. F-5694 issued to About Time Limousines, LLC by the California Public Utilities Commission's Consumer Protection and Enforcement Division on June 29, 2020. Citation No. F-5694 issues a fine of \$4,000 for six violations (17 counts) of the Public Utilities Code and Commission's General Orders during the period of October 1, 2019 through January 31, 2020. This citation is sustained. The full penalty amount of \$4,000 is now due.

**BACKGROUND**

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Public Utilities Code § 5351, et seq.) Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, Consumer Protection and Enforcement Division (CPED) 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 under Resolution ALJ-377.<sup>1</sup>

On June 29, 2020, CPED issued Citation No. F-5694 to About Time Limousines, LLC for six violations of the Public Utilities Code (Pub. Util. Code) and Commission General Orders (G.O.). Violations include, among others, seventeen counts of operating without a license and five counts of failing to enroll drivers in the State's Controlled Substance and Alcohol Testing Certification Program. The underlying investigation covered the period of October 1, 2019 through January 31, 2020. The citation was issued for the following violations:

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<sup>1</sup> The Commission issued Resolution ALJ-377 on April 28, 2019, it is applicable to appeals filed beginning July 1, 2020.

1. Operating without a license, in violation of Pub. Util. Code Section (§) 5379 [17 counts];
2. Failing to have worker's compensation (WKCP) insurance in effect and on file, in violation of Pub. Util. Code § 5378.1 [4 counts];
3. Failing to enroll five drivers in a Controlled Substance and Alcohol Testing Certification Program, in violation of Pub. Util. Code §§ 5347(a)(1)(I) and 5381 and G.O. 157-E, Part 10 [5 counts];
4. Failing to enroll five drivers in the Department of Motor Vehicles (DMV) Employer Pull Notice (EPN) program, in violation of Pub. Util. Code §§ 5347(a)(1)(I) and 5381 and G.O. 157-E, Part 10 [5 counts];
5. Failing to keep equipment list current, in violation of Pub. Util. Code § 5381 and G.O. 157-E, Part 4.01 [3 counts];
6. Failing to maintain documentation, in violation of Pub. Util. Code § 5381 and G.O. 157-E, Part 6.01 [1 count]; and
7. Failing to provide documentation, in violation of Pub. Util. Code §§ 5389 and 5381, and G.O. 157-E, Part 6.92 [1 count].

On January 4, 2021, About Time Limousines, LLC (Appellant) timely filed the instant appeal pursuant to Resolution ALJ-377.<sup>2</sup> CPED filed Compliance documentation on March 09, 2021.<sup>3</sup> On March 30, 2021, the assigned Administrative Law Judge (ALJ) issued a ruling by e-mail setting the hearing for April 2, 2021.

In support of its charges, CPED's compliance filing included the following attachments:

Attachment 1:	Copy of misdemeanor warning and photo of vehicle
Attachment 2:	Suspension of reinstatement notices
Attachment 3:	Reservation summary
Attachment 4:	Letter from State Compensation Insurance Fund
Attachment 5:	Drug Alcohol testing program
Attachment 6:	Employer Pull Notice

<sup>2</sup> Appellant properly requested and was granted an extension of time to file the instant appeal.

<sup>3</sup> The ALJ granted CPED's request to late file the compliance filing.

Ahead of the April 2, 2021, hearing, CPED also provided a printout of information on About Time Limousines, LLC contained in the Commission's Transportation Management Information System (TMIS).<sup>4</sup>

### **RESOLUTION OF THE APPEAL**

The Commission held an appeal hearing on April 2, 2021. Both parties appeared at the hearing.

Under Resolution ALJ-377, CPED has the burden to prove, by a preponderance of the evidence, that the citation was issued in compliance with the law and Commission rules, and that the penalty amount is just and reasonable. Then, the burden shifts to the Appellant to prove by a preponderance of the evidence, that a violation did not occur or that the amount of the penalty is inappropriate.

CPED provided evidence at the hearing in support of its position that the citations were properly issued and that the amount of the fine is reasonable.

