

Decision No. R14-0999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1098CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SKY TAXI LLC AND SKY JOHANN WODRASKA, IN HIS CAPACITY AS
OWNER-OPERATOR OF SKY TAXI LLC,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ASSESSING CIVIL PENALTY AND
ISSUING CEASE AND DESIST ORDER
AS TO RESPONDENT SKY TAXI,
DISMISSING CPAN WITH PREJUDICE
AS TO RESPONDENT WODRASKA, AND
CONTAINING ADVISEMENTS**

Mailed Date: August 20, 2014

TABLE OF CONTENTS

I. <u>STATEMENT</u>	2
II. <u>FINDINGS OF FACT</u>	6
III. <u>DISCUSSION AND CONCLUSIONS</u>	12
A. Governing Legal Standards and Principles.	12
B. Respondent Sky Taxi.....	16
1. Alleged Violations.....	16
a. Count 1 of the CPAN.....	16
b. Count 2 of the CPAN.....	17
c. Count 3 of the CPAN.....	19

2. Sanctions21

 a. Civil Penalty Assessment21

 b. Order to Cease and Desist.....24

C. Respondent Wodraska.....27

D. Additional Matter.35

IV. ORDER.....38

 A. The Commission Orders That:38

I. STATEMENT

1. Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 107063 (CPAN) commenced this Proceeding.

2. On November 4, 2013, counsel for Trial Staff of the Commission (Staff) entered an appearance in this matter. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding.

3. On November 6, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. The identity of the respondent or of the respondents named in the CPAN was unclear. As a result, on November 12, 2013, by Decision No. R13-1421-I, the ALJ required Staff to make a filing regarding the identity of the respondent or respondents.

5. On November 22, 2013, Staff filed its Amended Response to November 12, 2013 Interim Decision. On November 25, 2013, Staff supplemented that filing. Staff sought to amend the caption of this Proceeding to identify the two respondents.

¹ That Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

6. On December 24, 2013, by Decision No. R13-1589-I, for the reasons stated in that Interim Decision, and as pertinent here, the ALJ: (a) granted Staff's request to amend the caption of this Proceeding; (b) amended the caption of this Proceeding to show that Sky Taxi LLC (Sky Taxi) is a respondent and to show that Sky Johann Wodraska, in his capacity as owner-operator of Sky Taxi (Wodraska), is a respondent; and (c) informed Respondent Wodraska that he could appear in this matter without counsel to represent his own interests and informed Respondent Wodraska of the standards to which the ALJ would hold him.

7. Unless the context indicates otherwise, reference in this Decision to Respondents is to Sky Taxi and Mr. Wodraska, collectively. Staff and Respondents, collectively, are the Parties.

8. Review of the Commission file in this matter reveals that, on December 24, 2013, the Commission mailed, by first class postage, a copy of Decision No. R13-1589-I to each respondent at the Breckenridge, Colorado post office box address on file with the Commission and stated on the CPAN.² Review of the Commission file in this matter reveals that, as of the date of this Decision, this mailing has not been returned to the Commission as undeliverable. Respondents are presumed to have received, and to be aware of, the content of Decision No. R13-1589-I.

9. On January 27, 2014, by Decision No. R14-0103-I and for the reasons stated in that Interim Decision, the ALJ advised Respondent Sky Taxi that it could not participate in this matter without legal counsel. The ALJ advised Respondent Sky Taxi that, if its "legal counsel

² This is also the mailing address of Respondent Sky Taxi's registered agent, Mr. Wodraska. Hearing Exhibit No. 2 at 2.

enters an appearance in this Proceeding and if legal counsel makes an appropriate motion, then the ALJ [would] reconsider this ruling.” Decision No. R14-0103-I at ¶ 20.

10. Review of the Commission file in this matter reveals that, on January 27, 2014, the Commission mailed, by first class postage, a copy of Decision No. R14-0103-I to each respondent at the Breckenridge, Colorado post office box address on file with the Commission and stated on the CPAN. Review of the Commission file in this matter reveals that, as of the date of this Decision, this mailing has not been returned to the Commission as undeliverable. Respondent Sky Taxi is presumed to have received, and to be aware of, the content of Decision No. R14-0103-I.

11. As of the date of this Decision, no counsel has entered an appearance on behalf of Respondent Sky Taxi.

12. On January 28, 2014, by Decision No. R14-0108-I, the ALJ scheduled the evidentiary hearing in this matter for March 31, 2014. In addition, in that Interim Decision, the ALJ reiterated that: (a) Respondent Sky Taxi was required to have legal counsel in order to participate in the evidentiary hearing (Decision No. R14-0108-I at ¶ 7); (b) Respondent Wodraska was permitted to appear without legal counsel to represent his own interests (*id.* at ¶ 8); and (c) Respondent Wodraska was prohibited from representing the interests of Respondent Sky Taxi in this matter (*id.*).

13. Review of the Commission file in this matter reveals that, on January 28, 2014, the Commission mailed, by first class postage, Decision No. R14-0108-I to each respondent at the Breckenridge, Colorado post office box address on file with the Commission and stated on the CPAN. Review of the Commission file in this matter reveals that, as of the date of this Decision, this mailing has not been returned to the Commission as undeliverable. Respondents

are presumed to have received, and to be aware of, the content of Decision No. R14-0108-I. Thus, Respondents are presumed to have knowledge of the March 31, 2014 hearing date.

14. On the scheduled date, at approximately 15 minutes after the scheduled time, and at the scheduled location, the ALJ called this matter for hearing. Staff was present, was represented, and was prepared to proceed.

15. When the ALJ called this matter for hearing, neither Respondent Sky Taxi nor Respondent Wodraska was present. The ALJ decided to proceed with the hearing in the absence of Respondents because: (a) Respondents are presumed to have been aware of the scheduled evidentiary hearing date, time, and location; (b) neither respondent had contacted Staff with respect to this matter; (c) neither respondent had contacted either the ALJ or administrative Staff of the Commission with respect to this matter; and (d) neither respondent had filed a request to change the hearing date or time, or both. Staff was present, was represented, and was prepared to proceed. The ALJ and court reporter were present and prepared to proceed. For these reasons, the ALJ held the scheduled evidentiary hearing in Respondents' absence.

16. At the hearing, the ALJ heard the testimony of one witness: Staff witness Schlitter.³ Thirteen exhibits were marked and offered. Hearing Exhibits No. 1, No. 2, and No. 4 through and including No. 13⁴ were admitted into evidence.⁵ In this Proceeding, there is no information that is claimed to be confidential.

³ The record in this Proceeding contains no transcript of the evidentiary hearing.

⁴ Hearing Exhibit No. 7 was admitted subject to this limitation: the text only was admitted; the photographs were not admitted. Hearing Exhibit No. 10 was admitted for the limited purpose of providing foundation only.

⁵ Hearing Exhibit No. 3 was marked and offered but was not admitted into evidence.

17. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took the matter under advisement.

18. On April 18, 2014, Staff filed a Supplemental Briefing (Staff Legal Brief).

19. As of the date of this Decision, neither respondent has made a filing in this Proceeding.

20. In accordance with, and pursuant to, § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this Proceeding together with a written recommended decision.

II. FINDINGS OF FACT

21. The facts in this case are undisputed and un rebutted.

22. Staff is litigation Staff as identified in the Rule 4 CCR 723-1-1007(a) notice filed in this Proceeding.

23. Respondent Sky Taxi is a Colorado limited liability company that was formed on March 1, 2011. Hearing Exhibit No. 2⁶ at 1. At all times pertinent to this Proceeding, and as of the date of the evidentiary hearing, Respondent Sky Taxi was in good standing. *Id.*

24. Respondent Wodraska is the individual who owns Respondent Sky Taxi (Hearing Exhibit No. 6 at 1), is the individual who submitted to the Colorado Secretary of State the Periodic Report for Sky Taxi (Hearing Exhibit No. 2 at 3), and is Respondent Sky Taxi's registered agent (*id.* at 1).

