Decision No. R14-1238

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1329TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

PROCEEDING NO. 13G-1346TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE MANA L. JENNINGS-FADER ADDRESSING MOTION, ASSESSING CIVIL PENALTY FOR COUNT 1 IN EACH PROCEEDING, DISMISSING WITH PREJUDICE COUNT 2 IN EACH PROCEEDING, AND ORDERING RESPONDENT TO REIMBURSE CHARGES AND FEES TO THE TWO COMPLAINANTS

Mailed Date: October 10, 2014

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I. STATEMENT

1. On December 13, 2013, the Commission served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107699 on Parking Authority LLC (Parking Authority or Respondent). That CPAN commenced *Proceeding No. 13G-1329TO*.

2. On December 26, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1329TO. By filing this request, Respondent entered a general appearance in that Proceeding.

3. On January 8, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1329TO to the undersigned Administrative Law Judge (ALJ).

4. On January 9, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in Proceeding No. 13G-1329TO. 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 Proceeding No. 13G-1329TO.

5. On December 19, 2013, the Commission served, by certified mail (return receipt requested), CPAN No. 108156 on Parking Authority. That CPAN commenced *Proceeding No. 13G-1346TO*.

6. On December 31, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1346TO. By filing this request, Respondent entered a general appearance in that Proceeding.

7. On January 10, 2014, counsel for Staff entered his appearance in Proceeding No. 13G-1346TO. In that filing and pursuant to Rule 4 CCR 723-1-1007(a), Staff counsel identified the trial Staff and the advisory Staff in Proceeding No. 13G-1346TO.

8. On January 15, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1346TO to ALJ Mirbaba. A February 11, 2014 hearing date was scheduled in that Proceeding.

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

9. On January 22, 2014, Staff filed in each Proceeding a Motion to Consolidate Proceeding Nos. 13G-329TO and 13G-1346TO. Respondent did not oppose the consolidation.

10. On January 28, 2014, by Decision No. R14-0107-I, the undersigned ALJ granted Staff's Motion to Consolidate Proceeding Nos. 13G-1329TO and 13G-1346TO (Consolidated Proceeding or, unless the context indicates otherwise, Proceeding). The Consolidated Proceeding is assigned to the undersigned ALJ.

11. In addition, in Decision No. R14-0107-I, the ALJ: (a) vacated the February 11, 2014 hearing date in Proceeding No. 13G-1346TO; (b) permitted Respondent to proceed in the Consolidated Proceeding without legal counsel; (c) designated Mr. Jon L. Florey (Florey) as Respondent's representative in the Consolidated Proceeding; and (d) informed Respondent and Mr. Florey of the standards to which the ALJ would hold Mr. Florey in his role as Respondent's representative in the Consolidated Proceeding.

12. Staff and Parking Authority, collectively, are the Parties in the Consolidated Proceeding. Staff is represented by legal counsel. As discussed, the ALJ permitted Respondent to be represented by Mr. Florey, who is not an attorney.

13. On March 3, 2014, by Decision No. R14-0230-I, the ALJ scheduled the evidentiary hearing in this matter for May 8, 2014 and established the procedural schedule in this Consolidated Proceeding.

14. Staff filed its List of Witnesses and Exhibits, which it subsequently amended.

15. Respondent filed its List of Witnesses and Exhibits, which it subsequently amended.

16. On the date, at the time, and at the place scheduled, the ALJ called this matter for hearing. The Parties were present, were represented, and were prepared to proceed.

17. On April 24, 2014, Staff filed a Motion *in Limine* to Exclude Respondent's Exhibits 1, 3, 4, 5, 6, 7, 9, and 14 and to Require Respondent to Renumber and Resubmit Exhibits 11 and 12 (Staff Motion). On May 7, 2014, Respondent filed its Response to the Staff Motion and requests that the motion be denied.

18. The Respondent exhibit numbers refer to the document numbers as they appear in Respondent's list of exhibits; they are not Hearing Exhibit numbers. Before the hearing, the Parties premarked their exhibits. Reference in this Decision to the documents that are the subject of the Staff Motion is to the Hearing Exhibit number for identification given each document.

19. As a preliminary matter at the hearing, the ALJ heard argument on the Staff Motion. Following the argument, the ALJ granted the Staff Motion as to Hearing Exhibits for identification No. 19, No. 21 through No. 27, and No. 32 and denied the Staff Motion as to Hearing Exhibits for identification No. 29 and No. 30.[2]

20. The documents marked as Hearing Exhibits for identification No. 19 and No. 21 through No. 27 are copies of Commission records of cases pertaining to CPANs brought against towing carriers other than Respondent. The ALJ granted the Staff Motion as to Hearing Exhibits for identification No. 19 and No. 21 through No. 27 because: (a) although it asserted that the documents pertained to Staff's discriminatory treatment of Respondent *vis-à-vis* other towing carriers that had had CPANs issued to them, Respondent could neither identify nor explain the similarities between the allegations and circumstances surrounding the allegations against

[2] This Decision memorializes the ALJ's oral ruling.

Respondent and the allegations and circumstances surrounding the allegations against the other towing carriers; and (b) despite Respondent's assertion that the documents were relevant to the gravity of the alleged violations, which is one of the factors identified in Rule 4 CCR 723-1-1302(b),[3] none of the documents was relevant to that factor because the factor addresses the gravity of the violations alleged in this Consolidated Proceeding.

21. Hearing Exhibit for identification No. 32 is correspondence regarding Mr. Florey's Colorado Open Records Act (CORA) request for documents pursuant to which the Commission provided to him documents pertaining to CPANs issued to towing carriers. Because the Parties reached a stipulation, the ALJ granted the Staff Motion as to Hearing Exhibit for identification No. 32.

22. Hearing Exhibits for identification No. 29 and No. 30 are Commission files, received in response to Mr. Flory's CORA request, that pertain to Respondent. In its motion, Staff requests that the ALJ order the Respondent to separate each exhibit into its constituent parts because each exhibit contains: (a) documents that are duplicative of Staff exhibits; and (b) other documents that are not relevant to this Consolidated Proceeding. The ALJ denied this portion of the Staff Motion.

23. At the hearing, the ALJ heard the testimony of six witnesses. Staff presented the testimony of Messrs. William Schlitter and Anthony Cummings. Respondent presented the testimony of Ms. Barbara Smith and Messrs. Todd Bliek, Jon Florey, and Joel Perri. On motion of Staff, the witnesses were sequestered.

[3] This Rule is set out in full *infra*.

24. Forty-five exhibits were marked for identification;[4] of these, 34 were offered into evidence.[5] Hearing Exhibits No. 1 through No. 18,[6] No. 31, No. 33, No. 35, No. 42, No. 44, and No. 45 were admitted into evidence. Confidential Hearing Exhibits No. 1A, No. 4A, No. 11A, No. 14A, No. 33A, No. 35A, and No. 44A were admitted and contain confidential information.

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

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

II. FINDINGS OF FACT

27. Unless otherwise noted, the facts are not contested.

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

29. Respondent Parking Authority is a Colorado limited liability company. Respondent holds PUC Authority No. T-04164 and provides towing service pursuant to that authority.

[4] Exhibits No. 20, No. 29, No. 30, No. 32, No. 34, and No. 36 through and including No. 41 were marked but were not offered.

[5] Hearing Exhibits No. 19, No. 21 through No. 28, and No. 43 for identification were offered but were not admitted.

[6] Hearing Exhibit No. 9 was admitted for the limited purpose of establishing Respondent's mailing address.

30. At all times relevant to the instant Consolidated Proceeding, Respondent held Permit No. T-04164, which is a towing carrier permit as defined in Rule 4 CCR 723-6-6001(rr).[7]

31. Respondent performed each of the tows at issue in this Proceeding. Respondent used a tow truck, as defined in Rule 4 CCR 723-6-6501(k), to perform each of the tows at issue in this Proceeding.

32. At all times relevant to this Consolidated Proceeding, Respondent owned, controlled, operated, or managed one or more tow trucks, as defined in Rule 4 CCR 723-6-6501(k) and, thus, was a "towing carrier" as defined in Rule 4 CCR 723-6-6001(qq).

33. At all times relevant to this Consolidated Proceeding, Respondent owned, controlled, operated, or managed one or more motor vehicles (*i.e.*, tow trucks) that provided transportation in intrastate commerce in Colorado and, thus, was a "motor carrier" as defined in § 40-10.1-101(10), C.R.S., and in Rule 4 CCR 723-6-6001(ff).

34. At all times relevant to the instant Consolidated Proceeding, Respondent was subject to the Towing Carrier Rules in the Rules Regulating Transportation by Motor Vehicle. The Towing Carrier Rules are Rules 4 CCR 723-6-6500 through 723-6-6599 in effect in 2013.

A. Witnesses.

35. Respondent witness Bliek is employed, and at all times pertinent to this case was employed, as a property manager for West Star Management. He oversees or is responsible for 14 properties, including a commercial property known as High Point. As relevant here, his

[7] 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 2013.

duties and responsibilities include parking management and, when necessary, vehicle tows from the properties he manages. Respondent witness Bliek is knowledgeable about the towing contract between High Point and Respondent.

36. Staff witness Cummings is employed, and at all times pertinent to this case was employed, as a lead Criminal Investigator in the Commission's Transportation Section. In the course of his responsibilities and assigned duties as a lead Criminal Investigator, Staff witness Cummings conducts safety and compliance reviews and inspections of and verifies regulatory compliance of motor carriers subject to the Commission's jurisdiction. In the course of his assigned duties, and consistent with his responsibilities, as a lead Criminal Investigator, in 2013 Staff witness Cummings conducted the investigation that led to the issuance of CPAN No. 108156[8] (Proceeding No. 13G-1346TO) and served CPAN No. 108156 on Respondent by certified mail, return receipt requested.

37. Respondent witness Florey is, and at all times pertinent to this case was, a 50 percent owner of Respondent. Mr. Florey has primary responsibility for Respondent's back-office operations. His duties and responsibilities include assuring Respondent's compliance with applicable Commission rules and responding to complaints made to the Commission.

38. Respondent witness Perri is, and at all times pertinent to this case was, a 50 percent owner of Respondent. Mr. Perri has primary responsibility for Respondent's field relations with the properties for which Respondent does towing, for Respondent's towing

[8] CPAN No. 108156 is Hearing Exhibit No. 16.

contracts (*e.g.*, signing and follow-up), for vehicle maintenance, and for managing Respondent's tow truck operators.

39. Staff witness Schlitter is employed, and during all times pertinent to this Consolidated Proceeding was employed, as a Criminal Investigator in the Commission's Transportation Section. In the course of his responsibilities and assigned duties as a Criminal Investigator, Staff witness Schlitter conducts safety and compliance reviews and inspections of and verifies regulatory compliance of motor carriers subject to the Commission's jurisdiction. In the course of his assigned duties, and consistent with his responsibilities, as a Criminal Investigator, in 2013 Staff witness Schlitter conducted the investigation that led to the issuance of CPAN No. 107699[9] (Proceeding No. 13G-1329TO) and served CPAN No. 107699 on Respondent by certified mail, return receipt requested.

40. Respondent witness Smith is employed, and at all times pertinent to this case was employed, as the property manager for a multi-family residential property known as Townview (or the Townview Apartments), which is a 147-unit affordable housing project. She has been the Townview property manager for approximately seven years. As relevant here, her duties and responsibilities include parking management and, when necessary, vehicle tows from the Townview property. Respondent witness Smith is a signatory to and is knowledgeable about the towing contract between Townview and Respondent.

B. Proceeding No. 13G-1329TO (CPAN No. 107699).

41. On August 8, 2013, the Consumer Assistance group (Consumer Assistance group) within the Commission's External Affairs Section received an informal complaint from

[9] CPAN No. 107699 is Hearing Exhibit No. 8.

Complainant NA[10] about a tow performed by Respondent on July 29, 2013 (July 29 tow).[11] According to Complainant NA, Respondent towed the complainant's vehicle from the High Point parking lot located at 6365 East Hampden Avenue, Denver, Colorado (High Point). Complainant NA informed the Consumer Assistance group that he is the owner of the towed vehicle; that he was the driver of that vehicle on July 29, 2013; and that the July 29 tow occurred without his knowledge, permission, or consent.

