

Decision No. R23-0720

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

PROCEEDING NO. 23F-0311CP

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TIPSY VELO LLC DOING BUSINESS AS TIPSY VOYAGE,

COMPLAINANT,

V.

ABSOLUTE PRESTIGE LIMOUSINE II LLC, AND SHIRLEEN HUTTON,

RESPONDENTS.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
GRANTING SUMMARY JUDGMENT, IN PART,  
AND CLOSING PROCEEDING**

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Mailed Date: October 24, 2023

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**I. STATEMENT**

**A. Procedural Background**

1. On June 8, 2023, Complainant Topsy Velo, LLC doing business as Topsy Voyage (Complainant or Topsy Voyage) filed a verified Formal Complaint (Complaint) against Absolute Prestige Limousine II, LLC (Absolute Prestige Limousine), and Ms. Shirleen Hutton (Hutton) (collectively, Respondents).

2. On June 12, 2023, the Commission issued its Order Setting Hearing and Notice of Hearing (Notice), which set this matter for hearing on August 21, 2023, at 9:00 a.m., before an Administrative Law Judge (ALJ). The Notice also stated that the ALJ would establish the place and manner in which the hearing would be held.

3. On June 21, 2023, the Commission referred this proceeding to an ALJ by minute entry.

4. On July 10, 2023, the Answer and Response to Formal Complaint was filed by Respondents.

5. By Decision No. R23-0511-I, issued August 2, 2023, procedures were adopted to govern this proceeding.

6. On August 9, 2023, the Unopposed Motion to Vacate and Reschedule Hearing and Waive Response Time was filed by Complainant. Complainant’s counsel was unable to prepare for hearing prior to the date scheduled in this proceeding and reported that the requested relief was unopposed based upon conferral with Respondents.

7. By Decision No. R23-0536-I, issued August 11, 2023, the hearing was rescheduled.

8. On September 29, 2023, Complainant's Motion for Summary Judgment (Motion) was filed.

9. At the scheduled time and place, the scheduled hearing was convened. Complainant appeared through counsel and Ms. Shirleen Hutton appeared on behalf of Respondents.

**B. Waiver of Hearing**

10. When the case was called for hearing, as a preliminary matter, the undersigned acknowledged the Motion filed by Complainant only a few days before the noticed hearing on the complaint. Response time neither being addressed in the motion nor expired and Respondent not having had a reasonable opportunity to respond, the undersigned announced the hearing would proceed as noticed.

11. After conferring with his client, Counsel for Complainant waived the hearing and rested his case on the motion for summary judgment. No objection was raised by Respondents.

12. The hearing concluded following an announcement that a decision on the Motion would be issued in the normal course following the filing of a response or expiration of response time.

**C. Complaint**

13. The Complaint alleges that Absolute Prestige Limousine holds an "LL" permit and Certificate of Public Convenience and Necessity (CPCN) authorizing the transportation of passengers by motor vehicle, for hire, over the public roads of the State of Colorado, point-to-point within the State of Colorado.

14. Complainant further alleges that Absolute Prestige Limousine admits that CPCN PUC No. 55925 is dormant, if not abandoned.

15. Complainant contends that Absolute Prestige Limousine violated Rule 6205 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, by failing to file an application to suspend its authority. Further, as a result of that failure, Complainant contends that Absolute Prestige Limousine has abandoned CPCN PUC No. 55925.

16. Complainant alleges that Absolute Prestige Limousine violated Rules 6005 and 6016(d) by:

- a. advertising “services covered by PUC CPCN 55925 under a name or names other than that set forth on PUC CPCN 55925, namely ‘Absolute Prestige Limousines Service, Inc[sic]’ in its advertising and ‘Absolute Prestige Limousine Service Ltd.’ in its website, neither of which comports to the name on PUC CPCN 55925 which reads ‘Absolute Prestige Limousine II LLC.’
- b. Complainant alleges that the Colorado Secretary of State’s website indicates that “Absolute Prestige Limousine II LLC” and “Absolute Prestige Limousine Service, Ltd” are two separate legal entities and not trade names.

17. Respondent alleges that Absolute Prestige Limousine has abandoned CPCN 55925 by:

- a. Advertising only transportation service provided under permit LL 01716 by a legally distinct entity, “Absolute Prestige Limousine Service, Ltd” rather than “Absolute Prestige Limousine II LLC.”