⁶ Hearing Exhibit No. 2 pertains to Respondent Sky Taxi and consists of three pages printed by Staff witness Schlitter from the Colorado Secretary of State website on August 6, 2013. Hearing Exhibit No. 2 contains an one-page document (undated Summary of Respondent Sky Taxi) and a two-page document (Periodic Report submitted electronically on January 14, 2013 by Sky Taxi).

25. Staff witness Schlitter is employed, and during all times pertinent to this Proceeding was employed, as a Criminal Investigator in the Commission's Transportation Section. In the course of his assigned duties, and consistent with his responsibilities, as a Criminal Investigator, in 2013 Staff witness Schlitter: (a) conducted the investigation that led to the issuance of the CPAN; and (b) issued the CPAN.

26. On July 12, 2013, the Commission received a complaint about Respondent Sky Taxi; the record does not reveal whether the complaint was oral or written. In the complaint and in a subsequent telephone conversation with Staff witness Schlitter, the unidentified complainant provided this information:⁷ (a) Sky Taxi is operating without Commission authority; (b) Sky Taxi has a website; (c) a vehicle used by Sky Taxi has no external markings indicating it is a taxi, but its license plate reads "Sky Taxi"; and (d) Mr. Wodraska is affiliated with Sky Taxi.

27. As a result of the complaint, on August 6, 2013, Staff witness Schlitter undertook an investigation of Sky Taxi and of Mr. Wodraska.

28. On August 6, 2013, Staff witness Schlitter looked for the Sky Taxi website, which he found.⁸

⁷ Staff witness Schlitter provided this information in his oral testimony; thus, one might ask whether the information obtained from the unidentified complainant and recounted by Staff witness Schlitter is hearsay. The ALJ finds that there is no hearsay because Staff witness Schlitter recounted the complainant's statements solely for the purpose of explaining why he began the investigation of Respondents. Thus, Staff witness Schlitter did not offer the complainant's information for the truth of the matters asserted; and the statements are not hearsay. The ALJ relies on the results of the Staff investigation as testified to by Staff witness Schlitter or as confirmed by documentary evidence (or both) and does not rely on the information obtained from the unidentified complainant as recounted by Staff witness Schlitter in his testimony.

⁸ Hearing Exhibit No. 1 is an eight-page document that is a print-out of the Sky Taxi website (SKYTAXI4U.com) pages as they existed on August 6, 2013.

29. On September 11, 2013, Staff witness Schlitter again visited the Sky Taxi website.⁹ The Sky Taxi website: (a) described Sky Taxi as a “taxi limousine service ... dedicated to providing safe and affordable transportation in our luxury Cadillac fleet” (Hearing Exhibit No. 6 at 1); (b) identified the types of vehicles used by Sky Taxi to provide service (*id.*); (c) stated that Sky Taxi “provides service within Breckenridge, Keystone, Frisco, Silverthorne, Dillon, Vail and surrounding areas ... [and] services all of Summit County, Colorado as well as Vail, Beaver Creek, Aspen, Denver and the Denver International Airport” (*id.*); (d) stated that Sky Taxi provides shuttle service to Denver International Airport (*id.* at 1); (e) contained the per-mile rate (\$ 3.00) and the per-passenger pick-up rate (\$ 3.00) for transportation within Summit County (*id.* at 3); (f) contained the rate for the first passenger (\$ 250) and the rate for each additional passenger (\$ 50) for transportation to Denver International Airport and stated that additional fees may apply under identified circumstances (*id.*); (g) allowed the website user to “CLICK HERE TO BOOK A TAXI NOW!” (*id.* at 2 *passim* (capitals in original)) and to “BOOK A TAXI NOW!” (*id.* at 1, 3 (capitals in original)) directly from the website; (h) provided a telephone number (970.485.5100) to “Call Us: Whenever you want a ride, give us a call[.] We’re happy to come pick you up in our Cadillacs, and bring you wherever you need to go!” (*id.* at 2, 4); and (i) stated that Sky Taxi is available “24 hours a day” to provide transportation to Denver International Airport (*id.* at 3). In addition, the website described Sky Taxi as Summit County’s “first and only luxury transportation call service.” Hearing Exhibit No. 6 at 1.

⁹ Hearing Exhibit No. 6 is a four-page document that is a print-out of the Sky Taxi website (SKYTAXI4U.com) pages as they existed on September 11, 2013.

30. As part of his investigation, Staff witness Schlitter located Sky Taxi's Facebook page.¹⁰ On Facebook, Sky Taxi describes itself as a "[t]axi and limousine service providing the best transportation in Summit County. Based in Breckenridge, rates start at \$5[.]" Hearing Exhibit No. 7 at 1. The Facebook page also contains Sky Taxi's hours of operation and its contact information (*i.e.*, the skytaxi4u website address and the 970.485.5100 telephone number). *Id.*

31. As part of his investigation, on September 12, 2013, Staff witness Schlitter called the 970.485.5100 telephone number listed for Sky Taxi. An individual¹¹ answered the telephone "Sky Taxi." The individual provided information about Sky Taxi that was consistent with the information obtained on September 11, 2013 from the Sky Taxi website and the Sky Taxi Facebook page.

32. As part of his investigation, Staff witness Schlitter searched for court records pertaining to Sky Taxi or Mr. Wodraska (or both). He found Case No. 2009 CV 63 (District Court for Summit County)¹² and reviewed the filings in that matter. As relevant here, on April 13, 2009, in that civil case, the Summit County District Court entered a default judgment against Mr. Wodraska and entered and issued a permanent injunction against Mr. Wodraska "prohibiting [him] from transporting passengers and their baggage from point-to-point in intrastate commerce within the Summit County, Colorado." Order re Default Judgment as to Defendants Joe J. Schrik and Sky J. Wodraska (Hearing Exhibit No. 9) at ¶ 12.A.

¹⁰ Hearing Exhibit No. 7 is a five-page document that is a print-out of the Sky Taxi Facebook pages as they existed on September 11, 2013.

¹¹ The individual later identified himself as "Sky" and, insofar as the record shows, gave no last name.

¹² The caption of this case is: *Rainbows, Inc., d/b/a 453-TAXI, v. Timothy W. Gardner, Joe J. Schrik, and Sky J. Wodraska.*

33. Sky Taxi was not a named defendant in Case No. 2009 CV 63 (District Court for Summit County).

34. As part of his investigation, Staff witness Schlitter searched Commission records. That search revealed that, at no time pertinent to this Proceeding, did Respondent Sky Taxi hold a Commission-issued Certificate of Public Convenience and Necessity (CPCN).

35. Staff witness Schlitter's search of Commission records also revealed that, effective August 21, 2013, Sky Taxi's motor carrier insurance policy was cancelled by the insurance carrier. Hearing Exhibit No. 8. This was the last insurance-related Commission record pertaining to Sky Taxi's insurance.

36. Staff witness Schlitter's search of Commission records revealed that, at no time pertinent to this Proceeding, did Respondent Sky Taxi have on file with the Commission proof of insurance as required by Commission rule.

37. Staff witness Schlitter's search of Commission records further revealed that, on May 6, 2011, the Commission granted Sky Taxi "temporary authority to conduct operations as a common carrier by motor vehicle for hire for a period of 180 days commencing from the Mailed Date of this Order, with authority as set forth in the [Decision's] Appendix." Decision No. C11-0495¹³ (Hearing Exhibit No. 5) at Ordering Paragraph No. 1.

