

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



January 28, 1999

TO: PARTIES OF RECORD IN INVESTIGATION 98-01-004  
DECISION 99-01-040, Mailed 1/28/99

On December 28, 1998, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

A handwritten signature in cursive script, appearing to read "Lynn T. Carew".

Lynn T. Carew, Chief  
Administrative Law Judge

LTC:mrj

Attachment

Decision 99-01-040

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

Order Instituting Investigation into whether to revoke the operating authority issued to Felipa Garza Fuentes, an individual, doing business as Fuentes Tours (TCP 7591P).

Investigation 98-01-004  
(Filed January 7, 1998)

Felipa Garza Fuentes, respondent,  
Maria J. Oropeza, Attorney at Law,  
for Rail Safety and Carriers Division.

**OPINION**

**Summary**

This decision adopts the stipulation of facts presented by the parties in this proceeding and resolves the disputed issue of what sanctions should be imposed for admitted violations. We adopt the staff's recommendation that a \$20,000 fine be imposed pursuant to Public Utilities (PU) Code §§ 5413, 5413.5, and 5415, staying collection of \$10,000, the remainder payable over 36 equal monthly installments and upon the conditions that respondent, Felipa Garza Fuentes, performs no passenger carrier operations for three years, pays damages for the auto accident of her driver (as ordered by the Small Claims Court), obeys all applicable laws and notifies the Commission if she leases vans or is employed by any other carrier.

**Background**

The Commission regulates passenger charter-party carrier services pursuant to Article XII of the California Constitution, PU Code § 5351 et. seq. and General Order (GO) 157. Respondent is a charter-party carrier operating in the San Diego area. Respondent has no authority to operate as a passenger stage

carrier under PU Code § 226 by operating between fixed prints on a regular basis and charging individual fares. The authority of the respondent, Fuentes, has been suspended nine times: six of these times for failure to maintain adequate liability insurance coverage on file with the Commission; one time for failure to maintain evidence of workers' compensation insurance coverage, once for failure to comply with requirements of the California Highway Patrol (CHP), and once for failure to provide the annual CHP bus terminal inspection report.

In addition, in 1993 Fuentes was fined \$2,000 for failing to file workers' compensation insurance. She was cautioned for engaging unlicensed sub-carriers and for failure to issue waybills in violation of GO 157.

In 1995, one of the respondent's vans loaded with passengers collided with a car. At this time, respondent did not have insurance coverage or active authority.

In 1996, while suspended, respondent engaged in passenger stage operations.

Based upon the 1996 investigation by the Commission Rail and Safety Carriers Division(RSCD), on January 7, 1998, the Commission instituted an investigation into the operations and practices of respondent, to determine:

- a. Whether respondent violated PU Code §§ 5371 and 5379 by conducting operations as a charter-party carrier without a permit authorizing such operations;
- b. Whether respondent violated PU Code §§ 5387 and 5391, and GO 115, by conducting operations as a charter-party carrier without an active permit and accident liability insurance coverage on file and in effect with the Commission;
- c. Whether respondent violated PU Code §§ 5387 and 5391 and GO 115, by conducting operations as a charter-party carrier without the proper level of liability insurance coverage on file and in effect with the Commission;

- d. Whether respondent violated PU Code §§ 5378.5 by conducting operations as a charter-party carrier during a period when her permit was suspended at the recommendation of the CHP;
- e. Whether respondent violated GO 157, Parts 1.06 and 5.01 by driving a tour bus without the required driver's license pursuant to Vehicle Code § 15250;
- f. Whether respondent violated GO 157, Parts 1.06 and 5.01, by allowing tour buses to be operated by drivers who do not hold the required driver's license pursuant to Vehicle Code § 15250, and by employing a driver who does not hold a passenger endorsement as required by Vehicle Code § 15275;
- g. Whether respondent violated GO 157, Part 5.02 by failing to enroll all drivers in the Department of Motor Vehicles Pull Notice Program as required by § 1808.1 of the California Vehicle Code;
- h. Whether respondent violated GO 157, Part 1.06, by engaging drivers prior to obtaining current Department of Motor Vehicles records as required by § 1808.1 of the California Vehicle Code;
- i. Whether respondent violated GO 157, Part 4.01, by failing to properly report the seating capacity of vehicles and failing to maintain a current equipment statement on file with the Commission;
- j. Whether respondent violated GO 157, Parts 1.06 and 4.02, by failing to comply with the requirements of CHP and Motor Carrier Safety Sections of Title 13 of the California Code of Regulations;
- k. Whether respondent violated PU Code § 5373.1 by failing to comply with the CHP safety terminal inspection as required by Vehicle Code § 34501;
- l. Whether respondent violated PU Code V 5411 by aiding and abetting an illegal carrier;
- m. Whether respondent violated PU Code § 5401 by assessing and collecting individual fares from passengers;