18. Complainant alleges that the “entire Original Title Page of Passenger Tariff, Colorado PUC No. 1, Absolute Prestige Limousine, effective August 3, 2018” is illegal and discriminatory.

19. Complainant contends that Absolute Prestige Limousine abandoned CPCN PUC No. 55925 by violating Rules 6202 and 6205, 4 CCR 723-6, because Passenger Tariff, Colorado PUC No. 1:

(1) it fails and/or refuses to post shuttle rates for fewer than 10 individuals traveling together so that it refuses to provide service to a request for shuttle service from fewer than 10 passengers at one time and showing an intent to never operate a shuttle service with fewer than 10 passengers requesting the service; (2) it fails and/or refuses to post charter rates for less than two hours so that it refuses to provide service to a request for charter service for less than two hours and showing an intent to never operate a charter with a request for less than two hours of charter service; and (3) it fails and/or refuses to post sightseeing rates for fewer than 10 individuals traveling together so that it refuses to provide service to a request for sightseeing service from fewer than 10 passengers at one time and showing an intent to never operate a sightseeing service with fewer than 10 passengers requesting the service.

20. Complainant alleges that Ms. Hutton owns and/or manages Absolute Prestige Limousine II, LLC, which owns CPCN PUC No. 55925 and that she either permitted the certificate to go dormant or “or abandoned PUC No. 55925 prior to operations initiated by Respondent Absolute, and that in said capacity, Hutton has done nothing to restrain Respondent Absolute from violating its duty to serve the public and has accordingly aided and abetted Respondent Absolute in the violations.”

21. Finally, Complainant alleges that Ms. Hutton has “aided and abetted, and continues to aid and abet Respondent Absolute in the performance of the activities complained of herein.”

22. In Attachment 2 to the Complaint, Respondents admit that the following vehicles would have been used to provide common carriage services during 2022:

Vehicle Plate Number	Vehicle Description	Capacity
APLMO20	Freightliner Shuttle Bus	43
APLMO21	Ford F550 Limo Bus	25
APLMO22	Ford Shuttle Bus	27
APLMO23	Ford F650 Limo Bus	35

APLMO24	Ford Shuttle Bus	35
APLMO25	Ford Shuttle Bus	35
APLMO27	Freightliner Shuttle Bus	39

23. Based upon the foregoing violations alleged, relief is requested.

**D. Answer**

24. Respondents admit that Absolute Prestige Limousine II, LLC currently holds CPCN PUC No. 55925 that was issued by the Colorado Public Utility Commission. *See also* Decision No. C18-0511, issued June 26, 2018.

25. Throughout 2022 and to date, Absolute Prestige Limousine states that it has maintained all requirements to keep their CPCN in an active state including, but not limited to, “the maintenance of insurance, upkeep, taxes and licensing throughout the 2022 service period and continues to do so to present date.” It is admitted that no transportation services were performed during 2022, but it is denied that CPCN PUC No. 55925 is dormant, abandoned or suspended. Absolute Prestige Limousine contends that the COVID-19 Pandemic has caused broad impacts upon the company.

26. Absolute Prestige Limousine states that available transportation services were advertised on multiple platforms including, but not limited to, postings on the Absolute website, social media platforms, and print advertising. Despite these attempts, Absolute Prestige Limousine denies that any requests were made for “such” services.

27. Absolute Prestige Limousine denies that Commission rules caused CPCN PUC No. 55925 to be abandoned, dormant, or suspended, and contends that it has not been abandoned, dormant, or suspended.

28. Addressing allegations regarding business names, Absolute Prestige Limousine states “that they have continuously referred to their service under Absolute Prestige Limousine Service in referencing either company at any given time and has done so since the inception of the companies.”

29. Absolute Prestige Limousine states that it does business as “Absolute Prestige Limousine Service” and that “advertising is done in tandem for the companies as that is the most cost effect format of advertisement and lets the public know that there are ample modes available for transportation.”

30. Absolute Prestige Limousine denies any relevance of the non-existent “Absolute Prestige Limousines Service, Inc.”

31. Addressing allegations regarding Passenger Tariff, Colorado PUC No. 1, Respondent denies that the tariffs are illegal and discriminatory, that CPCN PUC No. 55925 is dormant or abandoned, or that the company is in violation of any rule.