38. Decision No. C11-0495 placed conditions on the temporary common carrier authority granted to Sky Taxi. Among the conditions was the requirement that Sky Taxi "cause[] proof of insurance (Form E) or surety bond coverage to be filed with the Commission in accordance with applicable rules[.]" *Id.* at Ordering Paragraph No. 3. Sky Taxi was required to

¹³ Decision No. C11-0495 was issued in Proceeding No. 11A-328CP-TA, *The Application of Sky Taxi LLC for Temporary Authority to Conduct Operations as a Common Carrier by Motor Vehicle for Hire.*

meet each of the stated conditions prior to commencing operations under the temporary authority. *Id.*

39. If Sky Taxi did not meet the conditions enumerated in Decision No. C11-0495 within a stated period of time, the temporary authority granted by that Decision was void. Decision No. C11-0495 (Hearing Exhibit No. 5) at Ordering Paragraph No. 4. Sky Taxi did not satisfy the stated conditions, and Commission records show that the temporary authority was voided. Even assuming that Sky Taxi had met the stated conditions and that the temporary authority has gone into effect (which did not occur), the 180-day temporary authority would have expired by its own terms prior to the end of 2011. For these reasons, at no time in September 2013 could Sky Taxi have offered to operate as a common carrier by motor vehicle by citing and relying on the temporary authority granted by Decision No. C11-0495.

40. Using the telephone number 970.485.5100 shown on the Sky Taxi website as the contact number for Sky Taxi and shown in Commission records as the telephone number for Sky Taxi, Staff witness Schlitter obtained information about the telephone number from the CLER database.¹⁴ The telephone number is both the business telephone number for Sky Taxi and the utility listing telephone number for Mr. Wodraska at Sky Taxi's business office address in Breckenridge, Colorado.

41. On October 16, 2013 at 1:00 p.m., Sheriff Deputy Palmerton of the Summit County Sheriff's Office, personally served the CPAN on Mr. Wodraska at an address in

¹⁴ The CLER database is a law enforcement database that allows an authorized individual to use search parameters, including a telephone number, to obtain information. Staff witness Schlitter routinely uses the CLER database during his investigations. The information related to telephone number 970.485.5100 is Hearing Exhibit No. 4, which is a print-out of the information the Staff witness Schlitter obtained as a result of his search of the CLER database.

Breckenridge, Colorado. Hearing Exhibit No. 13. Mr. Wodraska is Respondent Sky Taxi's registered agent. This service was sufficient as to both Respondents.

42. At all times pertinent to this Proceeding, Sky Taxi owned, controlled, operated, or managed at least one motor vehicle used to provide transportation in intrastate commerce in Colorado. *See, e.g.*, Hearing Exhibit No. 6 at 1 (Sky Taxi website describing vehicles used to provide transportation services offered by Sky Taxi).

43. At all times pertinent to this Proceeding, Sky Taxi was a "motor carrier" as defined in § 40-10.1-101(10), C.R.S.

44. Additional findings of fact are found throughout the remainder of this Decision.

III. DISCUSSION AND CONCLUSIONS

45. The record establishes that the Commission has subject matter jurisdiction in this Proceeding and *in personam* jurisdiction over both Respondents.

46. Staff bears the burden of proof by a preponderance of the evidence. Section 40-7-116(1), C.R.S.; § 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. A party has met the preponderance of the evidence burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

A. Governing Legal Standards and Principles.

47. Count 1 of the CPAN alleges violation of § 40-10.1-201(1), C.R.S. That section provides, as pertinent here:

A person shall not ... *offer to operate* as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.

(Emphasis supplied.)

48. As pertinent here, § 40-1-102(3)(a)(I), C.R.S., defines common carrier as [e]very person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within [Colorado] by motor vehicle ... by indiscriminately accepting and carrying passengers for compensation[.]

See also Rule 4 CCR 723-6-6001(e)¹⁵ (same). There are exceptions to this definition that are not applicable to this Proceeding.

49. A common carrier operates -- or offers to operate -- transportation service that is either scheduled service or call-and-demand service. The facts of this case do not establish that Respondent Sky Taxi operated or offered to operate scheduled transportation service, as scheduled service is defined in Rule 4 CCR 723-6-6201(i). Thus, the issue in this Proceeding is whether, on September 11, 2013, Respondent Sky Taxi (a) operated or offered to operate (b) call-and-demand transportation of passengers (c) in intrastate commerce (d) for compensation and (e) on an indiscriminate basis.

50. Rule 4 CCR 723-6-6201(c) defines call-and-demand service as

the transportation of passengers not on schedule. Call and demand service includes charter service, *limousine service*, *shuttle service*, sightseeing service, and *taxicab service*.

(Emphasis supplied.)

51. As pertinent here, Rule 4 CCR 723-6-6201(g) defines limousine service as

the transportation of passengers charged at a per-person rate, and the use of the motor vehicle is not exclusive to any individual or group. The term “limousine service” is distinguished from the term “luxury limousine service” as used in Article 10.1 of Title 40, C.R.S.

¹⁵ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 CCR 723, which were in effect from August 1, 2012 until February 13, 2014. Unless the context indicates otherwise, reference in this Decision to Part 6 Rules is to the Rules in effect in September 2013.

52. Rule 4 CCR 723-6-6201(j) defines shuttle service as “the transportation of passengers charged at a per-person rate and the use of the motor vehicle is not exclusive to any individual or group.”

53. Section 40-10.1-101(19), C.R.S., defines taxicab service as

passenger transportation in a taxicab on a call-and-demand basis, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.

See also Rule 4 CCR 723-6-6001(pp) (same). Section 40-10.1-101(18), C.R.S., defines taxicab as “a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.” *See also* Rule 4 CCR 723-6-6001(oo) (same).

54. Section 40-10.1-101(5), C.R.S., defines compensation as “any money, property, service, or thing of value charged or received or to be charged or received, whether directly or indirectly.” *See also* Rule 4 CCR 723-6-6001(f) (same).

55. Section 40-10.1-101(9), C.R.S., defines intrastate commerce as the “transportation for compensation by motor vehicles over the public highways between points in” Colorado. *See also* Rule 4 CCR 723-6-6001(j) (same). Section 40-10.1-101(16), C.R.S., defines public highway as “every street, road, or highway in [Colorado] over which the public generally has a right to travel.”

56. There is neither a statutory definition nor a rule definition of the term “indiscriminately accepting and carrying passengers,” as that term is used in § 40-10.1-201(1), C.R.S. There are, however, numerous judicial decisions that address this aspect of a common carrier. A “common carrier must convey for all desiring its transportation.” *Denver Cleanup Service, Inc. v. Public Utilities Commission*, 192 Colo. 537, 540, 61 P.2d 1252, 1253 (1977), citing *Ward Transport, Inc. v. Public Utilities Commission*, 151 Colo. 76, 376 P.2d 166 (1962).

See also *McKay v. Public Utilities Commission*, 104 Colo. 402, 413, 91 P.2d 965, 970 (1939) (*McKay*) (“A common carrier has the duty of giving adequate and sustained *public service* at reasonable rates, *without discrimination*” (emphasis supplied)). This common carrier duty and responsibility often is stated thusly: a common carrier by motor vehicle holds itself out to the public as ready, willing, and able to provide transportation service to any and all who request its service.

57. Count 2 of the CPAN alleges violation of Rule 4 CCR 723-6-6007(a)(I). That Rule provides:

(a) Financial responsibility requirements:

(I) Motor vehicle liability coverage. Every motor vehicle carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Motor vehicle liability means liability for bodily injury and property damage.

See also § 40-10.1-107(1), C.R.S. (a motor carrier “shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.”).

58. Count 3 of the CPAN alleges violation of Rule 4 CCR 723-6-6007(f)(I)(A). In pertinent part, that Rule provides:

(f) The motor carrier shall cause to be filed with the Commission the appropriate form in lieu of the original [insurance or surety] policy as follows:

(I) Motor vehicle liability coverage.

(a) For all common carriers ..., a Form E or G.

59. Finally, whether one or both Respondents violated applicable statutes and Commission Rules and, if one or both did, what the appropriate sanctions are, are matters of public interest. The Commission has an independent duty to determine matters that are within

the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Staff's proposals. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, and is in the public interest *provided* the record supports the result *and provided* the reasons for the choices made are stated.

60. The ALJ applied, and was mindful of, these standards and principles in reaching her decision in this Proceeding.

B. Respondent Sky Taxi.

1. Alleged Violations.

61. The CPAN contains three Counts, each of which is discussed separately.

a. Count 1 of the CPAN.