- n. Whether respondent violated GO 157, Part 3.04 by engaging the services of an unlicensed subcarrier; and,
- o. Whether respondent violated GO 157, Parts 3.01 and 6.01, by failing to generate and maintain all transportation records for a minimum period of three years.

A noticed prehearing conference was held by telephone on March 16, 1998 where the issues, scope, and schedule for the proceeding were discussed. A Scoping Memo was issued on April 15, 1998. Evidentiary hearing was held as scheduled on July 20, 1998 in San Diego. Late-filed exhibits were scheduled to be filed August 10 and August 27, 1998. Respondent did not file an exhibit, therefore, RSCD filed a motion to close the proceeding. Further hearing was held November 16, 1998 to clarify the penalty statutes under which CSD recommends a fine and how the fine is calculated. Ms. Fuentes did not appear. Therefore, a schedule for closing briefs was set. In its closing brief, staff outlined the legal basis for the recommended penalties and summarized its recommended resolution of the case which we herein adopt.

Since no further evidence will be submitted in this proceeding, the motion to close the proceeding is granted.

### **Evidentiary Hearing**

At the hearing, the parties presented a stipulation of facts in which Fuentes admitted all violations (see Attachment A). Staff recommended that Fuentes be fined \$20,000 under PU Code §§ 5413, 5413.5, and 5415, with \$10,000 stayed and the remaining \$10,000 payable over 36 months, provided she performs no type of passenger operations for three years, pays damages for the auto accident of her driver, obeys all applicable laws, and notifies the Commission if she leases vans or is employed by any other carrier.

The only disputed issue is Fuentes' allegation that she is not financially able to pay the recommended \$10,000 fine. She testified under oath that she was

employed when she entered into an agreement to pay the fine, but now she has no income. However, staff's witness Enedina K. Lopez presented the results of a recent investigation and testified that respondent operated without authority on June 2 and 18, and that she was paid \$3,675 for transportation rendered in April 1998. Staff's witness, Lopez, also submitted late-filed Exhibit 6 which contained a sworn statement that \$660 in wages was paid to Fuentes by Pioneer Stage Line for coordinating transportation for groups at a rate of \$30 per group. These receipts support Lopez' testimony that Fuentes was employed by Pioneer Stage Line in June 1998. The documents do not indicate that Fuentes is a permanent employee with a salary. In fact, the payments appear to be per group.

At the hearing, Fuentes did not deny that she had coordinated group transportation. But she alleged this was only on a group-by-group rate, the standard rate being \$30, and that she had only performed this service once or twice. Fuentes was allowed to submit further documents to show she had no income. Fuentes complained at the hearing that she did not know what to submit to make such a showing. She indicated she was not receiving unemployment compensation or welfare assistance. She was directed to seek the assistance of the Commission's Public Advisor to prepare and submit a late filed exhibit addressing this income issue. Fuentes did not submit such a late-filed exhibit.

At the further hearing, staff explained how its recommended fine was calculated. PU Code § 5413 grants the Commission authority to impose a fine of one thousand dollars (\$1,000.00) for each offense which violates any statute concerning the Charter-Party Carrier Act, or decisions and orders of the Commission. Fuentes is a charter-party carrier; she admitted to violating Sections 5371, 5379, 5387, 5391, 5387.5, 5373.1, 5411, 5401 GO 115, GO 157, Parts

1.06, 5.01, 5.02, 4.01, 4.02, 3.04, 3.01, and 6.01. Fuentes operated for 157 days without insurance and 91 days without operating authority.

PU Code § 5413.5 grants the Commission authority to impose a fine of five thousand dollars (\$5,000.00) for each violation and may also assess the investigation costs incurred by the Commission against the responding carrier.

PU Code § 5415 provides that any violation of a Commission regulation, order, decision, or the chapter entitled Charter-Party Carrier Act by a corporation or person is a separate and distinct offense, and in the case of a continuing violation each day's continuance is a separate and distinct offense which can be sanctioned.