42. Complainant NA provided the Consumer Assistance group with a copy of the tow ticket for the July 29 tow that Respondent provided to him (July 29 tow ticket).[12] That tow ticket shows $ 241.20 as the total amount due for the tow and storage. Complainant NA paid this amount and recovered his vehicle on July 29, 2013. Hearing Exhibit No. 1 at 1.

43. At the top of the July 29 tow ticket (Hearing Exhibit No. 1 at 1) is: "CO PUC T-04164[.]" That tow ticket does not contain this statement: "Report problems to the Public Utilities Commission at (303) 894-2070."

44. The July 29 tow ticket is a printed form and has a space for "DR INITIALS" (presumably, either the towed vehicle's driver's initials or the tow truck operator's initials) at the top of the form. Hearing Exhibit No. 1 at 1 (capitals in original).

[10] Confidential Attachment 1 to this Decision identifies Complainant NA, including his address.

[11] Staff witness Schlitter provided this information in his oral testimony. This is not hearsay because Staff witness Schlitter recounted the complainant's statements solely for the purpose of explaining why he began the investigation of Respondent. Thus, Staff witness Schlitter did not offer Complainant NA's statements 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 Complainant NA as recounted by Staff witness Schlitter in his testimony.

[12] Hearing Exhibit No. 1 is a redacted copy of the July 29 tow ticket; information identifying Complainant NA and the license number and Vehicle Identification Number (VIN) of his motor vehicle have been redacted. Confidential Hearing Exhibit No. 1A is an unredacted copy of the July 29 tow ticket. For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 1 is to both Hearing Exhibit No. 1 and Confidential Exhibit No. 1A.

45. At the bottom of the July 29 tow ticket (Hearing Exhibit No. 1 at 1) is: "AUTHORIZED TO TOW 207 WP" (capitals in original). "AUTHORIZED TO TOW" is part of the printed form, and "207 WP" is hand-written on the form.

46. The July 29 tow ticket has no space for the signature of the tow truck operator who performed the tow.

47. The tow truck operator who performed the July 29 tow did not sign the July 29 tow ticket.

48. As a result of the informal complaint, a member of the Consumer Assistance group contacted Respondent and requested a copy of the written contract with High Point pursuant to which Respondent performed the July 29 tow. In response, Respondent provided its Professional Parking Management & Enforcement Services written agreement with High Point (High Point contract).[13] According to Respondent, this document is the written agreement pursuant to which it was authorized to perform, and did perform, the July 29 tow.

49. In accordance with standard practice when the Consumer Assistance group believes that there may be a violation, the Consumer Assistance group forwarded to the Transportation Section both the informal complaint and the Parking Authority response. After reviewing the Commission records pertaining to the informal complaint and response, Staff witness Schlitter initiated the investigation that resulted in issuance of the CPAN No. 107699.

50. As part of his investigation, on November 13, 2013, Staff witness Schlitter contacted High Point; spoke with Mr. Kevin Hayutin, who identified himself as one of the owners of High Point; and requested a copy of the contract between High Point and Respondent.

[13] The High Point contract is Hearing Exhibit No. 2.

On November 14, 2013, Mr. Hayutin provided to Staff witness Schlitter a copy of the Professional Parking Management & Enforcement Services written agreement between High Point and Respondent.[14] The document provided by Mr. Hayutin (Hearing Exhibit No. 3) is identical to the High Point contract provided by Respondent to the Consumer Assistance group (Hearing Exhibit No. 2).

51. The High Point contract authorizes "Parking Authority to act as an authorized agent of [the property owner] for the purpose of monitoring the parking facilities and property for compliance with parking and property policies as laid out in this agreement." Hearing Exhibit No. 2 at ¶ 3. The High Point contract states: "Parking Authority, LLC Authorized Signature Personnel: *Joel Perri, Dave Huber, Heath Main, Ryan Zeeb, Guy Pardoe, Randen Day, Dylan Deprey, Jon Florey, also SEE ADDENDUM B (if attached) for any new/additional personnel*." *Id*. at 2 (italics and capitals in original). No Addendum B is attached to the High Point contract.

52. William Pulley is an employee of Respondent and is the tow truck operator who authorized the July 29 tow. The High Point contract does not list William Pulley among Respondent's authorized signature personnel.

53. The July 29 tow ticket (Hearing Exhibit No. 1 at 1) shows 207WP as the person who authorized the July 29 tow. The High Point contract does not list 207WP among Respondent's authorized signature personnel. In addition, the High Point contract contains no code that links 207WP to any person listed among Respondent's authorized signature personnel.

54. The High Point contract authorizes "Parking Authority to impound all vehicles that are not in compliance with parking policies. All immediate impounds are to be performed in

[14] This document is Hearing Exhibit No. 3.

accordance with the violation criteria list." Hearing Exhibit No. 2 at ¶ 4. The violation criteria are found in *id*. at 3-4.

55. By letter dated November 20, 2013,[15] Staff witness Schlitter: (a) advised Respondent that the July 29 tow ticket[16] contains neither the signature of the person authorizing the tow nor the signature of the tow truck operator; (b) advised Respondent that, as a result, the July 29 tow ticket violated Rules 4 CCR 723-6-6509(a)(VII)(B) and 723-6-6509(a)(X); (c) advised Respondent that, because William Pulley is not named in the High Point contract as a person who is authorized to sign the tow authorization and because the property owner did not sign the July 29 tow ticket, the July 29 tow was not authorized; and (d) because the July 29 tow was not authorized, directed Respondent to refund $ 241.20 to Complainant NA.

56. On November 22, 2013, Respondent received the letter dated November 20, 2013. By electronic mail correspondence dated November 27, 2013,[17] Respondent informed Staff witness Schlitter that Respondent would not make the requested refund to Complainant NA.

57. As a result of his investigation, Staff witness Schlitter prepared CPAN No. 107699. On December 13, 2013, CPAN No. 107699 was served on Respondent by certified mail, return receipt requested.

[15] Hearing Exhibit No. 4 is a redacted copy of the November 20, 2013 letter; information identifying the complainant has been removed. Confidential Hearing Exhibit No. 4A is an unredacted copy of the November 20, 2013 letter. The letter was mailed on November 21, 2013. For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 4 is to both Hearing Exhibit No. 4 and Confidential Exhibit No. 4A.

[16] The correspondence refers to a complaint about a tow that occurred on June 27, 2012; but the tow at issue in Proceeding No. 13G-1346TO occurred on July 29, 2013. Despite this discrepancy, both Respondent and Staff witness Schlitter understood -- as confirmed by the testimony -- that this correspondence, which specifically references a tow from 6465 East Hampden Avenue, Denver, Colorado (the High Point property), pertained to the July 29 tow.

[17] Hearing Exhibit No. 7 is a copy of the November 27, 2013 correspondence.

58. The High Point contract contains the information mandated by Rule 4 CCR 723-6-6508(a)(I).

59. The High Point contract is written authorization for the named employees of Respondent to authorize tows from High Point, but William Pulley is not among the named employees. Because he is not among Respondent's Authorized Signature Personnel, the High Point contract did not authorize William Pulley to authorize the July 29 tow.

60. No law enforcement officer directed Respondent to perform the July 29 tow. Respondent did not perform the July 29 tow pursuant to Rule 4 CCR 723-6-6508(b)(I)(A) authorization.

61. Neither the owner of the towed vehicle, nor the authorized operator of the towed vehicle, nor the authorized agent of the owner of the towed vehicle requested Respondent to perform the July 29 tow. Respondent did not perform the July 29 tow pursuant to Rule 4 CCR 723-6-6508(b)(I)(B) authorization.

62. The High Point property owner (*i.e.*, West Star, the management company for the property) contacted Respondent to request the July 29 tow.

63. The July 29 tow ticket is not signed by the High Point property owner. Because it is not signed by the property owner and so does not comply with Rule 4 CCR 723-6-6508(b)(II)(A), the July 29 tow ticket did not authorize the July 29 tow pursuant to Rule 4 CCR 723-6-6508(b)(II)(A).

64. Respondent entered a general appearance in Proceeding No. 13G-1329TO.

65. Respondent has a good working relationship with the High Point property owner. The High Point property owner is satisfied and has been satisfied with Respondent's performance under the High Point contract.

66. Respondent worked with Transportation Staff and relied on the Transportation Staff in developing the driver (*i.e.*, tow truck operator) code system that Respondent uses on its tow tickets and that Respondent used on the July 29 tow ticket. For example, Addendum B to Hearing Exhibit No. 13 is captioned: "ADDENDUM B ADDITIONAL AUTHORIZED SIGNATURE PERSONNEL (*Addendum format approved by PUC - Ted Barrett*)" Hearing Exhibit No. 13 at 5 (capitals in original; italics supplied). *See also* Hearing Exhibit No. 35 at 11 (same).

67. Respondent updates its list of authorized personnel from time to time. Hearing Exhibit No. 35 at 12 is a one-page document entitled: "PARKING AUTHORITY (T-04164) *PUC AUTHORIZED TO TOW* DRIVER LIST AND CODES" (capitals in original; italics supplied).[18] The document contains a list of named individuals and the code and contact number for each named individual. On the list is code 207WP, identified as William Pulley. The document is signed by Respondent witness Florey. Although the document is undated, Respondent witness Florey testified that Respondent created the document not later than June 1, 2013. Respondent witness Florey testified that the document was provided to the Commission; he could not recall when the document was provided.

68. Whether Respondent's June 1, 2013 driver and codes list was current as of the July 29 tow is unknown.

69. Commission Staff, at least the Consumer Assistance group, appears to be familiar with Respondent's use of driver codes. For example, in e-mail correspondence dated September 4, 2013, the Consumer Assistance group requested Respondent witness Florey to

[18] The same document is Hearing Exhibit No. 45.

"send the page [of the towing contract] with the driver codes on it." Hearing Exhibit No. 35 at 2 (correspondence pertains to an informal complaint made by MH about a nonconsensual tow performed by Respondent[19]); Hearing Exhibit No. 33.[20]

70. Through the testimony of Respondent witness Perri, Respondent acknowledged its familiarity with the Commission rules pertaining to towing carriers. Through the testimony of Respondent witness Florey, Respondent described the actions it took to assurance compliance with those rules.

71. Based on the interaction with Commission Staff (including Transportation Staff) that occurred over the course of many years, on July 29, 2013, Respondent believed that its use of driver codes complied with applicable towing carrier rules and was an appropriate method by which its towing vehicle operator authorized to authorize tows from High Point might sign the July 29 tow ticket. Respondent continued to hold this belief at the time of the hearing.

C. Proceeding No. 13G-1346TO (CPAN No. 108156).

72. The Consumer Assistance group received an informal complaint from Complainant LN[21] about a tow performed by Respondent on October 13, 2013 (October 13 tow).[22] According to Complainant LN, Respondent towed Complainant LN's vehicle from the Townview parking lot located at 1699 Hooker Street, Denver, Colorado. Complainant LN informed the Consumer Assistance group that he is the owner of the towed vehicle; that he was

[19] This informal complaint is not one of the complaints at issue in this Proceeding.

[20] Hearing Exhibit No. 33 is a complete copy (including the referenced attachment) of the e-mail correspondence found in Hearing Exhibit No. 35 at 1-7.

[21] Confidential Attachment 1 to this Decision identifies Complainant LN, including his address.

[22] Hearing Exhibit No. 44 is a redacted copy of an e-mail exchange between the Consumer Assistance group and Respondent about this informal complaint; information identifying Complainant LN has been redacted. Confidential Hearing Exhibit No. 44A is an unredacted copy of that same e-mail exchange. For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 44 is to both Hearing Exhibit No. 44 and Confidential Exhibit No. 44A.

the driver of the towed vehicle on October 13, 2013; and that the October 13 tow occurred without his knowledge, permission, or consent.

73. Complainant LN provided the Consumer Assistance group with the copy of the tow ticket for the October 13 tow that Respondent gave to him (October 13 tow ticket).[23] That tow ticket shows $ 307.60 as the total amount due for the tow and storage. Complainant LN paid this amount and recovered his vehicle on October 13, 2013. Hearing Exhibit No. 11 at 1.

74. At the top of the October 13 tow ticket (Hearing Exhibit No. 11 at 1) is: "CO PUC T-04164[.]" That tow ticket does not contain this statement: "Report problems to the Public Utilities Commission at (303) 894-2070."