62. Count 1 alleges that, on September 11, 2013, Respondent violated § 40-10.1-201(1), C.R.S. To meet its burden of proof with respect to this Count, Staff must prove that, on September 11, 2013, Respondent either operated or offered to operate as a common carrier without first having obtained a CPCN.

63. The evidence in this Proceeding establishes that both the Sky Taxi website and the Sky Taxi Facebook page, and each individually, served as public announcements that offered each one of Sky Taxi's identified transportation services to members of the public at large. The evidence establishes that, by these two means, Respondent Sky Taxi advertised, as that term is defined in § 40-10.1-101(1), C.R.S.,¹⁶ its transportation services.

¹⁶ As pertinent here, § 40-10.1-101(1), C.R.S., defines advertise as "to advise, announce, give notice of, publish, or call attention to by use of any ... written, or graphic statement made in ... any electronic medium[.]" See also Rule 4 CCR 723-6-6001(a) (same).

64. In addition, the evidence in this Proceeding establishes that, on September 11, 2013 by its website and its Facebook page, Respondent Sky Taxi: (a) offered to provide, and by so doing held itself out as ready, willing, and able to provide, call-and-demand transportation service (which Respondent Sky Taxi self-described as limousine service, shuttle service, and taxi service) to members of the public at large who requested its service; (b) offered to provide transportation in intrastate commerce (*i.e.*, provides “service within Breckenridge, Keystone, Frisco, Silverthorne, Dillon, Vail and surrounding areas ... [and] services all of Summit County, Colorado as well as Vail, Beaver Creek, Aspen, Denver and the Denver International Airport” (Hearing Exhibit No. 6 at 1)); and (c) offered to provide transportation service for compensation. The evidence in this Proceeding also establishes that, on September 11, 2013, Respondent Sky Taxi did not have a CPCN to operate as a common carrier by motor vehicle.

65. Finally, although not necessary to establish a violation of § 40-10.1-201(1), C.R.S., the evidence in this Proceeding establishes that, since at least 2011, Respondent Sky Taxi knew, or should have known, that, pursuant to statute, it could neither operate nor offer to operate as a common carrier by motor vehicle without first obtaining a CPCN.

66. The ALJ finds that Staff has met its burden of proof with respect to Count 1 and has established that, on September 11, 2013, Respondent Sky Taxi violated § 40-10.1-201(1), C.R.S. Having found that Respondent Sky Taxi violated § 40-10.1-201(1), C.R.S., the ALJ also finds that the Commission should impose sanctions on Respondent Sky Taxi for this violation. The sanctions are discussed below.

b. Count 2 of the CPAN.

67. Count 2 alleges that, on September 11, 2013, Respondent Sky Taxi violated Rule 4 CCR 723-6-6007(a)(I). To meet its burden of proof with respect to this Count, Staff must

prove that, on September 11, 2013, Respondent Sky Taxi did not obtain and have in effect motor vehicle liability insurance or a surety bond that provided coverage in accordance with Rule 4 CCR 723-6-6007.

68. The evidence in this Proceeding establishes that, on September 11, 2013, Respondent Sky Taxi: (a) was a motor vehicle carrier; (b) offered to operate as a common carrier; and (c) did not have on file with the Commission evidence of Respondent Sky Taxi's financial responsibility as required by Rule 4 CCR 723-6-6007(f).¹⁷

69. Pursuant to Rule 4 CCR 723-6-6007(g), Respondent Sky Taxi's failure to file proof of insurance as required by Rule 4 CCR 723-6-6007(f) creates "a rebuttable presumption that [Respondent Sky Taxi] is not properly covered under the requirements of" Rule 4 CCR 723-6-6007. There is no evidence in this Proceeding that rebuts this presumption. Consequently, the ALJ relies on the Rule-created presumption and, on this basis, finds that Respondent Sky Taxi's failure to file proof of insurance as required by Rule 4 CCR 723-6-6007(f) establishes that, on September 11, 2013, Respondent Sky Taxi did not have motor vehicle liability coverage as required by Rule 4 CCR 723-6-6007(a)(I).

70. In addition, although not necessary to prove a violation of Rule 4 CCR 723-6-6007(a)(I), the evidence in this Proceeding establishes that, since at least May 6, 2011 (the date on which Decision No. C11-0495 (Hearing Exhibit No. 5) issued), Respondent Sky Taxi knew, or should have known, of the financial responsibility requirements contained in Rule 4 CCR 723-6-6007(a)(I). In addition, the insurance company's notification of cancellation of insurance coverage (Hearing Exhibit No. 8) establishes that, for some period of time prior to

¹⁷ Respondent Sky Taxi's alleged violation of Rule 4 CCR 723-6-6007(f)(I)(A) is Count 3 of the CPAN, which is discussed *infra*.

August 21, 2013, Respondent Sky Taxi had insurance coverage for bodily injury and property damage. A logical inference to draw from this fact is that, prior to September 11, 2013, Respondent Sky Taxi was aware of its Rule 4 CCR 723-6-6007(a)(I) obligation to have coverage for motor vehicle liability, which is defined in Rule 4 CCR 723-6-6007(a)(I) as “liability for bodily injury and property damage.”

71. The ALJ finds that Staff has met its burden of proof with respect to Count 2 and has established that, on September 11, 2013, Respondent Sky Taxi violated Rule 4 CCR 723-6-6007(a)(I). Having found that Respondent Sky Taxi violated the cited Rule, the ALJ finds that the Commission should impose sanctions on Respondent Sky Taxi for this violation. The sanctions are discussed below.

c. Count 3 of the CPAN.

72. Count 3 alleges that, on September 11, 2013,¹⁸ Respondent violated Rule 4 CCR 723-6-6007(f)(I)(A) (*i.e.*, did not have on file with the Commission either a Form E or a Form G). To meet its burden of proof with respect to this Count, Staff must prove that, on September 11, 2013, Respondent did not have on file with the Commission either a Form E or a Form G and, if Rule 4 CCR 723-6-6007(f)(I)(A) is not a safety rule, that the violation was

¹⁸ As filed and served, Count 3 of the CPAN (Hearing Exhibit No. 12) alleges that the violation occurred on September 1, 2013. During the evidentiary hearing, Staff witness Schlitter testified that the September 1, 2013 date is a typographical error and that the correct date is September 11, 2013. This evidence is unrefuted and unrebutted. As a result, and notwithstanding the absence of a Staff motion to amend the CPAN to conform to the evidence, the ALJ finds that the alleged violation occurred on September 11, 2013 and amends Count 3 of the CPAN.

Staff is advised, and is on notice, that, in future proceedings, the ALJ *sua sponte* will not amend the CPAN to conform to the evidence. If Staff desires to amend the CPAN to conform to the evidence, Staff must make a motion to do so.

intentional.¹⁹ Section 40-10.1-113(1)(g), C.R.S. *See generally* Decision No. C14-0774²⁰ (discussion of intent in context of safety rules). A violation is intentional within the meaning of § 40-7-113(1)(g), C.R.S., when a person is aware of a requirement or restriction and nonetheless commits an act, or fails to act, and that act or omission violates the requirement or restriction. Decision No. C00-1075 at 22-24.²¹

73. The evidence in this Proceeding establishes that, on September 11, 2013, Respondent Sky Taxi: (a) was a motor vehicle carrier; (b) offered to operate as a common carrier; and (c) did not have on file with the Commission either of the required forms.

74. In addition, the evidence in this Proceeding establishes that, since at least May 6, 2011 (the date on which Decision No. C11-0495 (Hearing Exhibit No. 5) issued), Respondent Sky Taxi knew that it was required to have proof of insurance on file with the Commission. Decision No. C11-0495 (Hearing Exhibit No. 5) at Ordering Paragraph No. 3. Thus, the ALJ finds that Respondent's violation of Rule 4 CCR 723-6-6007(f)(I)(A) was intentional within the meaning of § 40-7-113(1)(g), C.R.S.