**E. Jurisdiction**

32. The Complaint was filed pursuant to §§ 40-6-108 and 40-10.1-112(2), C.R.S., and served properly on Respondents. The Commission has subject matter jurisdiction in this proceeding and personal jurisdiction over Complainant and Respondents.

33. Section 40-10.1-112 describes when the Commission can take action against a CPCN upon complaint:

(1) Except as specified in subsection (3) of this section, the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist or may suspend, revoke, alter, or amend any certificate or permit issued to the motor carrier under this article for the following reasons:

(a) A violation of this article or of any term or condition of the motor carrier’s certificate or permit;

- (b) Exceeding the authority granted by a certificate or permit;
- (c) A violation or refusal to observe any of the proper orders or rules of the commission;

(2) Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier’s certificate or permit, or assessment of civil penalties. Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier’s certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission’s authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116.

34. The Commission is obliged to “see that the ... statutes of this state affecting ... persons subject to article 10.1 of [title 40, C.R.S.] ... are enforced and obeyed[.]” § 40-7-101, C.R.S.

35. The notice and hearing requirements of §§ 40-6-108 and 40-10.1-112, C.R.S., have been met.<sup>1</sup>

**F. Motion for Summary Judgment**

36. Complainant states that Respondent abandoned CPCN PUC No. 55925 based upon:

- a) Respondent’s Annual Report to the Commission reflects the fact that no services were provided under CPCN PUC No. 55925.
- b) Respondent admitted providing transportation service during 2022 on September 21, 2023.
- c) Respondent had calls for service, but chose to provide service under a permit rather than its CPCN.

37. On September 21, 2023, Absolute Prestige Limousine disclosed its Hearing Exhibit 207 in Proceeding No. 22A-0335CP by filing the same in the Commission’s E-Filing System. Complainant filed the same herein in support of the Motion for Summary Judgment. There,

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<sup>1</sup> See J.C. Trucking, Inc. v. Public Utilities Comm'n, 776 P.2d 366 (Colo. 1989).

Absolute Prestige Limousine stated its Reservations by Customer by Month for transportation provided during the calendar year 2022.

38. Complainant requested that the scheduled hearing be vacated pending ruling on the Motion for Summary Judgment.

**G. Response to Motion for Summary Judgment**

39. On October 5, 2023, the Response to Complainant's Motion for Summary Judgment was filed by Absolute Prestige Limousine and Hutton (Response).

40. The following is stated:

- a. Partially disputed. Respondent Absolute is a Public Utility engaged in the transportation of passengers and their baggage, by motor vehicle, for hire over the public roads of the State of Colorado, point-to-point within the State of Colorado; however, their authority under the CPCN limits them to within the County of Mesa. And, although no services under the CPCN were performed in 2022, it was not because Absolute chose to not perform services, it was because no services were requested of Absolute during the reporting period of January 1, 2022 through December 31, 2022. Absolute contends that the authority granted by CPCN 55925 was not abandoned or dormant due to Absolute's inability to perform services. Complainant is in error in that there are no rules outlined by the Public Utilities Commission of the State of Colorado that mandate an authority be suspended by the carrier due to lack of service. The rule cited by Complainant outlines how an entity goes about applying for said suspension, but it does not give a mandate stating that an entity must apply. Additionally, as part of the Complaint, Complainant submitted Respondents' Annual Reports for 2020 and 2021 and implying that historically Respondents had failed to provide services. The Commission should note that 2020 was the year in which COVID-19 was extremely active and the restrictions set forth by the Colorado Department of Public Health significantly impacted companies such as Respondent Absolute in the disallowance of services. Furthermore, Respondent's Annual Report for the reporting period of January 1, 2021 through December 31, 2021 did, in fact, show that services were rendered,

all be it not of significant incomes to Respondent. For reference, those reports are attached herewith and incorporated herein.<sup>2</sup>