75. The October 13 tow ticket is a printed form and has a space for "DR INITIALS" (presumably, either the towed vehicle's driver's initials or the tow truck operator's initials) at the top. Hearing Exhibit No. 11 at 1 (capitals in original).

76. At the bottom of the October 13 tow ticket (Hearing Exhibit No. 11 at 1) is: "AUTHORIZED TO TOW 202 DH" (capitals in original). "AUTHORIZED TO TOW" is part of the printed form, and "202 DH" is hand-written on the form.

77. The October 13 tow ticket has no space for the signature of the tow truck operator who performed the tow.

78. The tow truck operator who performed the October 13 tow did not sign the July 29 tow ticket.

[23] Hearing Exhibit No. 11 is a redacted copy of the October 13 tow ticket; the information identifying Complainant LN and the license number and VIN of his motor vehicle have been redacted. Confidential Hearing Exhibit No. 11A is an unredacted copy of the October 13 tow ticket. For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 11 is to both Hearing Exhibit No. 11 and Confidential Exhibit No. 11A.

79. As a result of the informal complaint, a member of the Consumer Assistance group contacted Respondent and requested a copy of the written contract with Townview pursuant to which Respondent performed the October 13 tow. In response, Respondent provided the Professional Parking Management & Enforcement Services agreement with Townview (Consumer Assistance Townview contract).[24] The Townview agreement is dated June 21, 2011, and the hand-written notation "Consumer Affairs" appears on the first page of this version of the Townview contract.

80. In accordance with standard practice when the Consumer Assistance group believes that there may be a violation, the Consumer Assistance group forwarded to the Transportation Section both the informal complaint and the Parking Authority response. After reviewing the Commission records pertaining to the informal complaint and response, Staff witness Cummings initiated the investigation that resulted in issuance of CPAN No. 108156.

81. As part of his investigation, on December 5, 2013, Staff witness Cummings spoke with Respondent witness Smith, who is the Townview property manager, and requested a copy of the contract between Townview and Respondent. On December 5, 2013, Respondent witness Smith provided to Staff witness Cummings a copy of the Professional Parking Management & Enforcement Services written agreement between Townview and Respondent (Smith Townview contract).[25] The Townview agreement is dated June 21, 2011.

82. As part of his investigation, Staff witness Cummings requested Respondent to provide him with a copy of the contract between Townview and Respondent. On November 25, 2014, Respondent witness Florey provided to Staff witness Cummings a copy of the Professional

[24] The Consumer Assistance Townview contract is Hearing Exhibit No. 12.
[25] The Smith Townview contract is Hearing Exhibit No. 13.

Parking Management & Enforcement Services written agreement between Townview and Respondent (Respondent Townview contract).[26] The Townview agreement is dated June 21, 2011; and the first page of this version of the Townview contract is Hearing Exhibit No. 35 at 8.

83. Appended to the November 25, 2014 e-mail correspondence from Respondent witness Florey to Staff witness Cummings is the separate one-page document entitled: PARKING AUTHORITY (T-04164) PUC AUTHORIZED TO TOW DRIVER LIST AND CODES. Hearing Exhibit No. 35 at 12[27] (capitals in original). The document contains a list of individuals and the code and contact number for each named individual. On the list are: (a) code 202DH, identified as Dave Huber; and (b) code 207WP, identified as William Pulley. The document is signed by Respondent witness Florey. Although the document is undated, Respondent witness Florey testified that Respondent created the document not later than June 1, 2013. Respondent witness Florey testified that the document was provided to the Commission; he could not recall the date on which the document was provided to the Commission.

84. There is no evidence to suggest that, prior to the July 29 tow, Respondent provided to the High Point Property owner a copy of the one-page document entitled: PARKING AUTHORITY (T-04164) PUC AUTHORIZED TO TOW DRIVER LIST AND

[26] The Respondent Townview contract is part of Hearing Exhibit No. 35 (redacted) and of Confidential Hearing Exhibit No. 35A (unredacted). For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 35 is to both Hearing Exhibit No. 35 and Confidential Exhibit No. 35A.

Hearing Exhibit No. 35 contains four separate documents: (a) the November 25, 2014 e-mail from Respondent witness Florey to Staff witness Cummings (*id*. at 1); (b) an exchange of e-mails between the Consumer Assistance group and Respondent, which e-mails pertain to an informal complaint by MH that is not the basis for this Proceeding (*id*. at 1-7); (c) the Respondent Viewpoint contract (*id*. at 8-11); and (d) Respondent's undated PUC authorized tow driver list and codes (*id*. at 12).

Hearing Exhibit No. 35 includes a redacted copy of the exchange of e-mails between the Consumer Assistance group and Respondent, which e-mails pertain to an informal complaint by MH; information identifying MH has been removed. Confidential Hearing Exhibit No. 35A includes an unredacted copy of the exchange of e-mails between the Consumer Assistance group and Respondent, which e-mails pertain to an informal complaint by MH. Confidential Attachment 1 to this Decision identifies MH.

[27] The same document is Hearing Exhibit No. 45.

CODES (Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45). There is no evidence to suggest that, prior to the July 29 tow, the High Point property owner was aware of that document.

85. There is no evidence to suggest that, prior to the October 13 tow, Respondent provided to the Townview property owner a copy of the one-page document entitled: PARKING AUTHORITY (T-04164) PUC AUTHORIZED TO TOW DRIVER LIST AND CODES (Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45). There is no evidence to suggest that, prior to the October 13 tow, the Townview property owner was aware of that document.

86. The Professional Parking Management & Enforcement Services written agreement and the Violation Criteria attachment are identical in the Consumer Assistance Townview contract (Hearing Exhibit No. 12 at 1-3), the Smith Townview contract (Hearing Exhibit No. 13 at 2-4), and the Respondent Townview contract (Hearing Exhibit No. 35 at 8-10).

87. Each version of the Townview contract has attachments. The attachments to the three versions of the Townview contract are not identical:

a. Appended to the Consumer Assistance Townview contract (Hearing Exhibit No. 12) are two diagrams of the Townview property that are not appended to the Smith Townview contract (Hearing Exhibit No. 13) and that are not appended to the Respondent Townview contract (Hearing Exhibit No. 35); and

b. Appended to the Smith Townview contract (Hearing Exhibit No. 13) is an Addendum B that is appended to the Respondent Townview contract (Hearing Exhibit No. 35) but that is not appended to the Consumer Assistance Townview contract (Hearing Exhibit No. 12).

88. The Addendum B, which is *not* referenced in the Professional Parking Management & Enforcement Services written agreement, lists additional employees of Respondent who are Parking Authority, LLC Authorized Signature Personnel. The Addendum B contains the names of four drivers and the specific code for each named driver. Hearing Exhibit No. 13 at 5 (Addendum B); Hearing Exhibit No. 35 at 11 (Addendum B).

89. The ALJ cannot determine from the evidentiary record which version of the Townview contract (including attachments) was in effect on October 13, 2013. Nonetheless and as pertinent, the three versions have these commonalities:

a. All versions of the Townview contract authorize "Parking Authority to act as an authorized agent of [the property owner] for the purpose of monitoring the parking facilities and property for compliance with parking and property policies as laid out in this agreement." Hearing Exhibit No. 12 at ¶ 3; Hearing Exhibit No. 13 at 2 at ¶ 3; Hearing Exhibit No. 35 at 8 at ¶ 3.

b. All versions of the Townview contract state: "Parking Authority, LLC Authorized Signature Personnel: *Joel Perri, Dave Huber, Heath Main, Robert Main, Pam Applegate, Josh Dowsett, Jon Florey, Ryan Segb.*" Hearing Exhibit No. 12 at 2; Hearing Exhibit No. 13 at 3; Hearing Exhibit No. 35 at 9 (italics and capitals in original) (hand-written date 7/1/12 over hand-written Ryan Segb).

c. No version of the Townview contract contains a code for any of Respondent's listed authorized signature personnel. As Staff witness Cummings testified, however, no Rule requires that an agreement between a property owner and a towing carrier contain the code for authorized signature personnel.

90. Dave Huber is an employee of Respondent and is the tow truck operator who performed the October 13 tow.

91. The October 13 tow ticket (Hearing Exhibit No. 11 at 1) shows 202DH as the person who authorized the October 13 tow. No version of the Townview contract lists 202DH as an individual authorized to sign a tow authorization. In addition, no version of the Townview contract contains a code that links 202DH to any person listed among Respondent's authorized signature personnel.

92. By letter dated December 12, 2013,[28] Staff witness Cummings: (a) advised Respondent that the October 13 tow ticket contains neither the signature of the person authorizing the tow nor the signature of the tow truck operator; (b) advised Respondent that, because code 202DH is not named in the Townview contract as a person who is authorized to sign the tow authorization (*i.e.*, the October 13 tow ticket), the October 13 tow was not authorized; and (c) because the October 13 tow was not authorized, directed Respondent to refund $ 307.60 to Complainant LN.

93. By correspondence dated December 16, 2013,[29] Respondent informed Staff witness Cummings that Respondent would not make the requested refund to Complainant LN.

94. As a result of his investigation, Staff witness Cummings prepared CPAN No. 108156. On December 19, 2013, CPAN No. 108156 was served on Respondent by certified mail, return receipt requested.

[28] Hearing Exhibit No. 14 is a redacted copy of the December 12, 2013 letter; information identifying Complainant LN has been removed. Confidential Hearing Exhibit No. 14A is an unredacted copy of the December 12, 2013 letter. For ease of reference, unless the context indicates otherwise, reference in this Decision to Hearing Exhibit No. 14 is to both Hearing Exhibit No. 14 and Confidential Exhibit No. 14A.

[29] Hearing Exhibit No. 15 is a copy of the December 16, 2013 correspondence.

95. All versions of the Townview contract contain the information mandated by Rule 4 CCR 723-6-6508(a)(I).

96. All versions of the Townview contract contain written authorization for the named employees of Respondent to authorize tows from Townview. Dave Huber is among the named employees. All versions of the Townview contract authorize Dave Huber to authorize the October 13 tow.

97. No version of the Townview contract names code 202DH as an employee of Respondent authorized to authorize tows from Townview. Because no version of the Townview contract names code 202DH among Respondent's Authorized Signature Personnel, no version of the Townview contract authorized code 202DH to authorize the October 13 tow.

98. No law enforcement officer directed Respondent to perform the October 13 tow. Respondent did not perform the October 13 tow pursuant to Rule 4 CCR 723-6-6508(b)(I)(A) authorization.

99. Neither the owner of the towed vehicle, nor the authorized operator of the towed vehicle, nor the authorized agent of the owner of the towed vehicle requested Respondent to perform the October 13 tow. Respondent did not perform the October 13 tow pursuant to Rule 4 CCR 723-6-6508(b)(I)(B) authorization.

100. Whether the Townview property owner contacted Respondent to request the October 13 tow is unclear.

101. The October 13 tow ticket is not signed by the Townview property owner. Because it is not signed by the property owner and so does not comply with Rule 4 CCR 723-6-6508(b)(II)(A), the October 13 tow ticket did not authorize the October 13 tow pursuant to Rule 4 CCR 723-6-6508(b)(II)(A).

102. Respondent entered a general appearance in Proceeding No. 13G-1346TO.

103. Respondent has a good working relationship with the Townview property owner (*i.e.*, the Townview property manager Respondent witness Smith). The Townview property owner is satisfied and has been satisfied with Respondent's performance under the Townview contract.

104. Respondent worked with Transportation Staff and relied on the Transportation Staff in developing the driver (*i.e.*, tow truck operator) code system that Respondent uses on its tow tickets and that Respondent used on the October 13 tow ticket. For example, Addendum B to Hearing Exhibit No. 13 is captioned: "ADDENDUM B ADDITIONAL AUTHORIZED SIGNATURE PERSONNEL (*Addendum format approved by PUC - Ted Barrett*)" Hearing Exhibit No. 13 at 5 (capitals in original; italics supplied). *See also* Hearing Exhibit No. 35 at 11 (same).

105. Respondent updates its Driver List and Codes from time to time. In response to the Consumer Assistance group e-mail correspondence dated September 4, 2013, Respondent provided the document entitled "PARKING AUTHORITY (T-04164) DRIVER LIST AND CODES AS OF SEPTEMBER 2013" that is Hearing Exhibit No. 33 at 7. The September 2013 driver and codes list differs from the list that is Addendum B to the Smith Townview contract (Hearing Exhibit No. 13 at 5) and to the Respondent Townview contract (Hearing Exhibit No. 35 at 11).