75. The ALJ finds that Staff has met its burden of proof with respect to Count 3 and has established that, on September 11, 2013, Respondent Sky Taxi intentionally violated Rule 4 CCR 723-6-6007(f)(I)(A). Having found that Respondent Sky Taxi intentionally violated the cited Rule, the ALJ finds that the Commission should impose sanctions on Respondent Sky Taxi for this violation. The sanctions are discussed below.

¹⁹ In this Proceeding, the ALJ does not address the issue of whether Rule 4 CCR 723-6-6007(f)(I)(A) is a safety rule because the ALJ finds that Respondent Sky Taxi's violation of that rule was intentional.

²⁰ This Decision was issued on July 8, 2014 in Proceeding No. 14G-0149EC, *Public Utilities Commission v. Advanced Limousine, LLC*.

²¹ This Decision was issued on September 29, 2000 in Proceeding No. 99K-590CP, *Public Utilities Commission v. Valera Lea Holtorf, doing business as Dashabout Shuttle Company and/or Roadrunner Express*.

76. The ALJ has determined that Respondent Sky Taxi violated § 40-10.1-201(1), C.R.S.; Rule 4 CCR 723-6-6007(a)(I); and Rule 4 CCR 723-6-6007(f)(I)(A). The remaining issue to be decided is the sanction or sanctions to impose for the violations. The ALJ now turns to this issue.

2. Sanctions.

77. The Commission has broad authority with respect to the imposition of sanctions for violation of statutes and Commission rules. In this case, Staff requests that the ALJ both assess the maximum civil penalty for each violation and enter a cease and desist order against Respondent Sky Taxi. The ALJ discusses each of these requests below.

a. Civil Penalty Assessment.

78. The ALJ has found that, as alleged in Count 1 of the CPAN, Respondent Sky Taxi violated § 40-10.1-201(1), C.R.S. Pursuant to § 40-7-113(1)(b), C.R.S., the maximum civil penalty for a violation of § 40-10.1-201(1), C.R.S., is \$ 1,100. *See also* Rule 4 CCR 723-6-6216(a)(I) (same). With the mandatory surcharge required by § 24-34-108, C.R.S., the maximum total assessment for the Count 1 violation is \$ 1,210. It is within the Commission's discretion to impose any civil penalty up to the maximum amount.

79. The ALJ has found that, as alleged in Count 2 of the CPAN, Respondent Sky Taxi violated Rule 4 CCR 723-6-6007(a)(I). The cited Rule is a legal requirement to carry insurance. Pursuant to § 40-7-113(1)(a), C.R.S., the maximum potential civil penalty for failure "to carry the insurance required by law" is \$ 11,000. With the mandatory surcharge required by § 24-34-108, C.R.S., the maximum total assessment for the Count 2 violation is \$ 12,100. It is within the Commission's discretion to impose any civil penalty up to the maximum amount.

80. The ALJ has found that, as alleged in Count 3 of the CPAN, Respondent Sky Taxi violated Rule 4 CCR 723-6-6007(f)(I)(A). Pursuant to § 40-7-113(1)(g), C.R.S., and Rule 4 CCR 723-6-6312(d), the maximum potential civil penalty for violation of Rule 4 CCR 723-6-6007(f)(I)(A) is \$ 275. With the mandatory surcharge required by § 24-34-108, C.R.S., the maximum total assessment for the Count 3 violation is \$ 302.50. It is within the Commission's discretion to impose any civil penalty up to the maximum amount.

81. For each CPAN Count, Staff seeks the maximum civil penalty. For the three violations, the maximum civil penalty is \$ 12,375 and the mandatory surcharge is \$ 1,237.50, for a total assessment of \$ 13,612.50.

82. With respect to the amount of the civil penalty to be assessed, Rule 4 CCR 723-1-1302(b), provides as follows:

(b) The Commission may impose a civil penalty, when provided by law. The Commission will consider evidence concerning some or all of the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;
- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors as equity and fairness may require.

The amount of the civil penalty to be assessed is discretionary with the Commission and is based on the evidentiary record. On a case-by-case basis, the Commission balances and weighs the stated factors as it deems appropriate.

83. In determining the amount of the civil penalty in this case, the ALJ began with the full range of options; considered the evidence presented on the factors in aggravation and in mitigation; and, finally, tested the amount of the civil penalty against the purposes underlying the imposition of civil penalties.

84. Based on the evidentiary record, the ALJ finds that the maximum civil penalty for each Count should be assessed. In making this determination, the ALJ considered: (a) § 40-101.201(1), C.R.S.; Rule 4 CCR 723-6-6007(a)(I); and Rule 4 CCR 723-6-6007(f)(I)(A)²² and their public interest purposes; (b) the factors enumerated in Rule 4 CCR 723-1-1302(b); (c) Commission guidance provided in previous civil penalty decisions; (d) the purposes served by civil penalties; and (e) the range of civil penalty assessments found to be reasonable in other cases.

85. The ALJ first examined the circumstances, nature, and gravity of the violations (Rule 4 CCR 723-1-1302(b)(I)); and the degree of Respondent Sky Taxi's culpability (Rule 4 CCR 723-1-1302(b)(II)).

86. With respect to Count 1, the ALJ considered that Respondent Sky Taxi knew, or should have known, that it must have a CPCN before offering to operate as a common carrier by motor vehicle and considered the important public interests served by, and the reasons for, obtaining a CPCN prior to offering to operate as a common carrier by motor vehicle.²³

87. With respect to Count 2, the ALJ considered both Respondent Sky Taxi's long-standing awareness that it is obligated to meet the financial requirements established in

²² These are the statutes and Rules that Respondent Sky Taxi violated on September 11, 2013.

²³ See, e.g., *McKay*, 104 Colo. at 410-13, 91 P.2d at 969-71 (discussion of public interests served by regulation of motor vehicle carriers).

Rule 4 CCR 723-6-6007(a)(I) and the important public interests served by assuring that those offering to operate as a common carrier have insurance (or a surety bond) in the amounts required by Rule 4 CCR 723-6-6007.

88. With respect to Count 3, the ALJ considered both Respondent Sky Taxi's violation of 723-6-6007(f)(I)(A), notwithstanding its actual knowledge of the filing requirement, and the important public interests served by assuring that those offering to operate as a common carrier have filed proof of insurance with the Commission.

89. There is no record with respect to the remaining factors in Rule 4 CCR 723-1-1302(b). The ALJ finds that there are no mitigating factors in the record.

90. Given the evidentiary record, including the absence of evidence with respect to mitigation, the ALJ finds it appropriate in this case to assess the maximum civil penalty of **\$ 12,375**. The ALJ finds that § 24-34-108, C.R.S., mandates a **surcharge of \$ 1,237.50**. The ALJ will order the maximum total assessment of **\$ 13,612.50** against Respondent Sky Taxi and will order that Respondent Sky Taxi pay this amount to the Commission not later than 30 days following the date of the final Commission decision issued in this Proceeding.

b. Order to Cease and Desist.

91. Section 40-10.1-112(1), C.R.S., authorizes the Commission to issue a cease and desist order. That statute states, in relevant part:

the commission, at any time, by order duly entered, *after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist ... for the following reasons:*

- (a) A violation of [article 10.1 of title 40, C.R.S.] ...;

* * *

(c) A violation ... of the rules of the commission.

(Emphasis supplied.) This provision is subject to an exception that does not apply in this Proceeding.

92. As pertinent here, Rule 4 CCR 723-6-6008(c) provides:

After a hearing upon at least ten days' notice to the motor carrier affected, and upon proof of violation, the Commission may issue an order to cease and desist, ... for the following reasons:

(I) a violation of, or failure to comply with, any statute, ..., or rule concerning a motor carrier[.]

93. In this case, Staff asks the Commission to issue a cease and desist order prohibiting Respondent Sky Taxi from providing, or offering to provide, common carrier service by motor vehicle until Respondent Sky Taxi has obtained a CPCN from the Commission and has met the financial responsibility and filing requirements.