- b. Disputed. Through due diligence, Absolute researched the need to apply for a suspension of their CPCN authority and were told by parties within the Public Utilities Commission of the State of Colorado that there was not a need to apply unless Absolute determined that they would suspend appropriate insurances required by the Public Utilities Commission of the State of Colorado. did not suspend insurances and therefore did not seek an application for suspension.
- c. Disputed. Absolute Prestige Limousine Service, Ltd holds its own authority as a Luxury Limousine with certificate LL-01035 and Absolute Prestige Limousine II, LLC holds its own authority as a Luxury Limousine with certificate LL-01716 in addition to CPCN 55925. Specific authorities are not advertised on [www.aplimo.com](http://www.aplimo.com) as the certificate holder; however, services are advertised as Absolute Prestige.
- d. Disputed. Complainant alleges that only Absolute Prestige Limousine Service, Ltd is referenced on the companies' website. Actually, the companies' logo identifies "Absolute Prestige Limo & Ranch" and there is no reference specifically to Absolute Prestige Limousine Service, Ltd. or to Absolute Prestige Limousine II, LLC.
- e. Disputed. The Tariff identified in this paragraph was submitted and approved by the Public Utilities Commission of the State of Colorado in the course of the application by Absolute Prestige Limousine II, LLC for CPCN 55925. The language used in the Original Title Page is the same language used in the many of the other Tariff statements including a recent CPCN application for 55982. Palisade Trolley LLC.
- f. Disputed. The Tariff stated in Absolute's application is not illegal nor discriminatory. It does not discriminate in either a geographical sense, against persons, or against classes as alleged by Complainant. The published Tariff does not discriminate as alleged by Complainant with respect in the shuttling of fewer than 10 individuals traveling together. Specifically, if fewer than 10 individuals are traveling "together" they would be considered related persons and would be able to travel together under the Luxury Limousine authority. The allegation that the CPCN Tariff rate is for at least 10 passengers at one time which Complainant construes again as passengers traveling "together". Absolute contends that the passengers traveling "together" would again fall

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<sup>2</sup> The 2021 Annual Report was not attached to or filed with the Response.

under the authority of the Luxury Limousine, an authority which Absolute possesses in its vehicles covered by the Luxury Limousine authority. All parts of paragraph f) of the Complaint imply that there are no transportation options available; however, Complainant further contends that the passengers are traveling “together”. Furthermore, since the Tariff was approved by the Public Utilities Commission of the State of Colorado, then calling the formatting illegal and discriminatory would cause the rules set forth by the Public Utilities Commission of the State of Colorado to be faulted.

- g. Partially disputed. Respondent Hutton admits that she is the owner and/or managing partner of Absolute Prestige Limousine II, LLC which owns CPCN 55925; however Respondent Hutton disputes that she permitted CPCN 55925 to go dormant. Furthermore, Respondent Hutton disputes that CPCN 55925 has been abandoned. In addition, the only reason that Absolute did not provide service under CPCN 55925 was due to a lack of need by the public. Absolute did provide service under LL-01716 as shown by Complainants Exhibit 207.
- h. Disputed. Respondent Hutton did not aid or abet Respondent Absolute in its failure to perform services under CPCN 55925. Respondent Hutton cites that the lack of business opportunities and the needs of the public were key in stifling services during the reporting period of January 1, 2022 to December 31, 2022.
- i. Disputed. Respondent Hutton and Respondent Absolute continue to put the public’s interest at the forefront by offering services both under CPCN 55925 and LL-01716.
- j. Partially disputed. The Public Utilities Commission of the State of Colorado is charged with taking the public’s interests and well beings to heart; however, there is no infraction of the authority held by Respondents Absolute or Hutton in offering and providing services to the public as allowed by CPCN 55925.

## **H. Standard for Summary Judgment**

41. Rule 1400 of the Commission's Rules of Practice and Procedure permits summary judgment motions filed in accordance with Colorado Rule of Civil Procedure (C.R.C.P.) 56.