106. Whether the September 2013 driver and codes list was current as of the October 13 tow is unknown.

107. Commission Staff, at least the Consumer Assistance group, appears to be familiar with Respondent's use of driver codes. For example, in e-mail correspondence dated

September 4, 2013, the Consumer Assistance group requested Respondent witness Florey to "send the page [of the towing contract] with the driver codes on it." Hearing Exhibit No. 35 at 2 (correspondence pertains to an informal complaint made by MH about a nonconsensual tow performed by Respondent).[30]

108. Through the testimony of Respondent witness Perri, Respondent acknowledged its familiarity with the Commission rules pertaining to towing carriers. Through the testimony of Respondent witness Florey, Respondent described the actions it took to assurance compliance with those rules.

109. Based on its interaction with Commission Staff, including Transportation Staff, over many years, on October 13, 2013, Respondent believed that its use of driver codes complied with applicable towing carrier Rules and was an appropriate method by which its towing vehicle operator authorized to authorize tows from Townview might sign the October 13 tow ticket. Respondent continued to hold this belief at the time of the hearing.

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

III. DISCUSSION AND CONCLUSION

111. The record establishes that the Commission has subject matter jurisdiction in this Consolidated Proceeding and *in personam* jurisdiction over Respondent.

112. As Commission investigative personnel, Staff witnesses Cummings and Schlitter have authority, pursuant to § 40-7-116(1)(a), C.R.S., to issue CPANs for violations enumerated in §§ 40-7-112 and 40-7-113, C.R.S. Section 40-7-116(1)(b), C.R.S., mandates the content of a CPAN, including "citation to the specific statute or rule alleged to have been violated"

[30] This informal complaint is not one of the complaints at issue in this Proceeding.

(§ 40-7-116(1)(b)(II), C.R.S.). Section 40-7-116(1)(b), C.R.S., provides for service of a CPAN "either in person or by certified mail, or by personal service by a person authorized to serve process" under Colorado Rule of Civil Procedure 4(d).

113. Section 40-7-116(1)(d)(II), C.R.S., provides that "the [C]ommission has the burden of demonstrating a violation by a preponderance of the evidence." *See generally* § 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500 (to same effect). The evidence must be substantial, defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion." *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000). In addition,

> [a]s the phrase itself signifies, proof of a circumstance or occurrence "by a preponderance of the evidence" demands that in order for this circumstance or occurrence to be considered established, evidence of it must preponderate over, or outweigh, the evidence to the contrary. Without imputing any technical meaning to the term "probable" or implying any manner of mathematical calculation, the widely accepted formula for expressing this burden of proof, or persuasion, is that the matter to be proved must be found to be more probable than not.

Mile High Cab, Inc., v. Colorado Public Utilities Commission, 302 P.3d 241, 246 (Colo. 2013). 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.

114. In each CPAN, Staff alleges that Respondent performed a nonconsensual tow. Rule 4 CCR 723-6-6501(f) defines a nonconsensual tow as "the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle."

115. Count 1 of each CPAN alleges that Respondent violated Rule 4 CCR 723-6-6508(b)(I).[31] That Rule provides:

> (b) Authorization.
>
> (I) A towing carrier *shall not tow any motor vehicle unless one of the following conditions is met*:
>
> (A) the towing carrier is directed to perform a tow by a law enforcement officer;
>
> (B) the towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of a motor vehicle; or
>
> (C) the towing carrier is requested to perform a tow upon the authorization of the property owner.

(Emphasis supplied.)

116. Rule 4 CCR 723-6-6508(b)(I)(C) must be read in conjunction with Rule 4 CCR 723-6-6508(b)(II). Rule 4 CCR 723-6-6508(b)(II) provides:

> (II) Property owner authorization. The authorization from the property owner shall be in writing; shall identify, by make and license plate number (or in lieu thereof, by vehicle identification number), the motor vehicle to be towed; and shall include the date, time, and place of removal.
>
> (A) The authorization shall be filled out in full, signed by the property owner, and given to the towing carrier before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name.
>
> (B) A towing carrier shall not accept or use blank authorizations pre-signed by the property owner.
>
> (C) The written authorization may be incorporated with the tow record/invoice required by [Rule 4 CCR 723-6-6509].
>
> (D) With the exception of police-ordered tows, a towing carrier that is requested to perform a tow under the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to the storage facility without delay. No vehicle may be relocated and towed to a storage facility at a later time. A towing carrier may

[31] Hearing Exhibit No. 42 contains the entirety of Rule 4 CCR 723-6-6508 and a portion of Rule 4 CCR 723-6-6509(a).

not charge, collect, or retain any fee or charge for service performed in violation of this subparagraph.

117. Also pertinent to Count 1 of each CPAN is Rule 4 CCR 723-6-6508(a). That Rule mandates the content of the written agreement pursuant to which a towing carrier may act as agent for a property owner *vis-à-vis* towing a vehicle from private property. As pertinent here, the Rule provides:

(a) Towing carrier acting as agent for the property owner.

(I) *A towing carrier may act as the agent for the property owner under a written agreement to that effect, provided the agreement is compliant with [Rule 4 CCR 723-6-6508(a)]*. Such *written agreement* shall be maintained as provided in [Rule 4 CCR 723-6-6005] and *shall contain at least the following information*:

(A) the name, address, telephone number, email address (if applicable), and PUC Towing Permit number of the towing carrier;

(B) the name, address, email address (if applicable), and telephone number of the property owner;

(C) the address of the property from which the tows will originate;

(D) the name of each individual person who is authorized to sign the tow authorization;

(E) the address and phone number of the storage facility where the vehicle owner may retrieve the vehicle;

(F) the time period for which the agreement is made;

(G) a statement that the rates for a nonconsensual tow from private property, and the drop charge if the vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission;

(H) the name, title, and signature of the person making the agreement on behalf of the property owner and on behalf of the towing carrier; and

(I) the date the agreement is signed.

(Emphasis supplied.)

118. Count 2 of each CPAN alleges violation of Rule 4 CCR 723-6-6508(c). That Rule provides:

> (c) Noncompliance. If a tow is performed in violation of [Rule 4 CCR 723-6-6508], the towing carrier shall not charge, collect, or retain any fees or charges for the unauthorized services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge.

119. Whether Respondent violated applicable Commission rules and, if it did, the appropriate sanctions for the violation 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 Staff's proposed remedies. 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.

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

B. Alleged Violations.

1. Rule 4 CCR 723-6-6508(b)(I) (Count 1 of each CPAN).

121. Count 1 of each CPAN alleges that Respondent violated Rule 4 CCR 723-6-6508(b)(I). To meet its burden of proof in this case, Staff must prove that, on each of the two dates, Respondent violated Rule 4 CCR 723-6-6508(b)(I) (*i.e.*, performed a tow without meeting one of the stated conditions) and that the violation was intentional.[32]

[32] The Commission has held that § 40-7-113(1)(g), C.R.S., does not require Staff to prove that a violation is intentional if the rule a CPAN respondent is alleged to have violated is a safety rule. Decision No. C14-0774, issued on July 8, 2014 in Proceeding No. 14G-0149EC, *Public Utilities Commission v. Advanced Limousine, LLC*. In this Proceeding, the ALJ does not address the issue of whether Rule 4 CCR 723-6-6508(b)(I) is a safety rule because Staff presented no evidence with respect to that issue and did not assert that Rule 4 CCR 723-6-6508(b)(I) is a safety rule.

Section 40-10.1-113(1)(g), C.R.S. Although § 40-10.1-113(1)(g), C.R.S., does not define intentional, a violation is intentionally committed within the meaning of that provision when a person: (a) is aware of a requirement or restriction; (b) notwithstanding that knowledge or awareness, commits an act or fails to act; and (c) that act or omission violates the requirement or restriction. Decision No. C00-1075 at 22-24.[33] In addition, one commits a violation of a regulation intentionally (or knowingly) if one performs the violative act voluntarily and intentionally and not because of a mistake, an accident, or other innocent reason. *See*, *e.g.*, *United States v. Thompson-Hayward Chemical Company*, 446 F.2d 583 (5th Cir. 1971) (applying principle in criminal proceeding).

122. Importantly, an intentional violation within the meaning of § 40-7-113(1)(g), C.R.S., does not require a showing that a respondent acted with malice or with ill will. Indeed, a respondent may have acted in complete good faith yet later may be found to have committed an intentional violation within the meaning of § 40-6-113(1)(g), C.R.S.[34]

a. Proceeding No. 13G-1329TO.

123. Count 1 of CPAN No. 107699 (Hearing Exhibit No. 8) alleges that, on July 29, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I).

124. No law enforcement officer directed Respondent to perform the July 29 tow. Respondent did not perform the July 29 tow pursuant to authorization from the owner of, from the authorized operator of, or from the authorized agent of the owner of the towed vehicle. The

[33] 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*.

[34] As discussed *infra*, a respondent's good faith is a factor considered in determining: (a) whether to assess a civil penalty; and (b) if a civil penalty is assessed, the amount of the civil penalty.

evidence establishes that Respondent did not have authorization for the July 29 tow pursuant to Rules 4 CCR 723-6-6508(b)(I)(A) and 723-6-6508(b)(I)(B).

125. Rule 4 CCR 723-6-6508(b)(I)(C) ("the towing carrier is requested to perform a tow upon the authorization of the property owner") is the remaining avenue by which Respondent could have been authorized to perform the nonconsensual July 29 tow. The required written property owner authorization must be found in either the High Point contract or the July 29 tow ticket.

126. The High Point contract is a written general authorization for Respondent to act as the property owner's authorized agent for the purpose of authorizing nonconsensual tows from High Point (Rule 4 CCR 723-6-6508(a)(I)).

127. With respect to the July 29 tow, Staff asserts:

a. Rule 4 CCR 723-6-6508(a)(I) permits a towing carrier, pursuant to a written agreement, to act as an agent for the property owner for the purpose of towing vehicles from private property.

b. The written agreement must be between the towing carrier and the owner of the private property from which vehicles are towed (property owner) and, pursuant to Rule 4 CCR 723-6-6508(a)(I)(D), must name each person authorized to sign the tow authorization.

c. Although one or more employees of the towing carrier may be authorized to sign authorizations for tows, each authorized towing carrier employee must be named in the written agreement.

d. As shown on the July 29 tow ticket,[35] 207WP authorized the July 29 tow. Because the High Point contract does not name 207WP as a Respondent employee authorized to sign a tow authorization, the High Point contract did not authorize the July 29 tow.[36]

e. Respondent violated Rule 4 CCR 723-6-6508(b)(I) on July 29, 2013 because the tow from the High Point parking lot was not authorized by the property owner.

128. Respondent disagrees with Staff and, as its defense, asserts:

a. On June 1, 2013, Respondent had a self-created document entitled "PUC AUTHORIZED TO TOW DRIVER LIST AND CODES" on which appears the name William Pulley, identified by code 207WP.[37] As it had done with previous versions of its tow truck operator names and codes list, Respondent provided this document to Transportation Staff.

b. Based on Respondent's past discussions and interactions with Transportation Staff, Respondent understood that the High Point contract in conjunction with (or as supplemented by) the tow truck operator names and codes list provided to the Transportation Staff constituted the required written authorization for the July 29 tow.

c. Pursuant to the High Point contract and Respondent's tow truck operator names and codes list, William Pulley (code 207WP) both authorized and performed the July 29 tow as shown by the code 207WP on the July 29 tow ticket.

d. Respondent did not violate Rule 4 CCR 723-6-6508(a) because the High Point contract and the tow truck operator names and codes list provided the necessary property owner authorization for the July 29 tow.

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[35] This tow ticket is Hearing Exhibit No. 1.

[36] The High Point contract also does not name William Pulley as a Respondent employee authorized to sign a tow authorization. The High Point contract is Hearing Exhibit No. 2 and Hearing Exhibit No. 3.

[37] This list is Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45.

129. The ALJ finds that the High Point contract does not name William Pulley as an employee of Respondent authorized to act as the agent for the High Point property owner for the purpose of authorizing tows. The ALJ finds that William Pulley was not authorized to sign the "Authorized to Tow" line on the July 29 tow ticket.