94. The CPAN states: "***NOTICE: Upon proof of any violation alleged above, the Public Utilities Commission may order you to cease and desist activities in violation of statutes and Commission rules.***" Hearing Exhibit No. 12 at 1 (italics and bolding in original). Deputy Palmerton of the Summit County Sheriff's Office personally served the CPAN on Respondents on October 16, 2013. Hearing Exhibit No. 13. Thus, Respondent Sky Taxi had notice that a cease and desist order could issue in this Proceeding. In addition, Respondent Sky Taxi had more than ten days' notice of the evidentiary hearing in this matter.²⁴ Respondent Sky Taxi elected not to participate in this Proceeding.

²⁴ On January 28, 2014, the Commission mailed Decision No. R14-0108-I to the Breckenridge, Colorado address for Respondents known to the Commission and shown on the CPAN. That Interim Decision scheduled the March 31, 2014 evidentiary hearing in this Proceeding.

95. The ALJ finds that a cease and desist order should issue against Respondent Sky Taxi in this Proceeding because: (a) Respondent Sky Taxi knew, or should have known, that it could not operate or offer to operate as a common carrier by motor vehicle without first obtaining a CPCN; (b) Respondent Sky Taxi nonetheless acted as a common carrier by motor vehicle without first obtaining a CPCN, without meeting mandatory financial responsibility obligations, and without making a mandatory filing with the Commission; (c) Respondent Sky Taxi's actions, which did not comply with the applicable statute and Commission rules, harmed the traveling public and the general public; and (d) unless ordered to cease doing so, Respondent Sky Taxi may (and likely will) continue to operate or to offer to operate as a common carrier by motor vehicle without complying with the applicable statute and Commission rules.

96. In addition, the ALJ finds that a cease and desist order is warranted as Respondent Sky Taxi's unauthorized transportation service harms the traveling public and the general public interest. Respondent Sky Taxi's operating or offering to operate as a common carrier without first obtaining a CPCN is contrary to the statute that provides that common carriers by motor vehicle must be certificated and regulated by the Commission.

97. Finally, the ALJ finds that a cease and desist order is warranted because, insofar as the record of this Proceeding shows, there is neither an existing injunction nor an existing cease and desist order involving Respondent Sky Taxi. As pertinent here, the injunction entered in 2009 in Summit County district court names Respondent Wodraska and does not name Respondent Sky Taxi. Hearing Exhibit No. 9. *See also* Hearing Exhibit No. 11 (same). Thus, at present, there is no court or Commission order prohibiting Respondent Sky Taxi from operating as a common carrier by motor vehicle unless and until Respondent Sky Taxi obtains a CPCN.

98. The ALJ will order Respondent Sky Taxi, its members (as that term is defined in § 7-80-102(9), C.R.S.), its managers (as that term is defined in § 7-80-102(8), C.R.S.), its agents, its drivers, and its contractors immediately to cease and desist from operating as, or offering to operate as, a common carrier by motor vehicle unless Respondent Sky Taxi has a CPCN issued by the Commission; the insurance (or surety bond) required by law; and has made the filing required by Rule 4 CCR 723-6-6007(f)(I)(A). The cease and desist order will continue in effect until modified by subsequent Commission decision.

99. **Respondent Sky Taxi is advised, and is on notice, that** violation of the cease and desist order contained in this Decision may result in the Commission's taking further action, both administrative and judicial, as permitted by statute.

100. The ALJ finds that the combination of the maximum assessment and the cease and desist order achieves the following purposes: (a) deterring future violations, whether by Respondent Sky Taxi or by similarly-situated motor vehicle carriers; (b) motivating Respondent Sky Taxi to come into compliance with the law; and (c) punishing Respondent Sky Taxi for its past behavior. Thus, the maximum assessment and the cease and desist order are reasonable, are in accord with Commission procedures and policy, and are in the public interest.

C. Respondent Wodraska.

101. Respondent Sky Taxi is a Colorado limited liability company that, at all times pertinent to this Proceeding and as of the date of the evidentiary hearing, was in good standing.

102. Respondent Wodraska owns Respondent Sky Taxi (Hearing Exhibit No. 6 at 1) and is Respondent Sky Taxi's registered agent (Hearing Exhibit No. 2 at 1).

103. In response to a question from the ALJ during the evidentiary hearing, Staff counsel stated that Staff named Respondent Wodraska as a respondent solely in his capacity as

Respondent Sky Taxi's owner-operator (*i.e.*, Mr. Wodraska was not named as an individual or in any capacity other than as owner-operator of Respondent Sky Taxi).

104. Counsel's statement is a judicial admission, which is

a formal, deliberate declaration which a party or his attorney makes in a judicial proceeding for the purpose of dispensing with proof of formal matters or of facts about which there is no real dispute. ... Judicial admissions are conclusive on the party making them ... and generally continue to have effect for a subsequent part of the same proceedings. ... Such admissions need not be written when made in court, nor must they be made by a party as his counsel is impliedly authorized to make them. ... Generally, any fact whatever may be the subject of a judicial admission, and *parties may stipulate away valuable rights*, provided the court is not required to abrogate inviolate rules of public policy.

Kempter v. Hurd, 713 P.2d 1274, 1279 (Colo. 1986) (*Kempter*) (internal citations omitted) (emphasis supplied). Judicial admissions may be made in memoranda of law, in legal briefs, and in oral argument. *See generally Boulder Plaza Residential, LLC v. Summit Flooring, LLC*, 198 P.3d 1213, 1216 (Colo. App. 2008) and cases cited there (same).

105. Staff counsel made the representation for the purpose of specifying the capacity in which Mr. Wodraska was named as a respondent in this Proceeding; made the statement during a formal proceeding; made the statement unequivocally; made the statement in the course of his representation of Staff; and, in so doing, stipulated away or waived the valuable right to present evidence with respect to whether, or otherwise to assert that, Respondent Wodraska -- either as an individual or in some capacity other than owner-operator of Sky Taxi -- may have violated the statute and Commission rules as alleged in the Complaint. Staff may stipulate away or waive its right to present evidence or to make assertions with respect to the issue of Respondent Wodraska's liability, other than in his capacity as owner-operator of Respondent Sky Taxi, as doing so falls within its right to state the intended scope of the CPAN and does not implicate or

require the ALJ to abrogate any important public policy. Thus, the representation is binding on Staff.

106. Following Staff counsel's representation and during the evidentiary hearing, the ALJ did not allow Staff counsel to question Staff witness Schlitter about Respondent Wodraska as an individual. To be consistent with Staff counsel's representation, the ALJ required Staff counsel to ask questions in the context of Respondent Wodraska as owner-operator of Sky Taxi. Staff counsel did not object to, and complied with, this requirement.

107. As pertinent here, Staff filed its Legal Brief to respond to these questions raised by the ALJ with respect to naming Respondent Wodraska in his capacity as owner-operator of Respondent Sky Taxi: (a) whether Respondent Wodraska is personally liable for the violations; (b) whether Respondent Sky Taxi and Respondent Wodraska are jointly and severally liable for the violations; and (c) whether imposition of personal liability on Respondent Wodraska requires the ALJ to pierce the corporate veil of Respondent Sky Taxi.

108. Staff now asserts that, to find Respondent Wodraska personally responsible and liable in this Proceeding, the ALJ need not pierce the corporate veil of Respondent Sky Taxi because

the traditional application of the doctrine is never reached. Instead, in this case the evidence is that Mr. Wodraska, *individually*, committed violations of the statutes and rules concerning motor carriers. [Respondent Sky Taxi] had been the vehicle by which Mr. Wodraska offered illegal services, beginning in 2011, and Mr. Wodraska continues to use [Respondent Sky Taxi's] name as the basis for a website advertising these illegal services.

Since this case involves *an individual who bears responsibility separate and distinct from his role as an owner [or] principal of [Respondent Sky Taxi]*, liability can appropriately attach without resort to the veil-piercing doctrine.

Staff Legal Brief at 7 (emphasis supplied).

