

Decision 96-04-004 April 10, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's (the Commission) on July 25, 1994, on its own motion into the operations and practices of Fansar Enterprises, Inc., a corporation, doing business as Merritt Transporter, and Morteza Abdollahi, President, Respondents.

ORIGINAL

Morteza Abdollahi, for himself and for Fansar Enterprises, Inc., doing business as Merritt Transporter, respondents.  
Carol A. Dumond, Attorney at Law, for Safety and Enforcement Division.

**OPINION**

**1. Summary**

This order adopts a settlement agreement between the Commission's enforcement staff and respondents. The charter party carrier is placed on probation for 18 months and fined \$14,000, with \$7,000 held in abeyance to assure compliance with the terms of probation.

**2. Background**

The Commission on October 5, 1995, instituted this investigation of Fansar Enterprises, Inc., doing business as Merritt Transporter, and its president, Morteza Abdollahi. The investigation sought to determine whether respondents had violated Public Utilities (PU) Code §§ 5379 and 5371 by conducting for-hire transportation in July and August 1994 at a time when the carrier's operating authority had been suspended.

Merritt Transporter has operated since August 10, 1993, under permit TCP 8471-Z. It contracts with a number of airlines,

and its primary business is transporting airline crews within Los Angeles County.

On July 21, 1994, the California Highway Patrol (CHP) asked the Commission to suspend Merritt Transporter's operating permit following an on-site inspection that disclosed numerous safety violations. The Commission suspended the carrier's permit effective July 25, 1994, and the notice of suspension was personally served on Abdollahi on July 28, 1994. After a reinspection by CHP, the carrier's permit was reinstated effective August 26, 1994.

Subsequent investigation by the Commission's Safety and Enforcement Division (staff) resulted in an allegation that Merritt Transporter had operated 181 trips over a period of 28 days during the time its operating authority had been suspended. Staff alleged that most of the trips were conducted for the carrier's primary accounts, Japan Airlines, Air France, and Swissair. Staff alleged that Abdollahi, when questioned, stated that he was under the impression that the suspension applied only to three buses that had ordered held out of service pending repairs.

3. Procedural History

A prehearing conference scheduled for December 12, 1995, was continued at the request of respondent Abdollahi, who stated that he had not received staff's investigative report until December 4, 1995. A telephone prehearing conference was conducted on January 3, 1996, at which time the parties stated that they were engaged in settlement discussions. The administrative law judge (ALJ) directed the parties to be prepared for evidentiary hearing on January 26, 1996.

A hearing was held on January 26. The parties asked for time to continue discussions, and the ALJ adjourned the hearing for two 20-minute periods. At the end of that time, the parties presented a signed stipulation of settlement (Exhibit 2), and moved for its approval. Staff presented a witness, Moira Simmeron,

supervisor in the Safety and Enforcement Division who testified as to terms of the settlement and responded to questions by the ALJ. The matter was deemed submitted for Commission action on or about January 26.

4. Terms of Settlement

Under the terms of the settlement agreement, affixed to this order as Attachment A, respondents neither admit nor deny any staff's allegations, but respondents agree not to contest the staff's allegations. Respondents also agree to the following:

Probation: Merritt Transporter will be on probation without further conditions for 18 months, during which time it shall submit quarterly reports showing compliance with CHP and Commission safety regulations.

Suspension: If the carrier's operating authority is suspended based on a CHP investigation, the carrier may be reinstated only by passing a subsequent inspection by a CHP and filing a formal request with the Commission for reinstatement.

Monetary Payment: Respondents agree to pay a total of \$14,000, but \$7,000 of that amount will be excused upon application to the Commission if respondents successfully complete the terms of probation. The monetary payment will be made in monthly installments of \$389.

Compliance: Respondents agree to continue to comply with CHP safety regulations, the Department of Motor Vehicles driver pull-notice program, and with Commission requirements, including those set forth in General Order 157-B. If respondents do not comply with the terms of probation, the Commission may order sanctions for violations alleged in this investigation and for any other violations shown to have occurred.

5. Discussion

We are persuaded that the settlement agreement serves the public interest in this case. Were we to require respondents to

proceed to hearing, and were the allegations to be proved, the Commission would have no choice but to revoke the carrier's permit or to impose a penalty so substantial that it likely would put the carrier out of business.<sup>1</sup>

Here, respondents neither admit nor deny the allegations against them. More importantly, the record shows that the alleged violations took place more than a year ago, and that Merritt Transporter since that time has corrected the conditions for which it was cited by CHP and has conducted its charter operations in California without further incident. Staff confirms that respondents are in compliance with CHP and Commission safety regulations.