130. The ALJ finds that the person who signed the "Authorized to Tow" line on the July 29 tow ticket signed as 207WP. The ALJ finds that 207WP is not named in the High Point contract as one of Respondent's employees authorized to act as the agent for the High Point property owner for the purpose of authorizing tows. The ALJ finds that 207WP was not authorized to sign the "Authorized to Tow" line on the July 29 tow ticket.

131. The ALJ finds unpersuasive Respondent's argument that its tow truck operator names and codes list suffices to name, in the High Point contract, 207WP as an employee with authorization from the High Point property owner to authorize tows from the High Point property.

132. First, Rule 4 CCR 723-6-6508(a)(I) permits the towing carrier to act as the agent for the property owner with respect to authorizing tows only if the written agreement between the property owner and the towing carrier contains all the information listed in that Rule. One such requirement is found in Rule 4 CCR 723-6-6508(a)(I)(D): the written agreement must contain "the name of each individual person who is authorized to sign the tow authorization." The High Point contract contains a list of Respondent's employees who are authorized to authorize tows; 207WP is not named in that list. In addition, the High Point contract states "*SEE ADDENDUM B (if attached) for any new/additional personnel*" (Hearing Exhibit No. 2 at 2 (capitals and italics in original)). There is no Addendum B to the High Point contract.

133. Second, Respondent's tow truck operator names and codes list does not suffice to include, in the High Point contract, 207WP as an employee with property owner authorization to authorize tows from the High Point property. The High Point contract neither mentions nor incorporates by reference Respondent's tow truck operator names and code list; thus, the list is not included in the High Point contract. In addition, there is no evidence that the High Point owner property owner knew about the list of Respondent's tow truck operator names and codes,[38] let alone agreed to authorize those named in that list as persons who could authorize tows. Thus, Respondent's tow truck operator names and code list cannot -- and does not -- amend the High Point contract to include those named in that list as Respondent employees with authorization from the property owner to authorize tows from the High Point property.

134. When it performed the July 29 tow, Respondent acted through a tow truck operator who was not authorized by the High Point contract to act as the agent for the High Point property owner for the purpose of authorizing the July 29 tow. Thus, Rule 4 CCR 723-6-6508(a)(I) authorization is not applicable to the July 29 tow.

135. Before performing the July 29 tow, Respondent had to have a written property owner authorization; the High Point contract did not provide the property owner's authorization for the July 29 tow. The remaining source of authorization pursuant to which Respondent could perform the July 29 tow is Rule 4 CCR 723-6-6508(b)(II). This Rule addresses property owner authorization in the absence of, or for a tow performed outside the scope of, a Rule 4 CCR 723-6-6508(a)(I) authorization.

136. Rule 4 CCR 723-6-6508(b)(II)(A) requires the property owner authorization to be "filled out in full, *signed by the property owner*, and given to the towing carrier before the

[38] This list is Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45.

vehicle is removed from the property." (Emphasis supplied.) Rule 4 CCR 723-6-6508(b)(II)(C) permits the written property owner authorization to be "incorporated with the tow record/invoice required by" Rule 4 CCR 723-6-6509.

137. As pertinent here, Rule 4 CCR 723-6-6509 provides:

> (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows. *The tow record/invoice form shall contain the following information*:
>
> * * *
>
> (VII) unless incorporated into the authorization in [Rule 4 CCR 723-6-6508(b)(II)],
>
> (A) the *name, address, and telephone number of the person authorizing the tow*; and
>
> (B) the *signature of the property owner authorizing a tow*;
>
> * * *
>
> (X) the *signature of the towing vehicle operator [who performed the tow]*;

(Emphasis supplied.)

138. Only the July 29 tow ticket pertains specifically to the July 29 tow. Thus, if there is a written property owner authorization specific to the July 29 tow, it must be the July 29 tow ticket.

139. The July 29 tow ticket does not contain the name, address, and telephone number of the person at High Point who authorized the July 29 tow and does not contain the signature of the High Point property owner who authorized the July 29 tow. In addition, the July 29 tow ticket is incomplete: it does not contain "the signature of the towing vehicle operator," as required by Rule 4 CCR 723-6-6509(a)(X). Thus, the July 29 tow ticket satisfies neither the Rule 4 CCR 723-6-6509(a)(VII) requirements nor the Rule 4 CCR 723-6-6509(a)(X)

requirement and, as a result, cannot serve as the written property owner authorization specific to the July 29 tow.

140. The evidence establishes that Respondent had no authorization to perform the July 29 tow. The July 29 tow was an unauthorized nonconsensual tow.

141. The remaining issue with respect to Count 1 in Proceeding No. 13G-1329TO is whether Respondent's violation of Rule 4 CCR 723-6-6508(b)(I) on July 29, 2013 was intentional.

142. The record establishes that: (a) Respondent knew that, pursuant to the applicable towing rules, it was required to have written authorization from the property owner to tow a vehicle from private property if the tow was authorized by the property owner; (b) on January 18, 2013, Respondent entered into the High Point contract with the High Point property owner for the purposes of identifying the property from which and the circumstances under which the property owner authorized Respondent to tow vehicles and of identifying the individuals who could authorize tows; (c) Respondent knew that, to be authorized to authorize tows, an individual employee must be named in the High Point contract (*see*, *e.g.*, Hearing Exhibit No. 2 at 2 (list of Respondent's authorized employees)); (d) Respondent knew or (by reading the High Point contract in Respondent's possession) should have known that, on July 29, 2013, neither William Pulley nor 207WP was named in the High Point contract as a Respondent employee authorized by the High Point contract to authorize tows from the High Point property; (e) Respondent knew that, on July 29, 2013, its standard practice was for a tow truck operator, when filling out a tow ticket, to use a code rather than her/his name when signing the "authorized to tow" line on the tow ticket; (f) Respondent knew, on July 29, 2013, that its tow ticket -- a form it developed and used -- contained no line or place for the tow truck operator performing the tow

to sign the tow ticket; and (g) Respondent relies exclusively on the High Point contract as Respondent's authority to perform the July 29 tow. These facts establish that Respondent's July 29, 2013 violation of Rule 4 CCR 723-6-6508(b)(I) was intentional within the meaning of § 40-7-113(1)(g), C.R.S.

143. As discussed above, the ALJ finds Respondent's defense to be unpersuasive.

144. Based on the record, the ALJ finds that Staff met its burden of proof with respect to Count 1 in Proceeding No. 13G-1329TO as Staff established that, on July 29, 2013, Respondent intentionally violated Rule 4 CCR 723-6-6508(b)(I).

145. Having found that, on July 29, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I), the ALJ finds that sanctions for that violation are appropriate. The sanctions are discussed below.

b. Proceeding No. 13G-1346TO.

146. Count 1 of CPAN No. 108156 (Hearing Exhibit No. 16) alleges that, on October 13, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I).

147. No law enforcement officer directed Respondent to perform the October 13 tow. Respondent did not perform the October 13 tow pursuant to authorization from the owner of, from the authorized operator of, or from the authorized agent of the owner of the towed vehicle. The evidence establishes that Respondent did not have authorization for the October 13 tow pursuant to Rules 4 CCR 723-6-6508(b)(I)(A) and 723-6-6508(b)(I)(B).

148. Rule 4 CCR 723-6-6508(b)(I)(C) ("the towing carrier is requested to perform a tow upon the authorization of the property owner") is the remaining avenue by which Respondent could have been authorized to perform the October 13 tow. The required written

property owner authorization must be found in either the Townview contract or the October 13 tow ticket.

149. The Townview contract is a written general authorization for Respondent to act as the property owner's authorized agent for the purpose of authorizing nonconsensual tows from Townview (Rule 4 CCR 723-6-6508(a)(I)).

150. With respect to the October 13 tow, Staff asserts:

a. Rule 4 CCR 723-6-6508(a)(I) permits a towing carrier, pursuant to a written agreement, to act as an agent for the property owner for the purpose of towing vehicles from private property.

b. The written agreement must be between the towing carrier and the property owner and, pursuant to Rule 4 CCR 723-6-6508(a)(I)(D), must name each person authorized to sign the tow authorization.

c. Although one or more employees of the towing carrier may be authorized to sign authorizations for tows, each authorized towing carrier employee must be named in the written agreement.

d. Dave Huber is the tow truck operator who performed the October 13 tow. Dave Huber is named in all versions of the Townview contract as an employee of Respondent who has authority to authorize tows from the Townview property.[39]

e. As shown on the October 13 tow ticket,[40] 202DH authorized the October 13 tow. Because no version of the Townview contract names 202DH as a Respondent

[39] The Consumer Assistance Townview contract is Hearing Exhibit No. 12; the Smith Townview contract is Hearing Exhibit No. 13; and the Respondent Townview contract is Hearing Exhibit No. 35 at 8-11.

[40] This tow ticket is Hearing Exhibit No. 11.

employee authorized to sign a tow authorization, no version of the Townview contract authorized the October 13 tow.

f. Respondent violated Rule 4 CCR 723-6-6508(b)(I) on October 13, 2013 because the tow from the Townview parking lot was not authorized by the property owner.

151. Respondent disagrees with Staff and, as its defense, asserts:

a. On June 1, 2013, Respondent had a self-created document entitled "PUC AUTHORIZED TO TOW DRIVER LIST AND CODES" on which appears the name Dave Huber, identified by code 202DH.[41] As it had done with previous versions of the tow truck operator names and codes list, Respondent provided this document to Transportation Staff.

b. Based on Respondent's past discussions and interactions with Transportation Staff, Respondent understood that the Townview contract in conjunction with (or as supplemented by) the tow truck operator names and codes list provided to the Transportation Staff constituted the required written authorization for the October 13 tow.

c. Pursuant to the Townview contract and Respondent's tow truck operator names and codes list, Dave Huber (code 202DH) both authorized and performed the October 13 tow as shown by the 202DH on the October 13 tow ticket.

d. Respondent did not violate Rule 4 CCR 723-6-6508(a) because the Townview contract and the tow truck operator names and codes list provided the necessary property owner authorization for the October 13 tow.

[41] This list is Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45. *See also* September 2013 tow truck operator names and codes list (Hearing Exhibit No. 33 at 7) (contains the name Dave Huber but is slightly different from the June 1, 2013 list).

152. The ALJ finds that the person who signed the "Authorized to Tow" line on the October 13 tow ticket signed as 202DH. The ALJ finds that no version of the Townview contract names 202DH as a Respondent employee authorized to act as the agent for the Townview property owner for the purpose of authorizing tows. In addition, although no version of the Townview contract references an Addendum B, the Smith Townview contract and the Respondent Townview contract each contain an appended Addendum B. Neither appended Addendum B includes 202DH. The ALJ finds that 202DH was not authorized to sign the "Authorized to Tow" line on the October 13 tow ticket.

153. The ALJ finds unpersuasive Respondent's argument that its tow truck operator names and codes list suffices to name, in the Townview contract, 202DH as an employee with authorization from the Townview property owner to authorize tows from the Townview property.

154. First, Rule 4 CCR 723-6-6508(a)(I) permits the towing carrier to act as the agent for the property owner with respect to authorizing tows only if the written agreement between the property owner and the towing carrier contains all the information listed in that Rule. One such requirement is found in Rule 4 CCR 723-6-6508(a)(I)(D): the written agreement must contain "the name of each individual person who is authorized to sign the tow authorization." Each version of the Townview contract contains a list of Respondent's employees who are authorized to authorize tows; 202DH is not named in that list.

155. Second, Respondent's tow truck operator names and codes list does not suffice to include, in the Townview contract, 202DH as an employee with property owner authorization to authorize tows from the Townview property. No version of the Townview contract either mentions or incorporates by reference Respondent's tow truck operator names and code list;

thus, the list is not included in the Townview contract. In addition, the Townview property owner knew about and appears to have authorized the Respondent's employees named in the list that is Addendum B attached to the Smith Townview contract and the Respondent Townview contract. (The Addendum B contains neither the name Dave Huber nor the code 202DH.) There is, however, no evidence that the Townview property owner knew about the expanded list of Respondent's tow truck operator names and codes,[42] let alone agreed to authorize those named in that list as persons who could authorize tows. Thus, Respondent's tow truck operator names and code list cannot -- and does not -- amend the Townview contract to include those named in that list as Respondent employees with authorization from the property owner to authorize tows from the Townview property.