109. As discussed above, Staff made a judicial admission that the CPAN names Respondent Wodraska *only in his capacity as owner-operator of Respondent Sky Taxi*. This statement/admission “is conclusive on [Staff as] the party making” it. *Kempton*, 713 P.2d at 1279. As discussed above, Staff has stipulated away, or has waived, its right to present evidence on, and to make arguments or assertions with respect to, Respondent Wodraska’s responsibility for the alleged violations in any capacity other than in his capacity as owner-operator of Respondent Sky Taxi. As a result, Staff has waived its ability to assert that Respondent Wodraska, *as an individual*, is responsible for the violations alleged in the CPAN. For these reasons, the ALJ does not consider -- and will not address further -- Staff’s assertion that Respondent Wodraska, as an individual, is responsible for the violations alleged in the CPAN.

110. Article 80 of title 7, C.R.S., is the Colorado Limited Liability Company Act (LLC Act). Section 7-80-101, C.R.S. The LLC Act governs the formation, powers, treatment, and dissolution of a limited liability company, such as Respondent Sky Taxi. It specified and governs the responsibilities, rights, and obligations of members of a limited liability company. Importantly, it specifies and governs the protections afforded each member when a limited liability company exists.

111. The specific provisions of the LLC Act control over the general provisions of other statutes with respect to LLC-related issues such as, for example and as relevant here, the circumstances under which a member may be held liable or responsible for the actions of the LLC. Thus, the ALJ now addresses the issue of Respondent Wodraska’s liability or responsibility in light of the LLC Act, the controlling statutory provisions.

112. Respondent Wodraska is the owner-operator of Respondent Sky Taxi.

113. As defined in § 7-80-102(9), C.R.S., a member is

a person with an ownership interest in a limited liability company with the rights and obligations specified under [article 80 of title 7, C.R.S.]. In the case of a limited liability company with only one member, “members” and “all of the members” refers to such one member.

Thus, as an owner, Respondent Wodraska is a member of Respondent Sky Taxi.

114. The testimony of Staff witness Schlitter and the documentary evidence hint or broadly suggest that Respondent Wodraska acts or may act as the manager of Respondent Sky Taxi. As defined in § 7-80-102(8), C.R.S., a manager is “a person designated as a manager of a limited liability company to manage the company pursuant to” § 7-80-402, C.R.S. In relevant part, § 7-80-402, C.R.S., provides that, *if* the LLC’s articles of organization provide for vesting the LLC’s management in one or more managers, then members “may designate one or more persons to be managers.” Because the articles of organization are not in the record, there is insufficient evidence in this Proceeding on which to find that Respondent Wodraska in fact is the designated manager of Respondent Sky Taxi.²⁵ Thus, the remainder of the discussion in this Decision focuses on Respondent Wodraska as a member of Respondent Sky Taxi.

115. Based on the record in this Proceeding, Respondent Wodraska is the sole member of Respondent Sky Taxi. Section 7-80-401(1), C.R.S., provides in pertinent part that “decisions with respect to a [LLC] shall be made by a majority of the members[.]” Thus, under this authority, as the sole member Respondent Wodraska may manage Respondent Sky Taxi.

²⁵ Even if the ALJ could find that Respondent Wodraska is Respondent Sky Taxi’s designated manager (which the ALJ cannot do), the duties of, the responsibilities of, the rights of, and the protections afforded to members and managers of a LLC are substantially the same. *See, e.g.*, §§ 7-80-404, C.R.S. (duties of members and managers), 7-80-405, C.R.S. (members and managers as agents of LLC), 7-80-407, C.R.S. (reimbursement and indemnification of members and managers by LLC).

116. Section 7-80-107(1), C.R.S., provides:

In any case in which a party seeks to hold the members of a [LLC] personally responsible for the alleged improper actions of the [LLC], the court [here, the Commission] *shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.*

(Emphasis supplied.)

117. In this case, Staff knew of the existence of Respondent Sky Taxi and that it is an LLC. The caption on the CPAN (Hearing Exhibit No. 12) and the information on the Sky Taxi website (Hearing Exhibit No. 6) establish Staff's knowledge.²⁶ Staff also knew of Respondent Wodraska's status as a member (*i.e.*, owner-operator) of Sky Taxi. To the extent, then, that Staff seeks to hold Respondent Wodraska personally responsible for the actions of the Respondent Sky Taxi, the record evidence must be sufficient to pierce the corporate veil. Assuming the corporate veil could be pierced, Respondent Wodraska (and not Respondent Sky Taxi) would be the responsible party because, in that event, the evidence would establish that Respondent Sky Taxi is Respondent Wodraska's alter ego (*i.e.*, that Respondent Wodraska and Respondent Sky Taxi are one and the same) and Respondent Sky Taxi is not an independent separate entity.

118. To hold an individual member personally responsible for actions of the LLC of which the person is a member, it is necessary to pierce the corporate veil because "a limited liability company formed under the [LLC] Act offers members and managers the limited liability protection of a corporation." *Sheffield Services Company v. Trowbridge*, 211 P.3d 714, 719 (Colo. App. 2009) (*Sheffield*), *rev'd on other grounds, In re Weinstein*, 302 P.3d 263 (Colo. 2013). A party "seeking to pierce the corporate veil must show by *clear and convincing*

²⁶ In addition, members of the public know that they are dealing with Sky Taxi, a company that is "locally owned and operated right out of beautiful Breckenridge, Colorado." Sky Taxi website (Hearing Exhibit No. 6) at 1.

evidence” (*Sheffield*, 211 P.3d at 721 (emphasis supplied)) that each of the following considerations is met: (a) the LLC is the member’s alter ego; and (b) “justice requires recognizing the [alter ego] relationship’s substance because the [LLC] fiction was used to perpetuate a fraud or [to] defeat a rightful claim” (*id.* (internal quotation and citation omitted)); and (c) “disregarding the [LLC] form and holding the [member] personally liable for the [LLC’s] acts will lead to an equitable result” (*id.*).

119. To determine whether a LLC is its member’s alter ego (the first part of the piercing the corporate veil process),

[c]ourts consider various factors in identifying such a unity of interest in ownership so as to disregard the [LLC] fiction and [to] treat the [LLC and the member] as alter egos, including whether (1) the [LLC] is operated as a distinct business entity, (2) assets and funds are commingled, (3) adequate corporate records are kept, (4) the nature and form of the entity’s ownership and control facilitate misuse by an insider, (5) the business is thinly capitalized, (6) the [LLC] is used as a “mere shell,” (7) [members] disregard legal formalities, and (8) [LLC] funds or assets are used for noncorporate purposes.

Sheffield, 211 P.3d at 720-21.

120. In this case, Staff has the burden to prove, by clear and convincing evidence, the elements or factors necessary to pierce the corporate veil. With respect to Respondent Wodraska and his relationship and actions *vis-à-vis* Respondent Sky Taxi, the evidence establishes: (a) Respondent Wodraska is a member of -- and likely the sole owner of -- Respondent Sky Taxi; (b) Respondent Wodraska answered “Sky Taxi” when Staff witness Schlitter called the telephone number for Sky Taxi; (c) Respondent Wodraska is Sky Taxi’s designated agent and made filings on behalf of Sky Taxi with the Colorado Secretary of State; and (d) Respondent Wodraska, as a member of Sky Taxi, made filings with the Commission on behalf of Sky Taxi. There is nothing untoward or nefarious in any of these actions. Each is entirely consistent with Respondent Wodraska’s management of Respondent Sky Taxi.

121. Staff makes much of the fact that Respondent Wodraska is Sky Taxi's only member and appears to manage Sky Taxi. Staff appears to ask the ALJ to draw from this fact the inference that, almost by definition, Sky Taxi is (or must be) Mr. Wodraska's alter ego. Section 7-80-102(9), C.R.S., expressly permits a LLC to have only one member. As a result, the ALJ will not draw an inference of an alter ego relationship based on Respondent Wodraska's being the sole member of Respondent Sky Taxi.²⁷

122. Based on the evidence of record in this case, the ALJ finds that there is virtually no evidence, and certainly not the required clear and convincing evidence, to support a finding on any one -- let alone all three -- of the elements that Staff must prove to pierce the corporate veil between Sky Taxi and Mr. Wodraska. The ALJ finds that Staff failed to meet its burden of proof with respect to holding Respondent Wodraska personally responsible and liable for the violation alleged in the CPAN.