CPED met its burden to prove, and Appellant did not dispute the following:

- Appellant accepted that it is responsible for ensuring that all drivers that operate for the company must be enrolled in the program regardless of how often they drive for the company.<sup>5</sup>
- Appellant did not dispute the requirement to enroll drivers in the DMVs Employer Pull Notice (EPN) program.<sup>6</sup>

Appellant argued that CPED failed to meet its burden to prove the following facts underlying the citation:

- That Appellant's WKCP insurance coverage lapsed during the first suspension period (October 7, 2019 - October 24, 2019). On January 14, 2020, Appellant provided CPED with a State Compensation Insurance Fund e-mail dated October 22, 2019, approving reinstatement of Appellant's insurance policy without lapse of coverage due to extenuating circumstances.
- That Appellant knew it had been suspended. Appellant contends that it had no way of knowing it was suspended. The warning citation only indicated that it was issued because the vehicle was

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<sup>4</sup> TMIS is a publicly accessible data base which provides the status of all charter-party carriers' operating authorities. The TMIS database is updated every 30 minutes. *See* Resolution ALJ-365.

<sup>5</sup> Appellant stated that two of five drivers were enrolled and that unenrolled drivers were not regular About Time drivers.

<sup>6</sup> Appellant asserted at hearing that all drivers are now enrolled in the DMV EPN program.

not listed on the equipment list. The citation did not indicate a violation for operating after suspension.

- Delays in filing were due to circumstances beyond its control including postal service delays and limited availability of State employees to assist in filing.
- Appellant asserts that the delinquent fees (leading to the January 15, 2020 -January 20, 2020 suspension) were only \$12.50. Appellant contends that it tried to pay via facsimile on January 16, 2020, but the machine was not operational.
- Appellant argues that two of five drivers were enrolled in the Controlled Substance and Alcohol Testing Certification Program.
- Appellant contends that it's failure to keep a current equipment list and to maintain and provide documentation are largely technical in nature. Appellant maintains that it met the requirements.

CPED is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-377.

After reviewing the Appeal, the CPED Compliance Filing, and listening to both parties during the hearing, we find the following:

1. In October 2019, after receiving a warning citation over operating with a suspended license, Appellant made seven additional trips;
2. Five operators of vehicles owned by Appellant who drove between October 2019 and December 2019 were not enrolled in a Controlled Substance and Alcohol Testing Certification Program, as of January 1, 2020;
3. Four operators of vehicles owned by Appellant who drove between October 2019 and December 2019 were not enrolled in the DMV EPN program as of January 17, 2020;
4. Appellant has been late in filing proof of workers compensation insurance six times; and
5. Appellant has been late paying fees seven times.

While there was an error in the citation regarding the number of drivers not enrolled in the DMV EPN program, reducing that count by one, Appellant did not provide evidence contradicting other violations. Appellant's best arguments are that it did not know its license was suspended, that some of the violations it was cited for were corrected, and that circumstances beyond its control led to it not filing proof of

insurance, or paying fees, in a timely manner. Facts in the record, however, show that Appellant is repeatedly late with regular filings and fee payments, among other items. Appellant's license has been suspended temporarily at least 20 times as the result of these delinquencies.

We find a clear pattern of Appellant's failure to comply with its regulatory obligations, not extenuating circumstances. Further, after receiving the October 2019 citation warning, Appellant continued to operate without a license, while at the same time attempting to correct the reason for the violation after the fact. Finally, the Commission prioritizes the safety of charter-party carrier passengers and the public. The DMV EPN program and the Controlled Substance and Alcohol Testing Certification Program are two regulatory requirements specifically required to improve safety. Appellant's failure to enroll all drivers in these programs negatively impacts safety.

Appellant failed to present evidence to show that there were errors in the citations or that they were unwarranted. As such, this Resolution affirms most of CPED's findings, finds that the citation was properly issued and denies the appeal.

#### **ASSESSMENT OF THE FINE**

In assessing the reasonableness of the \$4,000 fine, several factors must be considered. Decision (D.) 98-12-075 sets forth criteria for determining the reasonableness of a fine. The factors to consider in assessing the reasonableness of a fine include: (1) the severity of the economic or physical harm resulting from the violation; (2) the conduct to prevent, detect, disclose, and rectify the violation; (3) the financial resources of the party involved; (4) the public interest involved; (5) the totality of the circumstances; and (6) Commission precedents.