156. When it performed the October 13 tow, Respondent acted through a tow truck operator who was not authorized by the Townview contract to act as the agent for the Townview property owner for the purpose of authorizing the nonconsensual October 13 tow. Thus, Rule 4 CCR 723-6-6508(a)(I) authorization is not applicable to the October 13 tow.

157. Before it performed the October 13 tow, Respondent had to have a written property owner authorization; no version of the Townview contract provided the property owner's authorization for the October 13 tow. The remaining source of authorization for Respondent to perform the October 13 tow is Rule 4 CCR 723-6-6508(b)(II). This Rule addresses property owner authorization in the absence of, or for a tow performed outside the scope of, a Rule 4 CCR 723-6-6508(a)(I) authorization.

158. Rule 4 CCR 723-6-6508(b)(II)(A) requires the property owner authorization to be "filled out in full, *signed by the property owner*, and given to the towing carrier before the

[42] This expanded list is Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45.

vehicle is removed from the property." (Emphasis supplied.) Rule 4 CCR 723-6-6508(b)(II)(C) allows the written property owner authorization to be "incorporated with the tow record/invoice required by" Rule 4 CCR 723-6-6509.

159. As pertinent here, Rule 4 CCR 723-6-6509 provides:

> (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows. *The tow record/invoice form shall contain the following information*:
>
> * * *
>
> (VII) unless incorporated into the authorization in [Rule 4 CCR 723-6-6508(b)(II)],
>
> (A) the *name, address, and telephone number of the person authorizing the tow*; and
>
> (B) the *signature of the property owner authorizing a tow*;
>
> * * *
>
> (X) the *signature of the towing vehicle operator [who performed the tow]*;

(Emphasis supplied.)

160. Only the October 13 tow ticket pertains specifically to the October 13 tow. Thus, if there is a written property owner authorization specific to the October 13 tow, it must be the October 13 tow ticket.

161. The October 13 tow ticket does not contain the name, address, and telephone number of the person at Townview who authorized the October 13 tow and does not contain the signature of the Townview property owner who authorized the October 13 tow. In addition, the October 13 tow ticket is incomplete: it does not contain "the signature of the towing vehicle operator," as required by Rule 4 CCR 723-6-6509(a)(X). Thus, the October 13 tow ticket satisfies neither the Rule 4 CCR 723-6-6509(a)(VII) requirements nor the Rule 4 CCR

723-6-6509(a)(X) requirement and, as a result, cannot serve as the written property owner authorization specific to the nonconsensual October 13 tow.

162. The evidence establishes that Respondent had no authorization to perform the October 13 tow. The October 13 tow was an unauthorized nonconsensual tow.

163. The remaining issue with respect to Count 1 in Proceeding No. 13G-1346TO is whether Respondent's violation of Rule 4 CCR 723-6-6508(b)(I) on October 13, 2013 was intentional.

164. The record establishes that: (a) Respondent knew that, pursuant to the applicable towing rules, it was required to have written authorization from the property owner to tow a vehicle from private property if the tow was authorized by the property owner; (b) on June 21, 2011, Respondent entered into the Townview contract with the Townview property owner for the purposes of identifying the property from which and the circumstances under which the property owner authorized Respondent to tow vehicles and of identifying the individuals who could authorize tows; (c) Respondent knew that, to be authorized to authorize tows, an individual employee must be named in the Townview contract (*see*, *e.g.*, Hearing Exhibit No. 12 at 2 (list of Respondent's authorized employees)); (d) Respondent knew or (by reading the Townview contract in Respondent's possession) should have known that, on October 13, 2013, 202DH was not named in the Townview contract as an employee of Respondent authorized by the Townview contract to authorize tows from the Townview property; (e) Respondent knew that, on October 13, 2013, its standard practice was for a tow truck operator, when filling out a tow ticket, to use a code rather than her/his name when signing the "authorized to tow" line on the tow ticket; (f) Respondent knew, on October 13, 2013, that its tow ticket -- a form it developed and used -- contained no line or place for the tow truck operator performing the tow to sign

the tow ticket; and (g) Respondent relies on the Townview contract as Respondent's authority to perform the October 13 tow. These facts establish that Respondent's October 13, 2013 violation of Rule 4 CCR 723-6-6508(b)(I) was intentional within the meaning of § 40-7-7113(1)(g), C.R.S.

165. Respondent argues that, on October 13, 2013, it did not intentionally violate Rule 4 CCR 723-6-6508(b)(I) because the October 13 tow ticket was signed by Respondent's employee Dave Huber, as evidenced by 202DH on the tow ticket, and the Townview contract names Dave Huber as an individual authorized by the property owner to authorize tows from the Townview property. In addition, Respondent asserts that it relied on the Transportation Staff's representations that Respondent's tow truck operator names and codes list was sufficient to satisfy the applicable rule requirements.[43]

166. For the following reasons, the ALJ finds Respondent's argument to be unpersuasive.

167. First, as discussed above, no version of the Townview contract contains any information that links Dave Huber to 202DH.

168. Second, Respondent's good faith reliance on Staff's representations neither excuses the violation nor protects Respondent from a finding that it intentionally violated Rule 4 CCR 723-6-6508(b)(I). Respondent is the entity that is responsible to know and to comply with the towing carrier rules; Respondent cannot avoid its responsibility by asserting its

[43] In this Proceeding, Staff did not contest Respondent's testimony about Staff's representations. Staff witness Schlitter testified to Staff's understanding of the towing carrier rules *vis-à-vis* the towing carrier's use of codes in lieu of names; his testimony was consistent with Respondent's testimony on this point.

good faith reliance on the Transportation Staff's representations. Rule 4 CCR 723-1-1007(c) highlights this point as it provides that the

> [o]pinions expressed by Commission staff do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission's functions. Nothing communicated by the Commission staff constitutes legal advice.

169. Third and importantly, the towing carrier rule language does not support the Transportation Staff's reading of the Rule (*i.e.*, that Respondent towing carrier may use codes in lieu of the names of its employees authorized to authorize tows) on which Respondent relies.

170. Rule 4 CCR 723-6-6508(b)(II)(A) states, in pertinent part, that the "*property owner* may sign using a verifiable employee identification number or code name in lieu of the person's proper name" (emphasis supplied). Neither Staff nor Respondent identified a rule that contains a similar provision with respect to the towing carrier, and the ALJ has not found such a rule. In fact, Rule 4 CCR 723-6-6509(a) provides that a "tow record/invoice form *shall contain* the following information: ... (X) *the signature of the towing vehicle operator*" who performed the tow (emphasis supplied) and contains no provision permitting the use of an employee identification number or code name in lieu of the required signature.

171. Based on the record, the ALJ finds that Staff met its burden of proof with respect to Count 1 in Proceeding No. 13G-1346TO as Staff established that, on October 13, 2013, Respondent intentionally violated Rule 4 CCR 723-6-6508(b)(I).

172. Having found that, on October 13, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I), the ALJ finds that sanctions for that violation are appropriate. The sanctions are discussed below.

2. Rule 4 CCR 723-6-6508(c) (Count 2 of each CPAN).

173. Count 2 of CPAN No. 107699 (Hearing Exhibit No. 8) alleges that, on November 27, 2013, Respondent violated Rule 4 CCR 723-6-6508(c). Count 2 of CPAN No. 108156 (Hearing Exhibit No. 16) alleges that, on December 16, 2013, Respondent violated Rule 4 CCR 723-6-6508(c). That Rule states:

> (c) Noncompliance. If a tow is performed in violation of [Rule 4 CCR 723-6-6508], the towing carrier shall not charge, collect, or retain any fees or charges for the unauthorized services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge.

174. In this Proceeding, Staff takes the position that a violation of Rule 4 CCR 723-6-6508(c) occurs when the following have occurred: (a) Staff informs the towing carrier that, in Staff's opinion, the towing carrier performed an unauthorized nonconsensual tow; (b) Staff requests the towing carrier to reimburse the individual whose vehicle was towed in the unauthorized nonconsensual tow; and (c) the towing carrier does not make the requested reimbursement. Because the ALJ reads Rule 4 CCR 723-6-6508(c) as containing at least one additional requirement, the ALJ does not adopt Staff's position.

175. First, Rule 4 CCR 723-6-6508(c) uses the term "a tow is performed in violation of" Rule 4 CCR 723-6-6508, which logically refers to a violation of Rule 4 CCR 723-6-6508(b) as that is the portion of the Rule that defines authorization and the remainder of Rule 4 CCR 723-6-6508(c) refers specifically to "unauthorized services" and towing performed "without authorization." As pertinent here, the Commission determines whether in fact a towing carrier has violated Rule 4 CCR 723-6-6508(b).[44] An unproven Staff allegation that a violation has

[44] In an appropriate case, a court of competent jurisdiction also may make such a determination.

occurred is insufficient to meet the Rule 4 CCR 723-6-6508(c) predicate requirement of "a tow [that] is performed in violation" of Rule 4 CCR 723-6-6508(b).

176. Second, when applicable, Rule 4 CCR 723-6-6508(c) is a significant sanction or remedy for a violation of Rule 4 CCR 723-6-6508 (*i.e.*, the towing carrier must relinquish all charges and fees associated with the unauthorized nonconsensual tow). In the normal course, a sanction or remedy follows a Commission finding that a violation has occurred; rarely does a sanction or remedy precede a Commission finding that a violation has occurred. Staff provided no explanation of its reading of Rule 4 CCR 723-6-6508(c) that creates a rather considerable exception to the normal course.

177. Third, Rule 4 CCR 723-6-6508(c) is entitled "Noncompliance." While not controlling or dispositive, the title suggests that Rule 4 CCR 7230606508(c) is applicable if and when a towing carrier has been found to have violated Rule 4 CCR 723-6-6508(b).

178. The ALJ finds that the better reading of Rule 4 CCR 723-6-6508(c) assumes a Commission finding that a towing carrier violated Rule 4 CCR 723-6-6805(b) by performing an unauthorized nonconsensual tow. Based on and subsequent to such a Commission determination, Rule 4 CCR 723-6-6508(c), broadly speaking, requires the towing carrier: (a) to disgorge "any fees or charges for the unauthorized services it performs"; and (b) if the vehicle that was towed without consent and without authorization is in storage, to release the vehicle to its "owner, lienholder, or agent of the owner or lienholder without charge." If it fails to do so, the towing carrier violates Rule 4 CCR 723-6-6508(c) and may be subject to sanctions (*e.g.*, a civil penalty) for that violation. This reading of the Rule makes the owner of the towed vehicle whole and sanctions the towing carrier only if the Commission finds that the towing carrier

performed the tow in violation of Rule 4 CCR 723-6-6508(b). This reading, then, is consistent with the normal process by which the Commission imposes a sanction or remedy.

179. It is Staff's reading or interpretation that a violation of Rule 4 CCR 723-6-6508(c) occurs when a towing carrier declines or fails to make a reimbursement when requested to do so by Staff. Staff requests a towing carrier to make a reimbursement during the course of, and usually near the end of, Staff's investigation. A violation of Rule 4 CCR 723-6-6508(c) carries a civil penalty of up to $ 1,100 (plus the 10 percent surcharge) (Rule 4 CCR 723-6-6514(a)(III)).

180. Adopting Staff's position results in at least these likely situations:

a. The towing carrier could be assessed a civil penalty for failing to make a reimbursement when requested to do so by Staff even if it later developed that Staff's belief or opinion that the towing carrier performed an unauthorized nonconsensual tow could not be proven.

b. The towing carrier would be put to this election: (1) comply with Staff's request, even if the towing carrier believed the nonconsensual tow was authorized, and thereby avoid a possible civil penalty; or (2) do not comply with Staff's request and thereby risk being the recipient of a CPAN (with the attendant costs in time and money) and risk imposition of a $1,100 civil penalty for not complying even if it later develops that Staff's opinion that the towing carrier performed an unauthorized nonconsensual tow could not be proven.

c. The towing carrier that complies with Staff's request and later successfully defends against a CPAN based on the allegedly unauthorized nonconsensual tow would lose the fees and charges already reimbursed to the individual whose vehicle was towed and would stand little chance of recouping that loss without incurring additional costs in time and money.