The settlement agreement requires quarterly reports by Merritt Transporter to assure that only qualified drivers will operate the carrier's vehicles. It also requires continued compliance with requirements for vehicle safety, and it imposes harsh conditions should the carrier fail to pass another CHP safety inspection during the period of probation.

The carrier agrees to a monetary payment of \$14,000, but it may apply at the end of 18 months to be excused from paying \$7,000 of this amount if it has complied with all requirements of the settlement agreement.

We find that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Rules of Practice and Procedure. (See also

<sup>1</sup> The Commission has only limited discretion, in assessing sanctions when it finds that a carrier operated during a period of suspension. PU Code § 5378.5(e) provides that if the Commission, after hearings, finds that such violations occurred, it must either revoke the carrier's operating authority or impose a civil penalty of not less than \$1,000 nor more than \$5,000 for each day of unlawful operation.

San Diego Gas & Electric Company (1992) 46 CPUC2d 538 (rules for all-party settlements)

#### 6. Comments on Draft Decision

The draft decision in this case was filed with the Docket Office and mailed for comment to all parties in conformance with PU Code § 311 and Rule 77.1. None of the parties has filed comments. The draft decision is adopted without change.

#### Findings of Fact

R R D R O

1. Merritt Transporter has operated since August 10, 1993, under permit TCP 8471-Z, engaged primarily in charter party carriage of airline crews within Los Angeles County. The carrier's operating authority was suspended effective July 25, 1994, at the recommendation of the California Highway Patrol following an on-site safety inspection.

3. The carrier's operating authority was reinstated on August 26, 1994, following reinspection by CHP.

4. The Commission's Safety and Enforcement Division alleges that respondents operated for-hire trips over a period of 28 days during the time its operating authority had been suspended.

5. This Order instituting investigation of respondents was issued on October 5, 1995.

6. At hearing, staff and respondents presented a signed stipulation of settlement of this matter.

7. Under terms of the settlement agreement, respondents will be on probation for 18 months, will make quarterly reports to the Commission, will conduct their operations in compliance with CHP and Commission requirements, and will make a monetary payment of \$14,000, with \$7,000 of that amount held in abeyance to assure compliance with the terms of probation.

#### Conclusions of Law

1. Respondents neither admit nor deny the allegations brought against them.

The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

The settlement agreement should be approved. In order to assure prompt compliance with the terms of settlement, this order should be made effective immediately.

**ORDER**

IT IS ORDERED that:

1. The stipulation for settlement affixed hereto as Attachment A and made part hereof is approved, and the parties are directed to comply with the terms set forth therein.

2. This proceeding is closed, subject to the conditions set forth in the stipulation for settlement.

This order is effective today following the date of this order. Dated April 10, 1996 at Sacramento, California.

DANIEL W. FESSLER  
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER  
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gen. W. H. ...  
Administrative Law Judge

Investigation on the Commission's own motion into the operations and practices of Fansar Enterprises, Inc., a corporation, doing business as Merritt Transporter, and Morteza Abdollahi, President, Respondents )  
I.95-10-002 (Filed October 5, 1995)

STIPULATION FOR SETTLEMENT

This stipulation for settlement (Settlement Agreement or Agreement) is entered into by and between the Safety and Enforcement Division of the California Public Utilities Commission, (Staff) and Fansar Enterprises, Inc., a corporation, doing business as Merritt Transporter (Merritt), and Morteza Abdollahi (Abdollahi), President of Merritt Transporter. The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

The Commission regulates charter party carrier of passengers pursuant to its authority under Article XII of the California Constitution, Public Utilities Code (P.U. Code) Sections 5351 et seq., and General Order (G.O.) 157. Merritt Transporter conducts such operations under its charter party operating authority, TCP 8471-Z.

AGREEMENT

On September 1, 1994, the Commission issued this Order Instituting Investigation (OII) into the operations and practices of Fansar Enterprises, Inc., a corporation, doing business as Merritt Transporter, and its President, Morteza Abdollahi. The OII sought to determine the following:

- (a) Whether Merritt Transporter violated Section 5379 of the California Public Utilities Code by conducting for-

hire transportation during the suspension of its charter party permit; and

(b) Whether Merritt Transporter violated Section 5371 of the California Public Utilities Code by conducting for-hire transportation without a valid permit in effect issued by the Commission.

THE PARTIES TO THIS PROCEEDING now pending before the Commission, wishing to avoid the expense, inconvenience, and uncertainty attendant to litigation of the issues in dispute between them, have agreed to settle the issues raised in the OII, and submit this Settlement Agreement to the Commission for approval and adoption as its final disposition of the matters herein.