42. Summary judgment is appropriate when the pleadings and supporting documents demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to summary judgment as a matter of law.<sup>3</sup>

43. Courts have described the burden shifting to the nonmoving party upon a *prima facie* showing. The nonmoving party must then show sufficient evidence that a reasonable jury could find in his favor in a genuine dispute of a material fact.<sup>4</sup> "A dispute over a material fact is genuine if a rational jury could find in favor of the nonmoving party on the evidence presented."<sup>5</sup>

44. A nonmoving party cannot create a genuine dispute as to a material fact to avoid summary judgment by asserting a legal conclusion without evidence to support it.<sup>6</sup>

45. Naked contradictions will not carry the non-movant's burden on summary judgment.<sup>7</sup> Asserting a fact without evidence to support will not avoid summary judgment.<sup>8</sup>

46. "The nonmovant must go beyond the allegations and denials of his pleadings and provide admissible evidence, which the Court views in the light most favorable to him. Conclusory statements based merely on conjecture, speculation, or subjective belief are not competent summary judgment evidence. The nonmoving party's evidence must be more than 'mere reargument of [his] case or a denial of an opponent's allegation' or it will be disregarded."<sup>9</sup>

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<sup>3</sup> Martini v. Smith, 42 P.3d 629 (Colo. 2002).

<sup>4</sup> City of Aurora v. ACJ P'ship (In re Application for Water Rights of the City of Aurora), 209 P.3d 1076, 1082 (Colo. 2009); Bernard v. Grp. Publ'g, Inc., 970 F. Supp. 2d 1206, 1210 (D. Colo. 2013).

<sup>5</sup> Robertson v. IHC Health Servs., No. 22-4046, 2023 U.S. App. LEXIS 18290, at \*16-17 (10th Cir. July 19, 2023) citing Schneider v. City of Grand Junction Police Dep't, 717 F.3d 760, 767 (10th Cir. 2013).

<sup>6</sup> Fritz v. Regents of Univ. of Colo., 196 Colo. 335, 339, 586 P.2d 23, 26 (1978).

<sup>7</sup> Robertson v. IHC Health Servs., No. 22-4046, 2023 U.S. App. LEXIS 18290, at \*16-17 (10th Cir. July 19, 2023).

<sup>8</sup> City of Aurora v. ACJ P'ship (In re Application for Water Rights of the City of Aurora), 209 P.3d 1076, 1082 (Colo. 2009), citing Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 441, 364 P.2d 866, 868 (1961).

<sup>9</sup> Bernard v. Grp. Publ'g, Inc., 970 F. Supp. 2d 1206, 1210 (D. Colo. 2013). (internal citations omitted).

47. Summary judgment is appropriate where reasonable people would not reach a different conclusion based upon the evidence.<sup>10</sup>

**I. Analysis**

48. Respondents admit that Absolute Prestige Limousine Service, Ltd and Absolute Prestige Limousine II, LLC are distinct entities: “Absolute Prestige Limousine Service, Ltd holds its own authority as a Luxury Limousine with certificate LL-01035 and Absolute Prestige Limousine II, LLC holds its own authority as a Luxury Limousine with certificate LL-01716 in addition to CPCN 55925.”<sup>11</sup>

**1. Common Carriage**

49. CPCN No. 55925, issued to Absolute Prestige Limousine II LLC, authorizes:

- a. Transportation of passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in Mesa County, State of Colorado.

50. Under the doctrine of regulated monopoly, Absolute Prestige Limousine’s certificate grants it the exclusive right to serve customers within its certificated area unless it is established that the certificated utility is unable or unwilling to provide adequate service.<sup>12</sup>

51. A common carrier of passengers by motor vehicle for hire is obligated to indiscriminately accept and carry passengers for compensation.<sup>13</sup>

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<sup>10</sup> City of Aurora v. ACJ P'ship (In re Application for Water Rights of the City of Aurora), 209 P.3d 1076, 1082 (Colo. 2009).

<sup>11</sup> Response at 3.

<sup>12</sup> Public Service Company of Colorado v. Shaklee, 784 P.2d 314 (Colo. 1989).

<sup>13</sup> § 40-1-102(3) C.R.S.