181. For the foregoing reasons, the ALJ finds that a necessary precondition to the applicability of Rule 4 CCR 723-6-6508(c) is a Commission determination that, in fact, the towing carrier performed an unauthorized tow in violation of Rule 4 CCR 723-6-6805.[45] For the foregoing reasons, the ALJ also finds that a Staff determination or opinion that a towing carrier has violated Rule 4 CCR 723-6-6508 (*i.e.*, performed an unauthorized nonconsensual tow), standing alone, is insufficient to make Rule 4 CCR 723-6-6508(c) applicable.[46]

182. In Count 2 in Proceeding No. 13G-1329TO (CPAN No. 107699), Staff alleges that Respondent violated Rule 4 CCR 723-6-6508(c) on November 27, 2013. In support of this allegation, Staff established: (a) Staff asked Respondent to refund the fees and charges incurred by Complainant NA to recover his vehicle from Respondent on July 29, 2013; and (b) on November 27, 2013, Respondent refused Staff's request. Staff did not establish that, prior to November 27, 2013, the Commission had found that, in fact, Respondent violated Rule 4 CCR 723-6-6508 when it performed the July 29 tow. Staff's request that Respondent refund fees or charges to Complainant NA was based solely on Staff's belief or opinion that a violation occurred and not on a Commission determination that a violation in fact occurred. For these reasons, the ALJ finds that Staff did not meet its burden of proof with respect to Count 2 in Proceeding No. 13G-1329TO (CPAN No. 107699).[47]

[45] There may be other necessary preconditions. On the facts of this case, the ALJ does not need to address -- and neither addresses nor offers an opinion with respect to -- this issue.

[46] In the absence of a Commission order and at the urging of the Staff, a towing carrier may voluntarily take one or more of the actions listed in Rule 4 CCR 723-6-6508(c).

[47] To prove a violation of Rule 4 CCR 723-6-6508(c), Staff also must prove that Respondent's violation was intentional. (Staff neither asserted nor proved that Rule 4 CCR 723-6-6508(c) is a safety rule.) Although not necessary for the ruling in this Proceeding, the ALJ notes that Staff did not meet its burden to establish that Respondent intentionally violated Rule 4 CCR 723-6-6508(c) on November 27, 2013.

183. In Count 2 in Proceeding No. 13G-1346TO (CPAN No. 108156), Staff alleges that Respondent violated Rule 4 CCR 723-6-6508(c) on December 16, 2013. In support of this allegation, Staff established: (a) Staff asked Respondent to refund the fees and charges incurred by Complainant LN to recover his vehicle from Respondent on October 13, 2013; and (b) on December 16, 2013, Respondent refused Staff's request. Staff did not establish that, prior to December 16, 2013, the Commission had found that, in fact, Respondent violated Rule 4 CCR 723-6-6508 when it performed the October 13 tow. Staff's request that Respondent refund fees or charges to Complainant LN was based solely on Staff's belief or opinion that a violation occurred and not on a Commission determination that a violation in fact occurred. For these reasons, the ALJ finds that Staff did not meet its burden of proof with respect to Count 2 in Proceeding No. 13G-1346TO (CPAN No. 108156).[48]

184. For these reasons, the ALJ will dismiss with prejudice Count 2 in Proceeding No. 13G-1329TO (CPAN No. 107699) and Count 2 in Proceeding No. 13G-1346TO (CPAN No. 108156).

C. Sanctions.

185. The ALJ has found that, on July 29 and October 13, 2013, Respondent intentionally violated Rule 4 CCR 723-6-6508(b)(I). The remaining issue to be decided is the penalty or sanction to impose for the violations. The ALJ now turns to this issue.

186. The Commission has broad authority with respect to the imposition of penalties and sanctions or remedies for violation of Commission rules. In addition, the Commission

[48] To prove a violation of Rule 4 CCR 723-6-6508(c), Staff also must prove that Respondent's violation was intentional. (Staff neither asserted nor proved that Rule 4 CCR 723-6-6508(c) is a safety rule.) Although not necessary for the ruling in this Proceeding, the ALJ notes that Staff did not meet its burden to establish that Respondent intentionally violated Rule 4 CCR 723-6-6508(c) on December 16, 2013.

should look to the language of its substantive rules (*e.g.*, Rule 4 CCR 723-6-6508) when considering the imposition of penalties and sanctions or remedies.

187. Staff does not seek issuance of a cease and desist order in this Proceeding.

1. Civil Penalty Assessment.

188. Pursuant to § 40-7-113(1)(g), C.R.S., and Rule 4 CCR 723-6-6514(a)(II), the maximum potential civil penalty for a violation of Rule 4 CCR 723-6-6508(b)(I) is $ 1,100. With the 10 percent surcharge required by § 24-34-108, C.R.S., the maximum total assessment for each violation of Rule 4 CCR 723-6-6508(b)(I) is $ 1,210.

189. For Count 1 in each Proceeding, Staff seeks the maximum civil penalty of $ 1,100 and the required surcharge of $ 110, for the maximum total assessment of $ 1,210. Thus, in this consolidated Proceeding, Staff seeks a total civil penalty of $ 2,200 and the required surcharge of $ 220, for a total assessment of $ 2,420.

190. As pertinent here, it is within the Commission's discretion to impose any civil penalty up to the maximum amount stated in § 40-7-113(1)(g), C.R.S., and Rule 4 CCR 723-6-6315(a)(II).

191. In determining whether to assess a civil penalty, and if a civil penalty will be assessed the amount of the civil penalty, the Commission considers the Rule 4 CCR 723-1-1302(b) factors. That Rule provides that the

> Commission *may impose* a civil penalty, where provided by law, after considering evidence concerning 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 business of the respondent; and

(VIII) Such other factors as equity and fairness may require.

(Emphasis supplied.) 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.

192. In determining the amount of the civil penalty in this case, the ALJ began with the full range of options (*i.e.*, from assessing no civil penalty to assessing the maximum civil penalty); then considered the evidence presented on the factors in aggravation and on the factors in mitigation; and finally tested the result against the purposes underlying civil penalty assessments.

a. Proceeding No. 13G-1329TO.

193. Each of the Rule 4 CCR 723-1-1302(b) factors is discussed below.

194. *The nature, circumstances, and gravity of the violation*: As discussed above, Respondent's failure to comply with Rule 4 CCR 723-6-6508(b)(I) was intentional as Respondent knew of the Rule and failed to obtain authorization for the July 29 tow.

195. The known circumstances of the July 29 tow are: (a) the tow occurred the morning of July 29; (b) the tow was nonconsensual, as defined in Rule 4 CCR 723-6-6501(f); (c) the High Point contract has a provision that authorizes tows of "Starbucks patrons [and] construction workers not working on" the High Point property (Hearing Exhibit No. 2 at 4); and (d) the July 29 tow ticket states, as the reason for the tow, "no construction worker parking MCI" (Hearing Exhibit No. 1 at 1).

196. William Pulley, the tow truck operator who performed the July 29 tow, did not testify. As a result, there is no evidence with respect to: (a) whether the tow truck operator took steps to determine whether the towed vehicle was, in fact, the vehicle of a construction worker who was not working on the High Point property; (b) if the tow truck operator did take steps, what steps the tow truck operator took to assure himself that the towed vehicle was, in fact, the vehicle of a construction worker who was not working on the High Point property; and (c) the meaning of "MCI," whether "MCI" is relevant, and if relevant how "MCI" is relevant. Thus, given the lack of the evidence on these points, the circumstances surrounding the July 29 tow are murky.

197. The Rule serves important purposes; violation of the Rule is, therefore, a serious matter. *First*, Rule 4 CCR 723-6-6508(b)(I) serves to assure that the tow truck operator who performs a nonconsensual tow has proper written authority from the property owner to perform the tow. *Second*, the Rule provides assurance to the property owner that only individuals specifically named in the tow contract, and thus presumably approved by the property owner, will enter the property for the purpose of performing a nonconsensual tow; this allows the property owner to maintain control over who enters the property and for what purpose. *Third*, the Rule assures that tows are performed only within the scope of an authorization that can be verified by reference to a document (for example, a Rule 4 CCR 723-6-6508(a)(I) agreement or a Rule 4 CCR 723-6-6509(a) tow ticket). Without appropriate written and verifiable authorization, the public, the property owner, the individual whose vehicle is towed, and the Commission have little or no assurance that a tow was performed at the request of someone with authority to make such a request and not at the whim of the tow truck operator or the towing carrier or for purposes of her/his/its own. *Fourth*, a written and verifiable authorization that complies with the rules

reduces the likelihood of, or at least the degree of, misunderstanding -- typically between the towing carrier (including the tow truck operator who performs the tow) and the individual whose vehicle is towed -- about the reason for and the authority for a nonconsensual tow.

198. *The degree of Respondent's culpability*: As discussed above, Respondent's violation for failure to comply with Rule 4 CCR 723-6-6508(b)(I) was intentional as Respondent knew of the Rule and failed to obtain appropriate authorization for the July 29 tow.

199. *Respondent's history of prior offenses*: There is no evidence of prior offenses. When asked to identify and to discuss evidence of aggravating factors in this case, Staff witness Schlitter did not identify as an aggravating factor any prior offense by Respondent.

200. *Respondent's ability to pay*: There is no evidence on this factor.

201. *Any good faith efforts by Respondent in attempting to achieve compliance and to prevent future similar violations*: The evidence on this factor is discussed above.

202. As to efforts that precede the July 29 tow, the evidence shows that Respondent attempted to comply by: (a) entering into the January 18, 2013 High Point contract; and (b) having discussions, over the years, with Transportation Staff about the towing carrier rules and how to comply with those rules.

203. As to actions taken after the July 29 tow, there is no evidence that Respondent took steps to prevent similar violations in the future, principally because Respondent genuinely believed that the July 29 tow was performed with valid authorization; that the July 29 tow did not violate any rule; and that, as a result, no corrective action was required.

204. *The effect on Respondent's ability to continue in business*: There is no evidence on this factor.

205. *The size of Respondent's business*: There is no evidence on this factor.

206. *Other factors as equity and fairness may require*: The ALJ considered that an intentional violation within the meaning of § 40-7-113(1)(g), C.R.S., standing alone, carries no implication that Respondent acted with malice or with ill will. In addition, the ALJ considered that the evidence establishes, as Respondent argues in mitigation, that Respondent acted in good faith when it performed the July 29 tow and genuinely believed that the July 29 tow was performed with valid authorization. Finally, the ALJ considered that the single Staff-identified aggravating factor[49] has been taken into account.

207. Based on the evidentiary record, the ALJ finds that a civil penalty in the amount of **$ 800** should be assessed in Proceeding No. 13G-1329TO. In making this determination, the ALJ considered the Rule that Respondent violated and its purpose; considered the factors enumerated in Rule 4 CCR 723-1-1302(b); considered Commission guidance provided in previous civil penalty case decisions; considered the purposes served by civil penalties; and considered the range of civil penalty assessments found to be reasonable in other civil penalty cases.

208. Based on the evidentiary record in Proceeding No. 13G-1329TO, the ALJ finds it appropriate in this case to assess a civil penalty in the amount of **$ 800.** The ALJ finds that § 24-34-108, C.R.S., mandates a **surcharge of $ 80**. The ALJ will order a total assessment of **$ 880** against Respondent in Proceeding No. 13G-1329TO and will order Respondent to pay this

[49] As identified by Staff, that factor is: Respondent did not provide the expanded tow truck operator names and codes list (*i.e.*, Hearing Exhibit No. 35 at 12 and Hearing Exhibit No. 45) either to the High Point property owner (as an addendum to the High Point contact) or to Staff witness Schlitter (in response to his request for a copy of the High Point contract).

amount to the Commission not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding.

b. Proceeding No. 13G-1346TO.

209. Each of the Rule 4 CCR 723-1-1302(b) factors is discussed below.

210. *The nature, circumstances, and gravity of the violation*: As discussed above, Respondent's failure to comply with Rule 4 CCR 723-6-6508(b)(I) was intentional as Respondent knew of the Rule and did not obtain authorization for the October 13 tow.

211. The circumstances of the October 13 tow are discussed in detail above. The ALJ took the circumstances into consideration.