As set forth in D.98-12-075, the Commission should evaluate the reasonableness of the \$4,000 fine amount. Using these criteria, it is determined that although the public was placed at risk, there was no immediate economic or physical harm because of the violations. With respect to the public interest, the Commission notes that safety of the public is paramount. A fine of \$4,000 is reasonable.

#### **SAFETY**

The Commission has broad authority to regulate charter-party carriers, particularly regarding safety concerns. (*See* for example, Pub. Util. Code §§ 451, 5382 and 5387.) The Commission is mindful that the statutory schemes under which this citation was issued in this case are intended to secure the safety of charter-party carrier passengers and the general public.

#### **COMMENTS**

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of

the Commission on the resolution. A draft of today's resolution was distributed for comment to the service list.

### **ASSIGNMENT OF PROCEEDING**

Thomas J. Glegola is the assigned Administrative Law Judge for this citation appeal.

### **FINDINGS**

1. On June 29, 2020, the Commission's Consumer Protection and Enforcement Division (CPED) issued Citation No. F-5694 to About Time Limousines, LLC.
2. The citation, a fine of \$4,000, is for the following violations:
  - a. Operating without a license, in violation of Pub. Util. Code § 5379 [17 counts];
  - b. Failing to have worker's compensation (WKCP) insurance in effect and on file, in violation of Pub. Util. Code § 5378.1 [4 counts];
  - c. Failing to enroll five drivers in a Controlled Substance and Alcohol Testing Certification Program, in violation of Pub. Util. Code §§ 5347(a)(1)(I) and 5381 and General Order 157-E, Part 10 [5 counts];
  - d. Failing to enroll five drivers in the Department of Motor Vehicles (DMV) Employer Pull Notice (EPN) program, in violation of Pub. Util. Code §§ 5347(a)(1)(I) and 5381 and General Order 157-E, Part 10 [5 counts];
  - e. Failing to keep equipment list current, in violation of Pub. Util. Code § 5381 and General Order 157-E, Part 4.01 [3 counts];
  - f. Failing to maintain documentation, in violation of Pub. Util. Code § 5381 and General Order 157-E, Part 6.01 [1 count]; and
  - g. Failing to provide documentation, in violation of Pub. Util. Code §§ 5389 and 5381, and General Order 157-E, Part 6.92 [1 count].
3. On October 7, 2019, CPED suspended the license of About Time Limousines, LLC for not having workers compensation insurance in effect and on file with the Commission. CPED reinstated the license on October 24, 2019.
4. On October 12, 2019, in Calistoga, CPED issued a warning citation to About Time Limousines, LLC for operating with a suspended

license. Before its license was reinstated, About Time Limousines, LLC made seven trips after receiving the warning citation.

5. Five operators of vehicles owned by Appellant that drove between October 2019 and December 2019 were not enrolled in a Controlled Substance and Alcohol Testing Certification Program, as of January 1, 2020.
6. Four operators of vehicles owned by Appellant that drove between October 2019 and December 2019 were not enrolled in the DMV EPN program as of January 17, 2020.
7. Appellant has been late in filing proof of workers compensation insurance six times.
8. Appellant has been late paying fees seven times.

**THEREFORE, IT IS ORDERED that:**

1. The violations in Commission's Consumer Protection and Enforcement Division Citation No. F-5694 are affirmed.
2. The penalty in Citation No. F-5694 in the amount of \$4,000 is sustained.
3. The amount of the penalty that is immediately due and payable is \$4,000. About Time Limousines, LLC must either request a payment plan from the Consumer Protection and Enforcement Division or make full payment of the penalty within 30 days of the effective date of this order. If a payment plan is approved, payment of the \$4,000 penalty must be completed no later than twelve months from the effective date of this order. About Time Limousines, LLC must pay the penalty of \$4,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102. About Time Limousines, LLC must write on the face of the check or money order, "For deposit to the General Fund pursuant to Resolution ALJ-419."
4. K.21-01-019 is closed.

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 \_\_\_\_\_, the following Commissioners voting favorably thereon:

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Rachel Petersen  
Executive Director



**N O T I C E**

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

Resolution ALJ-419 ALJ/TJG/sgu

\*\*\*\*\* PARTIES \*\*\*\*\*

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last Updated on 26-APR-2021 by: AHB  
K2101019 LIST

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