52. “Limousine Service” means the transportation of Passengers by a Common Carrier on a call-and-demand basis charged at a per-Person rate, and the use of the Motor Vehicle is not exclusive to any individual or group. Limousine Service is also referred to as Shuttle Service.<sup>14</sup>

53. “Shuttle Service” means the transportation of Passengers by a Common Carrier on a call-and-demand basis charged at a per-Person rate and use of the Motor Vehicle is not exclusive to any individual or group. Historical Certificates of Public Convenience and Necessity refer to this service as Limousine Service, which is different than Luxury Limousine Service that is provided by a Limited Regulation Carrier.<sup>15</sup>

54. “Sightseeing Service” means the transportation of Passengers by a Common Carrier on a call-and-demand basis originating and terminating at the same point for the sole purpose of viewing or visiting places of natural, historic, or scenic interest.<sup>16</sup>

55. Absolute Prestige Limousine’s Passenger Tariff, Colorado PUC No. 1 went into effect by operation of law and states the Tariff Naming Rules, Regulations, and Rates for The Transportation of Passengers pursuant to CPCN No. 55925. Section 3.1 states the fares for call-and-demand shuttle service and sightseeing service.

56. In part, the tariff states that “a minimum charge of ten passengers per shuttle is required” for call-and-demand shuttle service. No matter whether the number of adult passengers is one or ten, the cost is \$300 for a trip between 1 and 15 miles and \$600 for a trip between 16 and 40 miles.

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<sup>14</sup> Rule 6001(tt), 4 CCR 723-6.

<sup>15</sup> Rule 6001(nnn), 4 CCR 723-6.

<sup>16</sup> Rule 6001(ooo), 4 CCR 723-6.

57. In part, the tariff states that “a minimum charge of ten passengers per tour is required” for sightseeing service. No matter whether the number of adult passengers is one or ten, the cost is \$860 for half of a day and \$1,600 for a full day.

**2. Luxury Limousine Service**

58. Absolute Prestige Limousine also holds Luxury Limousine Permit No. LL-01716, pursuant to which the company is authorized operate or offer to operate a luxury limousine in intrastate commerce.<sup>17</sup>

59. “Luxury Limousine Carrier” is a type of Limited Regulation Carrier that provides a luxurious, specialized transportation service with great comfort, quality, and ease of use that is not usually available from Common Carriers. The services provided are on a Prearranged Charter Basis memorialized in a contract prior to the provision of service using vehicles defined at rule 6305.<sup>18</sup>

**3. Dormancy and Abandonment**

60. Rule 6001(gg), 4 CCR 723-6, defines a Fully Regulated Intrastate Carrier as:  
 a Motor Carrier that is subject to market entry, economic, operational, and safety regulation by the Commission as a public utility pursuant to Article 10.1 of Title 40, C.R.S. Fully Regulated Intrastate Carriers include Common Carriers, such as Taxicab Carriers, Shuttle Service, formerly known as Limousine Service, Sightseeing Service, or Charter Service, and Contract Carriers.

61. Rule 6202(b), 4 CCR 723-6, prohibits a Fully Regulated Intrastate Carrier from abandoning or suspending operations under its authority without specific approval by the Commission.

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<sup>17</sup> § 40-10.1-302, C.R.S.

<sup>18</sup> Rules 6001(uu) and 6301(e), 4 CCR 723-6.

62. Absolute Prestige Limousine has chosen not to request suspension of any part of the CPCN, which with Commission approval, would have kept the authority from being found to have been abandoned or allowed it to become dormant.<sup>19</sup>

63. The Commission has distinguished dormancy and abandonment as follows:

- a. Historically, this Commission's decisions indicate that "abandonment" consists of both acts and intentions evidencing a desire to abandon operating rights; mere non-use alone is insufficient to establish abandonment.
- b. On the other hand, "dormancy" has been defined as non-use alone, without the intent element necessary for abandonment.<sup>20</sup>

64. The Commission looks to whether "substantial" service is provided to determine whether active operations exist.<sup>21</sup> The Commission may determine insubstantial service by a comparison to the carrier's overall operations.<sup>22</sup>

65. The Commission has applied the "representative points standard" to establish dormancy:

A lack of substantial service to a representative number of points in the [certificated] area may establish that operating rights are dormant. A finding of insubstantial service can be determined by a comparison to the carrier's overall operations.<sup>23</sup>

66. To defend a claim of dormancy, a carrier must demonstrate not only that it actively operated the authority but also that it has provided service.<sup>24</sup>

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<sup>19</sup> Decision No. R93-0255 at 1, issued March 16, 1993.

<sup>20</sup> Decision No. R92-1232 issued October 1, 1992 (citations omitted). *See also* Decision No. R80-1417, issued July 17, 1980.