212. The Rule serves important purposes; violation of the Rule is, therefore, a serious matter.[50] *First*, Rule 4 CCR 723-6-6508(b)(I) serves to assure that the tow truck operator who performs a nonconsensual tow has proper written authority from the property owner to perform the tow. *Second*, the Rule provides assurance to the property owner that only individuals specifically named in the tow contract, and thus presumably approved by the property owner, will enter the property for the purpose of performing a nonconsensual tow; this allows the property owner to maintain control over who enters the property and for what purpose. *Third*, the Rule assures that tows are performed only within the scope of an authorization that can be verified by reference to a document (for example, a Rule 4 CCR 723-6-6508(a)(I) agreement or a Rule 4 CCR 723-6-6509(a) tow ticket). Without appropriate written and verifiable authorization, the public, the property owner, the individual whose vehicle is towed, and the Commission have little or no assurance that a tow was performed at the request of someone with authority to make

[50] Although the violation is a serious matter, for the reasons discussed below, Respondent's culpability in Proceeding No. 13G-1346TO is slight.

such a request and not at the whim of the tow truck operator or the towing carrier or for purposes of her/his/its own. *Fourth*, a written and verifiable authorization that complies with the rules reduces the likelihood of, or at least the degree of, misunderstanding -- typically between the towing carrier (including the tow truck operator who performs the tow) and the individual whose vehicle is towed -- about the reason for and the authority for a nonconsensual tow.

213. *The degree of Respondent's culpability*: As discussed above, Respondent's violation for failure to comply with Rule 4 CCR 723-6-6508(b)(I) was intentional as Respondent knew of the Rule and did not have appropriate authorization for the nonconsensual October 13 tow.

214. The Rule 4 CCR 723-6-6508(b)(I) violation rests on Respondent's use of code on the October 13 tow ticket (*i.e.*, Dave Huber, an employee of Respondent authorized by the Townview contract to authorize tows from the Townview property, used code on the tow ticket in lieu of his signature). On the facts of this case, Respondent's culpability is slight. *First*, there was no malice on the part of the Respondent and no intent to deceive the public, the Townview property owner, Complainant LN, or the Commission. In fact, given Staff's assurances and actions prior to October 13, 2013, Respondent believed itself to be in full compliance with the towing carrier rules. *Second*, the circumstances of the October 13, 2013 violation include Respondent's good faith and reasonable reliance on the Transportation Staff's representations that the use of code in lieu of a tow truck operator's name/signature complies with the applicable rule. The testimony of Staff witness Schlitter confirmed that Staff's understanding of a towing carrier's permissible use of code is the same as Respondent's understanding of a towing carrier's permissible use of code. *Third and finally*, the actions of the Consumer Assistance group served to confirm Respondent's understanding: in August and September 2013, the Consumer

Assistance group corresponded with Respondent concerning the informal complaint made by MH[51] about a nonconsensual tow performed by Respondent; on September 4, 2013; in a response to a request from the Consumer Assistance group, Respondent witness Florey sent "the page [of the towing contract] with the driver codes on it" (Hearing Exhibit No. 35 at 2; Hearing Exhibit No. 33[52]); and on September 5, 2013, the Consumer Assistance group "closed [the] case" (Hearing Exhibit No. 33 at 1; Hearing Exhibit No. 35 at 1).

215. *Respondent's history of prior offenses*: There is no evidence of prior offenses. In addition, when asked to identify evidence of aggravating factors in this case, Staff witness Cummings did not identify any prior offense by Respondent.

216. *Respondent's ability to pay*: There is no evidence on this factor.

217. *Any good faith efforts by Respondent in attempting to achieve compliance and to prevent future similar violations*: The evidence on this factor is discussed above.

218. As to efforts that precede the October 13 tow, the evidence shows that Respondent attempted to comply by: (a) entering into the January 21, 2011 Townview contract and naming in that contract Dave Huber as a Respondent employee authorized by Townview to authorize tows from the Townview property; (b) having discussions, over the years, with Transportation Staff about the towing carrier rules and how to comply with those rules; and (c) in accordance with Respondent's understanding of its obligation, submitting to Transportation Staff (and providing to Consumer Assistance staff on request) Respondent's tow truck operator names and codes list as that list changed from time to time.

[51] This informal complaint is not one of the complaints at issue in this Proceeding.

[52] Hearing Exhibit No. 33 is a complete copy (including the referenced attachment) of the e-mail correspondence found in Hearing Exhibit No. 35 at 1-7.

219. As to actions after the October 13 tow, there is no evidence that Respondent took steps to prevent similar violations in the future, principally because Respondent genuinely believed that the October 13 tow was performed with valid authorization; that the October 13 tow did not violate any rule; and that, as a result, no corrective action was required.

220. *The effect on Respondent's ability to continue in business*: There is no evidence on this factor.

221. *The size of Respondent's business*: There is no evidence on this factor.

222. *Other factors as equity and fairness may require*: First, the ALJ considered that an intentional violation within the meaning of § 40-7-113(1)(g), C.R.S., standing alone, carries no implication that Respondent acted with malice or with ill will. Second, the ALJ considered that the evidence establishes that Respondent acted in good faith when it performed the October 13 tow and genuinely believed that the October 13 tow was performed with valid authorization. Third, the ALJ considered that Staff witness Cummings testified that his investigation reveals no aggravating factors and no mitigating factors. Fourth and finally, for the reasons discussed above, the ALJ took into consideration the significant quantum of mitigation evidence presented in this case.

223. Based on the evidentiary record, the ALJ finds that a civil penalty in the amount of **$ 100** should be assessed in Proceeding No. 13G-1346TO. In making this determination, the ALJ considered the Rule that Respondent violated and its purpose; considered the factors enumerated in Rule 4 CCR 723-1-1302(b); considered Commission guidance provided in previous civil penalty case decisions; considered the purposes served by civil penalties; and considered the range of civil penalty assessments found to be reasonable in other civil penalty cases.

224. Based on the evidentiary record in Proceeding No. 13G-1346TO, the ALJ finds it appropriate in this case to assess a civil penalty in the amount of **$ 100.** The ALJ finds that § 24-34-108, C.R.S., mandates a **surcharge of $ 10**. The ALJ will order a total assessment of **$ 110** against Respondent in Proceeding No. 13G-1346TO and will order Respondent to pay this amount to the Commission not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding.

2. Reimbursement.

225. Rule 4 CCR 723-6-6508(c) provides "If a tow is performed in violation of [Rule 4 CCR 723-6-6508], the *towing carrier shall not* charge, collect, or *retain any fees or charges for the unauthorized services it performs*" (emphasis supplied). The language of Rule 4 CCR 723-6-6508(c) is mandatory: no towing carrier can retain any fee or charge for an unauthorized service (as pertinent here, the unauthorized tows).

226. Rule 4 CCR 723-6-6508(c) is an additional remedy available when, as here, the Commission finds that a towing carrier performed an unauthorized nonconsensual tow in violation of Rule 4 CCR 723-6-6508(b).

a. Proceeding No. 13G-1329TO.

227. The evidence establishes that, to recover his vehicle from Respondent, Complainant NA in Proceeding No. 13G-1329TO paid Respondent hookup/drop charges, mileage charges, and storage fees associated with the July 29 tow. The total amount paid was $ 241.20. July 29 tow ticket (Hearing Exhibit No. 1) at 1. The evidence also establishes -- and the ALJ has found -- that, on July 29, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I) when it performed the July 29 tow without authorization.

228. The ALJ finds that Rule 4 CCR 723-6-6508(c) requires Respondent to reimburse Complainant NA in Proceeding No. 13G-1329TO the amount that he paid to recover his vehicle, which amount is $ 241.20. The ALJ will order Respondent to **reimburse $ 241.20 to Complainant NA in Proceeding No. 13G-1329TO**.

229. The ALJ will order Respondent to work with Staff to facilitate the reimbursement to Complainant NA.

230. **Respondent is advised and is on notice that** failure to reimburse Complainant NA as required by this Decision may result in the imposition of civil penalties.

b. Proceeding No. 13G-1346TO.

231. The evidence establishes that, to recover his vehicle from Respondent, Complainant LN in Proceeding No. 13G-1346TO paid Respondent hookup/drop charges, mileage charges, and storage fees associated with the October 13 tow. The total amount paid was $ 307.60. October 13 tow ticket (Hearing Exhibit No. 11) at 1. The evidence also establishes -- and the ALJ has found -- that, on October 13, 2013, Respondent violated Rule 4 CCR 723-6-6508(b)(I) when it performed the October 13 tow without authorization.

232. The ALJ finds that Rule 4 CCR 723-6-6508(c) requires Respondent to reimburse Complainant LN in Proceeding No. 13G-1346TO the amount that he paid to recover his vehicle, which amount is $ 307.60. The ALJ will order Respondent to **reimburse $ 307.60 to Complainant LN in Proceeding No. 13G-1346TO**.

233. The ALJ will order Respondent to work with Staff to facilitate the reimbursement to Complainant LN.

234. **Respondent is advised and is on notice that** failure to reimburse Complainant LN as required by this Decision may result in the imposition of civil penalties.

235. The ALJ finds that the combination of the civil penalty assessment and the reimbursement to the complainants achieves the following purposes: (a) deterring future violations, whether by Respondent or by similarly-situated towing carriers; (b) motivating Respondent to comply with the law in the future; (c) punishing Respondent for its past behavior; and (d) implementing Commission rules. The ALJ finds that the civil penalty assessment and the reimbursement are reasonable; are in accord with Commission procedures and policy; and are in the public interest.

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

IV. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, with respect to Count 1 in Proceeding No. 13G-1329TO (Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107699), Respondent Parking Authority LLC is assessed a civil penalty in the amount of $ 800 for its violation of Rule 4 *Code of Colorado Regulations* 723-6-6508(b)(I) on July 29, 2013.

2. Pursuant to § 24-34-108, C.R.S., an $ 80 surcharge on the Proceeding No. 13G-1329TO civil penalty is assessed against Respondent Parking Authority 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 Consolidated Proceeding, Respondent Parking Authority LLC shall pay to the Commission the civil penalty and the surcharge assessed in Ordering Paragraphs No. 1 and No. 2.

4. Consistent with the discussion above, Count 2 in Proceeding No. 13G-1329TO (CPAN No. 107699) is dismissed with prejudice.

5. Consistent with the discussion above, Respondent Parking Authority LLC shall reimburse Complainant NA the $241.20 that Complainant NA paid on July 29, 2013 to recover his vehicle from Respondent Parking Authority LLC.

6. The reimbursement ordered in Ordering Paragraph No. 5 is due and payable not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding. Respondent Parking Authority LLC shall work with Transportation Staff of the Commission to facilitate the reimbursement to Complainant NA.

7. Consistent with the discussion above, with respect to Count 1 in Proceeding No. 13G-1346TO (CPAN No. 108156), Respondent Parking Authority LLC is assessed a civil penalty in the amount of $ 100 for its violation of Rule 4 *Code of Colorado Regulations* 723-6-6508(b)(I) on October 13, 2013.

8. Pursuant to § 24-34-108, C.R.S., a $ 10 surcharge on the Proceeding No. 13G-1346TO civil penalty is assessed against Respondent Parking Authority LLC. The surcharge shall be credited to the Consumer Outreach and Education Cash Fund, as provided by the statute.

9. Not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding, Respondent Parking Authority LLC shall pay to the Commission the civil penalty and the surcharge assessed in Ordering Paragraphs No. 7 and No. 8.

10. Consistent with the discussion above, Count 2 in Proceeding No. 13G-1346TO (CPAN No. 108156) is dismissed with prejudice.

11. Consistent with the discussion above, Respondent Parking Authority LLC shall reimburse Complainant LN the $ 307.60 that Complainant LN paid on October 13, 2013 to recover his vehicle from Respondent Parking Authority LLC.

12. The reimbursement ordered in Ordering Paragraph No. 11 is due and payable not later than 30 days following the date of the final Commission decision issued in this Consolidated Proceeding. Respondent Parking Authority LLC shall work with Transportation Staff of the Commission to facilitate the reimbursement to Complainant LN.

13. Consistent with the discussion above, the Motion *in Limine* to Exclude Respondent's Exhibits 1, 3, 4, 5, 6, 7, 9, and 14 and to Require Respondent to Renumber and Resubmit Exhibits 11 and 12, which motion was filed by Staff of the Commission, is granted in part and is denied in part.

14. Respondent Parking Authority LLC is held to the advisements contained in this Decision.

15. 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.

16. 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.

17. 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

Doug Dean,
Director