In order to settle this matter, Merritt and Abdollahi will not contest the above allegations. Morteza Abdollahi and Merritt Transporter agree that if Staff, introduces the alleged violations in any future enforcement or licensing proceeding involving either Merritt or Abdollahi, the violations will not be contested.

NOW, THEREFORE, in consideration for the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. Probation. Merritt Transporter shall serve an eighteen month probation which shall begin on the date this Agreement is approved and adopted by the Commission. During probation Merritt Transporter is subject to the following terms and conditions:

(a) Progress Reports. During probation, Merritt Transporter shall submit to the Commission...



Transporter shall prepare, and present to Staff quarterly reports of its compliance with Commission regulations. Each such report shall include:

(1) a list of the drivers engaged by Merritt Transporter for the prior quarter;

(2) the drivers' license number of each driver listed in (1) above;

(3) evidence of compliance with Section 1808.1 of the Vehicle Code, including the Pull Notice and DMV printouts, and the first installation of the month following the Commission's adoption of this Agreement;

(4) a complete list of all citations issued against Merritt's drivers in the course of their employment for the prior quarter.

The report shall be due on the 15th of the month following the last month of the previous quarter's operations. The first report shall be due 60 days after the Commission's adoption of this Agreement. Merritt Transporter shall continue to provide these reports until completion of probation.

(b) Commission Orders of Suspension. The operating authority of Merritt Transporter (TCP 8471-Z), once suspended by order of the Commission at the recommendation of the California Highway Patrol, can only be reinstated by further order of the

Commission, pursuant to Public Utilities Code Section 4. Driver Retention, DMV Pull Notice 5.875 in Merritt

further agrees not to allow any unlicensed driver to operate any

(c) Further Proceedings. In the event that Merritt violates the terms of this Agreement, Staff may ask the Commission to begin proceedings to

reconsider the terms of this Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which have been or should be imposed for any past, present, or future acts or omissions with respect to Merritt's performance of its charter party operations.

(2) The driver's license number of each driver

2. Monetary Payment. Merritt agrees to pay a total of \$14,000, with \$7,000 held in forbearance unless Merritt violates the terms or conditions of this Agreement. Merritt agrees to pay this amount in eighteen installments as follows: The first installment of \$389 shall be due on or before the first of the month following the Commission's adoption of this Agreement. The remaining installments shall be due on or before the first of each subsequent month for the next seventeen months. Each installment shall be in the amount of \$389 except the eighteenth installment which shall be in the amount of \$7,387. During the sixty days prior to the completion of probation, Merritt may apply to the Commission to be excused from \$7,000 of the eighteenth installment, making the amount due \$387. In the event that Merritt has fully complied with the terms of this Agreement, the Staff will not oppose this application. No interest is payable with respect to the Settlement amount.

3. CHP Terminal Inspection Program. Merritt acknowledges that it understands its obligation to maintain its vehicles in a safe operating condition and in compliance with the California Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

4. Driver Retention, DMV Pull Notice Program. Merritt further agrees not to allow any unlicensed driver to operate any company vehicle and shall also enroll its drivers in the Department of Motor Vehicle's Driver Pull Notice Program in compliance with California Vehicle Code Section 1808.1.

IN WITNESS WHEREOF, the parties hereto have executed this

1951 Compliance with Commission Orders. Merritt will comply with the provisions of General Order 157-B, the Public Utilities Code, and all Commission orders, decisions, and regulations. Merritt further acknowledges that it understands its obligation to obey every Commission order, including, but not limited to, orders of suspension.

6. Merritt agrees that, immediately upon the Commission adoption of this Settlement Agreement, it will be in compliance with the terms of the Agreement.

7. Merritt agrees that this Settlement Agreement is intended only to resolve the instant regulatory matter affecting it that is before the Commission.

The parties agree jointly by executing and submitting this Stipulation for Settlement that the relief requested herein is just, fair, and reasonable and in the public interest, and that the terms are binding when approved by the Commission. The parties respectfully request that the Commission adopt findings and conclusions consistent with the Stipulation for Settlement and that the instant proceeding be terminated upon such order of the Commission.

*[Handwritten signature]*

WILLIAM R. SCHUBERT  
Director of Safety and  
Enforcement Division

Date: 1/5/51

(A ATTACHMENT A)

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures

Fansar Enterprises, Inc. doing business as Merritt Transporter

Dated: 1/24/96 By: Morteza Abdollahi, President Merritt Transporter.

Morteza Abdollahi, Respondent

Dated: 1/24/96 By: Morteza Abdollahi, Respondent

STAFF OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Dated: 1/24/96 By: William R. Schulte, Director of Safety and Enforcement Division

(END OF ATTACHMENT A)