<sup>21</sup> Decision No. R03-0973 at 14.

<sup>22</sup> *Id.*

<sup>23</sup> Decision No. C96-1227 at 16-17, issued November 25, 1996, citing Decision No. R96-718, issued July 11, 1996 (internal citations omitted).

<sup>24</sup> *See e.g.* R90-925 at 2, issued July 17, 1990.

67. Even holding oneself out as ready, willing, and able to provide service, if and when requested to do so, by members of the traveling public has been held insufficient in the absence of evidence of some operations within the subject area.<sup>25</sup>

68. Absolute Prestige Limousine is able to provide partially overlapping transportation services through both a CPCN and a luxury limousine permit with each having different rights and obligations.<sup>26</sup>

69. Absolute Prestige Limousine admits that no transportation services were requested or provided pursuant to CPCN PUC No. 55925 during the entire reporting period of January 1, 2022, through December 31, 2022.<sup>27</sup> Respondents further admit only providing service under luxury limousine permit LL-01716 during 2022 as shown in Complainant's Exhibit 207.<sup>28</sup>

70. Based upon the statements of Respondents and a total lack of any substantial service pursuant to its CPCN for the entire calendar year of 2022, it is found and concluded that the CPCN was permitted to go dormant. However, dormancy of operating rights under an authority alone does not eliminate an authority. Rather, dormant authority continues to exist and can be reactivated by a carrier.<sup>29</sup>

71. If the CPCN that is the subject of the Complaint were at issue in a transfer, dormancy would have resulted in separation of the authority with the dormant portion remaining with the transferor and subject to reactivation. However, if the dormant authority is found to have

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<sup>25</sup> Decision No. R03-0973 at 14, *citing* Boulder Airporter, *supra* (holding oneself out as ready, willing, and able to provide transportation service is but a "slender reed" in dormancy analysis and is not a "substitute for performance").

<sup>26</sup> Illustratively, call-and demand shuttle and sightseeing services are provided on a call-and-demand basis and charged on a per-person basis. A luxury limousine carrier operating pursuant to § 40-10.1-301 et. seq. is subject to lesser requirements than a common carrier and a different level regulation. See e.g., § 40-1-102(3) C.R.S.

<sup>27</sup> Response at 2.

<sup>28</sup> Response at 5 and Complainant's Exhibit 207 attached to the Motion.

<sup>29</sup> Decision No. C90-929 at 2, issued July 11, 1990.

been abandoned upon complaint, the authority will be revoked.<sup>30</sup> Thus, having found that the operating rights were dormant, it must next be determined whether there were acts and intentions evidencing a desire to abandon common carrier operations pursuant to the authority.

72. The Motion is not supported by affidavit; rather, Topsy Voyage relies upon facts in the verified Complaint and the admissions of Respondents. While the ALJ may question other aspects of operations, it is found that Topsy Voyage only partially met its burden of proof as to the Motion.

73. Absolute Prestige Limousine undertook the obligation to serve the public convenience and necessity. It has the exclusive right to serve customers within its certificated area only so long as it demonstrates a willingness and ability to provide that service.

74. In the response, Respondents generally deny that transportation was provided under the Luxury Limousine permit by choice, stating “it was because no services were requested of Absolute.”<sup>31</sup>

75. Absolute Prestige Limousine does not advertise common carrier services under the name of the authority holder. Rather it generally advertised transportation services available: “advertising is done in tandem for the companies as that is the most cost effect format of advertisement and lets the public know that there are ample modes available for transportation.” It is further admitted “that they have continuously referred to their service under Absolute Prestige Limousine Service in referencing either company at any given time and has done so since the inception of the companies.”<sup>32</sup>

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<sup>30</sup> Decision No. C90-833 at 3, issued June 27, 1990.

<sup>31</sup> Response at 2.

<sup>32</sup> Answer at 4.

76. Topsy Voyage failed to meet its burden of proof to show that no genuine issues of material fact remain to support a determination that Respondent abandoned its entire authority. Disputed issues of fact remain as to whether Absolute Prestige Limousine engaged in bona fide common carrier operations and the nature and quantity of all transportation services requested of Absolute Prestige Limousine by larger groups during 2022. Topsy Voyage failed to demonstrate the content and manner of how Absolute Prestige Limousine holds itself out to the public, and that Absolute Prestige Limousine was unable or unwilling to provide any common carrier service. Most importantly, Topsy Voyage failed to fully demonstrate the bare allegation that Absolute Prestige Limousine “chose to provide service under one of its permits rather than under its certificate” as to all transportation actually provided.