Staff took several factors in consideration when it calculated the monetary penalty it recommended for imposition against Fuentes. First, staff considers the violations to be severe because Fuentes conducted business for 157 days without having proper liability insurance on the vehicles used in the charter-party carrier business. She placed the public at risk of suffering serious injury or death in the event of an accident with no insurance to cover any property damage or personal injury costs.

Fuentes also conducted business for 91 days while her operating authority was suspended due to her failure to pass CHP safety inspections. Fuentes was fully aware that her vehicles were unsafe, yet she continued to operate the vehicles. Fuentes contended that she could not pay a substantial fine because she was unemployed and had very little income. Staff alleges it could have easily sought a fine of \$455,000.00 under PU Code § 5413.5 as well as a fine of \$250,000.00 under PU Code § 5413. However, staff narrowed the fine to an amount within the financial parameters of Fuentes' income, but sufficient to impress upon her the gravity of the violations she committed.

Initially the staff sought to revoke Fuentes' operating authority; however, by July 1998, when the evidentiary hearing was held, Fuentes' operating authority had expired. So, staff recommended to the Commission that Fuentes be prevented from obtaining operating authority for a period of three years. Staff contends Fuentes' actions demonstrate an unwillingness to abide by Commission regulations which are in place to protect consumers.

### **Discussion**

Based upon the financial information in the record, we agree that paying a fine may be difficult for Fuentes, but foregoing the entire fine is out of the question. Fuentes is engaging in practices that result in unsafe service, one of the exact reasons for many of the Commission rules and regulations. In fact, a serious consequence of these violations has happened, one of Fuentes' drivers had an accident while her insurance had lapsed, damaged the car of another driver and a civil court has ordered Fuentes to pay these costs. Thus, it appears that fines are necessary to impress upon Fuentes that such violations will no longer be tolerated without punitive consequences and to assure that such actions do not continue. Under Fuentes' extenuating circumstances, it is reasonable to allow 36 equal monthly installments to pay the \$10,000 penalty. The conditions proposed by the staff are reasonable, given Fuentes history and the severity of continuing violations.

### **Findings of Fact**

1. The parties entered into a stipulation that respondent, Felipa Garza Fuentes, has violated the rules and regulations as alleged in the OII in this proceeding. The stipulation is attached as Appendix A.
2. For such violations, a fine of \$20,000 is reasonable with the forbearance in collecting \$10,000 provided Fuentes: performs no passenger carrier operations for three years; pays any unpaid balance of the judgment ordered in Small Claims



Court Case No. 93106 for the 1996 auto accident of her driver; obeys all applicable laws; and, notifies the Commission if she leases vans or is employed by any other carrier.

3. It is reasonable to allow the remaining \$10,000 fine to be paid over a period of 36 months.

### **Conclusions of Law**

1. Respondent has violated the following Commission rules and regulations: PU Code §§ 5371, 5373.1, 5378.5, 5379, 5387, 5391, 5401, 5411, and GOs 115 and 157 (Parts 1.06, 3.01, 3.04, 4.01, 4.02, 5.01 and 6.01).

2. Respondent should be fined \$20,000 under §§ 5413, 5413.5, and 5415 for these violations, with the forbearance of collecting \$10,000 provided she performs no passenger stage operations for three years, pays all damage claims for the 1996 auto accident of her driver, obeys all applicable laws, and notifies the Commission if she leases vans or is employed by any other carrier. The remaining \$10,000 should be payable in 36 equal monthly installments plus 7% interest.

3. Respondent's authority should not be renewed for a period of three years and until the fine imposed in this proceeding is paid.

## **O R D E R**

### **IT IS ORDERED that:**

1. For violations of charter-party regulations, respondent, Felipa Garza Fuentes, is ordered to pay a fine of \$20,000 under Public Utilities §§ 5413, 5413.5, and 5415, with the forebearance of collecting \$10,000 provided she performs no passenger stage operations for three years, pays all unpaid damage claims for the 1996 auto accident of her driver as ordered by the Small Claims Court in Case No. 93106, obeys all applicable laws, and notifies the Commission if she leases

vans or is employed by any other carrier. The amount of the remaining fine, \$10,000, shall be payable in 36 equal monthly installments plus interest of 7% per year from the effective date of this order.

2. Respondent's operating authority will not be renewed until the fine imposed in this proceeding is paid in full.

3. This proceeding is closed.

This order is effective today.

Dated January 28, 1999, at San Francisco, California.