123. In addition, as discussed above, the evidence establishes that Respondent Sky Taxi did not comply with applicable statute and Rules. To reach this conclusion, the ALJ necessarily determined that, based on the record evidence, the LLC is an independent entity. This determination precludes a finding that Sky Taxi is the alter ego of Respondent Wodraska.

124. Finally, absent circumstances that Staff neither asserted nor proved, the violations occurred due to the action or inaction of *either* Respondent Sky Taxi *or* Respondent Wodraska. Both Respondents cannot be held to have violated the statute and the Rules because only one of them (*i.e.*, Sky Taxi as an independent entity *or* Mr. Wodraska through his LLC alter ego) acted

²⁷ Even if such an inference were to be drawn or could be drawn (which it cannot be on the facts of this case), there is insufficient clear and convincing evidence in this record on the other considerations necessary to pierce the corporate veil and to hold Respondent Wodraska personally responsible and liable for the violations alleged in the CPAN.

as a common carrier without first having obtained a CPCN, failed to have insurance, and failed to have proof of insurance on file with the Commission. Staff cannot recover a civil penalty and cannot obtain a cease and desist order against both named Respondents because there is only one responsible party.²⁸

125. For these reasons, the ALJ finds that Staff failed to meet its burden of proof with respect to Respondent Wodraska. The ALJ will dismiss, with prejudice, the CPAN and this case as to Respondent Wodraska.

D. Additional Matter.

126. At 3, the Staff Legal Brief states:

By statute, the Colorado Public Utilities Commission has limited, defined jurisdiction. Pursuant to section 40-10.1-102(1), C.R.S., “The commission has the power to and shall administer and enforce this article, including the right to inspect the motor vehicles, facilities, and records and documents, regardless of the format, of the motor carriers and persons involved.”

Thus, the *Commission’s jurisdiction is limited by this grant of authority from the General Assembly*: It may enforce Article 10.1 only against “motor carriers and persons involved.” *Id.*

(Emphasis supplied.)

127. The ALJ addresses these statements insofar as they pertain to the scope and source of the Commission’s authority over public utilities lest the failure to address the statements be taken as agreement.²⁹

128. Staff’s statements with respect to the Commission’s authority over public utilities, including common carriers and contract carriers by motor vehicle, are incomplete. The

²⁸ This also addresses Staff’s arguments, which the ALJ finds to be unpersuasive, that the Respondents are jointly and severally liable for the alleged violations.

²⁹ The ALJ does not address here, and offers no opinion with respect to, the remainder of Staff’s assertions.

statements ignore both article XXV of the Colorado Constitution and other statutory provisions applicable to common carriers and contract carriers by motor vehicle.

129. The Commission derives its authority over public utilities from article XXV of the Colorado Constitution. Article XXV provides:

In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

130. Article XXV gives the Commission broad authority to regulate public utilities.³⁰

In the regulation of public utilities, the Commission has authority unless and until the General Assembly takes action specifically to restrict the Commission's authority. *Colorado-Ute Electric Association, Inc. v. Public Utilities Commission*, 760 P.2d 627, 638-39 (Colo. 1988); *see also Integrated Network Services, Inc. v. Public Utilities Commission*, 875 P.2d 1373, 1377 (Colo. 1994) (the Commission "has broad constitutional and legislative authority to regulate public utilities in Colorado"). Once the General Assembly acts, the applicable statute governs the Commission's authority. *Peoples Natural Gas Division of Northern Natural Gas Company v. Public Utilities Commission*, 626 P.2d 159 (Colo. 1981).

³⁰ Unless and until restricted by the General Assembly, the Commission's authority is coextensive with that of the General Assembly as it existed on the date that article XXV was passed.

131. With respect to regulation of transportation by motor vehicle, the Commission's authority is set out in article 10.2 of title 40, C.R.S. As pertinent here, § 40-10.1-103(1), C.R.S., provides:

All common carriers and contract carriers are *declared to be public utilities within the meaning of articles 1 to 7 of [title 40, C.R.S.]* and are declared to be affected with a public interest and [are declared to be] *subject to this article and articles 1 to 7 of [title 40, C.R.S.]* including the regulation of all rates and charges pertaining to public utilities, so far as applicable, and other laws of this state not in conflict therewith.

(Emphasis supplied.)³¹ Thus, with respect to common carriers and contract carriers by motor vehicle, one must look to § 40-3-102, C.R.S.,³² and other provisions within the Public Utilities Law to ascertain the Commission's authority.

132. The Commission's function is to regulate within the parameters established by the Colorado Constitution and the applicable statutes. *Colorado Office of Consumer Counsel v. Mountain States Telephone and Telegraph Company*, 816 P.2d 278, 283 (Colo. 1991); *City of Montrose v. Public Utilities Commission*, 629 P.2d 619, 622 (Colo. 1981).

133. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

³¹ Articles 1 to 7 of title 40, C.R.S., are the Public Utilities Law.

³² In pertinent part, that provision states:

The power and authority is hereby vested in the public utilities commission ... and it is hereby made [the] duty [of the commission] to adopt all necessary rates, charges, and regulations to govern and [to] regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in [the Public Utilities Law] or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in [the Public Utilities Law] through proper courts having jurisdiction[.]

IV. ORDER**A. The Commission Orders That:**

1. Consistent with the discussion above, Respondent Sky Taxi LLC is assessed a civil penalty in the amount of \$ 12,375.

2. Pursuant to § 24-34-108, C.R.S., a \$ 1,237.50 surcharge on the civil penalty is assessed against Respondent Sky Taxi LLC. The surcharge shall be credited to the Consumer Outreach and Education Cash Fund, as provided by the statute.

3. Not later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent Sky Taxi LLC shall pay to the Commission the civil penalty and the surcharge assessed in Ordering Paragraphs No. 1 and No. 2.

4. Respondent Sky Taxi LLC, its members (as that term is defined in § 7-80-102(9), C.R.S.), its managers (as that term is defined in § 7-80-102(8), C.R.S.), its agents, its drivers, and its contractors immediately shall cease and desist from operating as, or offering to operate as, a common carrier by motor vehicle regulated by the Commission pursuant to article 10.1 of title 40, C.R.S., and shall not operate or offer to operate as a common carrier by motor vehicle unless and until Respondent Sky Taxi LLC has obtained a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle.

5. Respondent Sky Taxi LLC, its members (as that term is defined in § 7-80-102(9), C.R.S.), its managers (as that term is defined in § 7-80-102(8), C.R.S.), its agents, its drivers, and its contractors immediately shall cease and desist from operating as, or offering to operate as, a common carrier by motor vehicle regulated by the Commission pursuant to article 10.1 of title 40, C.R.S., and shall not operate or offer to operate as a common carrier by motor vehicle

unless and until Respondent Sky Taxi LLC has obtained and has kept in effect the insurance (or surety bond) required by law.

6. Respondent Sky Taxi LLC, its members (as that term is defined in § 7-80-102(9), C.R.S.), its managers (as that term is defined in § 7-80-102(8), C.R.S.), its agents, its drivers, and its contractors immediately shall cease and desist from operating as, or offering to operate as, a common carrier by motor vehicle regulated by the Commission pursuant to article 10.1 of title 40, C.R.S., and shall not operate or offer to operate as a common carrier by motor vehicle unless and until and unless Respondent Sky Taxi LLC has made the filing required by Rule 4 *Code of Colorado Regulations* 723-6-6007(f)(I)(A).

7. The cease and desist order set out in Ordering Paragraphs No. 4, No. 5, and No. 6 shall continue in effect until and unless modified by subsequent Commission decision.

8. Consistent with the discussion above, Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 107063 is dismissed in its entirety and with prejudice as to Respondent Sky Johann Wodraska.

9. The Parties are held to the advisements contained in this Decision.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director