77. Based upon further facts, Topsy Village has shown that there are no genuine disputed issues of material fact as to abandonment of authority to serve fewer than ten passengers. Despite the breadth of authorized operations under the CPCN, Respondents admit sufficient facts to support the legal conclusion of abandonment of the now dormant authority, in part.

78. For common carrier services, Absolute Prestige Limousine is obligated to keep file with the Commission schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, together with all rules, regulations, contracts, privileges, and facilities that in any manner affect or relate to rates, tolls, rentals, classifications, or service.<sup>33</sup>

79. Under the tariff offering, charges for fewer than ten passengers in call-and-demand shuttle and sightseeing services can be as high as ten times more than the per-person charge of ten passengers. By charging smaller groups significantly higher per-person costs for travel, prices can

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<sup>33</sup> § 40-3-103 C.R.S.

effectively amount to a denial of service.<sup>34</sup> Applicable here, the magnitude and manner of charging smaller parties evidences an intent to not full exercise of the granted authority, in part.

80. Additionally, and more critical here, Respondents admit smaller parties would not be served under its existing CPCN:

“Respondent maintains that if a customer requested service for less than 10 passengers Respondent has the ability due to their LL tag to transport fewer passengers either as an unrelated group in individual vehicles or as a related group in a smaller vehicle.”<sup>35</sup>

81. Contrary to referencing a smaller vehicle providing service under its authority, Respondents are not ready, willing, or able to provide common carrier service with a smaller vehicle either. Respondents admit that the smallest of seven vehicles used to provide common carrier service has a 25-passenger seating capacity. In the context of operations, and contrary to the public interest, Absolute Prestige Limousine admits it would not provide service under its CPCN for less than ten passengers.

82. Giving the benefit of every reasonable inference, Respondents failed to identify specific facts demonstrating the existence of a genuine issue of material fact as to the lack of substantial operations under CPCN or the intention not to exercise the dormant common carrier authority as to service for fewer than ten passengers. The only reasonable conclusion based upon the record is that Respondents have no intention to provide common carrier services to fewer than ten passengers. General denials and unsupported statements as to legal conclusions are not sufficient to overcome the evidence of Respondents actions in operation.

83. That portion of CPCN PUC No. 55925 which permits transportation of fewer than ten passengers, in call-and-demand shuttle service, call-and-demand charter service, and

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<sup>34</sup> See *Durango Transp., Inc. v. Colo. PUC*, 122 P.3d 244, 249 (Colo. 2005).

<sup>35</sup> Response at 4.

call-and-demand sightseeing service between points in Mesa County, State of Colorado will be revoked. CPCN PUC No. 55925 will be revised to reflect the partial revocation.

84. To the extent the above conclusions reflect the relief reflected in the Motion filed by Topsy Voyage, that relief is awarded.

85. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. Complainant's Motion for Summary Judgment (Motion) filed by Topsy Velo, LLC doing business as Topsy Voyage (Complainant or Topsy Voyage) on September 29, 2023, is granted in part. Relief requested in the Motion is awarded consistent with the above discussion and is otherwise denied.

2. Any remaining relief requested in the verified Formal Complaint against Absolute Prestige Limousine II, LLC, (Absolute Prestige Limousine) and Ms. Shirleen Hutton (collectively, Respondents) filed on June 8, 2023, is denied.

3. That portion of CPCN PUC No. 55925 which permits transportation of fewer than ten passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between points in Mesa County, State of Colorado is abandoned and is revoked.

4. The full and complete CPCN PUC No. 55925 to operate as a common carrier of passengers by motor vehicle for hire is revised and shall read as set forth in Appendix A attached to this Decision.

5. Absolute Prestige Limousine shall operate in accordance with all applicable statutes, orders, and rules of the Commission. The Commission may issue an order to cease and desist or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112 (1), C.R.S.

6. Proceeding No. 23F-0311CP is closed.

7. 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.

8. 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.

9. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director