

Decision No. R25-0706-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25F-0270CP

ROMAN LYSENKO,

COMPLAINANT,

V.

ON LOCATION EVENTS, LLC DOING BUSINESS AS SHUTTLES TO RED ROCKS,

RESPONDENT.

**INTERIM DECISION DENYING MOTION TO DISMISS,
GRANTING REQUESTS FOR SUBPOENAS, AND
ESTABLISHING PROCEDURAL SCHEDULE**

Issued Date: September 30, 2025

I. STATEMENT

A. Relevant Background

1. On June 18, 2025, Roman Lysenko filed a Formal Complaint (“Complaint”) against On Location Events, LLC doing business as Shuttles to Red Rocks (“Shuttles to Red Rocks”).

2. On June 23, 2025, the Commission scheduled the Complaint for an evidentiary hearing to be held on September 2, 2025 starting at 9:00 a.m. On the same date, the Commission

served the Complaint on Shuttles to Red Rocks, and filed and served an Order Setting Hearing and Notice of Hearing, an Order to Answer or Satisfy, and other documents on the parties.

3. On July 2, 2025, the Commission referred this proceeding by minute entry to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

4. On July 14, 2025, Shuttles to Red Rocks filed a Motion to Dismiss.

5. On July 21, 2025, Mr. Lysenko filed a response to the Motion to Dismiss.

6. On July 22, 2025, the ALJ issued Decision No. R25-0534-I that required Mr. Lysenko to confer with counsel for Shuttles to Red Rocks regarding a schedule for this proceeding, the method by which the hearing should be conducted, and whether the currently scheduled hearing should be rescheduled. Decision No. R25-0534-I also ordered Mr. Lysenko to file a Conferral Report by August 1, 2025.

7. On July 31, 2025, Mr. Lysenko filed the Conferral Report stating that the parties agreed that no discovery is necessary, the hearing should take place on September 2, 2025, and the hearing should be conducted as a remote hearing.

8. On August 8, 2025, Mr. Lysenko filed requests for the issuance of subpoenas to testify to be served on Ace Express Coaches, LLC, On Location Events, LLC, and Ramblin’ Express, Inc.

9. On August 28, 2025, the ALJ issued Decision No. R25-0625-I vacating and rescheduling the remote hearing to November 18, 2025.

B. Motion to Dismiss

1. Legal Standard

1. The basis for the requested dismissal of the Complaint is C.R.C.P. 12(b)(5), which permits dismissal if a complaint fails to state a claim upon which relief can be granted. In ruling on such a motion, the Complainant's allegations of material fact (but not legal conclusions) must be accepted as true.¹ The Commission "may consider only matters stated in the complaint and must not go beyond the confines of the pleadings,"² except for documents that are referenced in, and central to, the complaint.³ The ALJ may also consider documents that are subject to administrative notice.⁴ If matters outside of the complaint are included with the motion to dismiss and not excluded by the ALJ, the motion must be converted to one for summary judgment and "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by C.R.C.P. 56."⁵

2. To survive a C.R.C.P. 12(b)(5) motion to dismiss, a complaint must contain sufficient factual allegations that, if accepted as true, "state a claim to relief that is plausible on its face."⁶ A claim has facial plausibility when the complainant pleads factual content that allows the court to draw the reasonable inference that the respondent is liable for the misconduct alleged.⁷ The plausibility standard is not akin to a "probability requirement." Indeed, it asks for more than a sheer possibility that a respondent has acted unlawfully.⁸ Where a complaint pleads

¹ *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (adopting the standard for review of motions to dismiss for failure to state a claim enunciated by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

² *Ashton Props., Ltd. v. Overton*, 107 P.3d 1014, 1018 (Colo. App. 2004).

³ *Prospect Dev. Co. v. Holland & Knight*, 433 P.3d 146, 149 (Colo. App. 2018).

⁴ *Walker v. Van Laningham*, 148 P.3d 391, 397-398 (Colo. App. 2006).

⁵ C.R.C.P. 12(b).

⁶ *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016).

⁷ *Twombly*, 550 U.S. at 556 (2007).

⁸ *Id.*

facts that are “merely consistent with” a respondent’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”⁹ Put differently, a complaint that alleges facts that are equally consistent with both legal and illegal conduct has not alleged a plausible claim and must be dismissed.¹⁰

3. “The chief function of a complaint is to give notice to the defendant of the transaction or occurrence that is the subject of plaintiff’s claims.”¹¹ As a result, motions to dismiss “are viewed with disfavor.”¹² Nevertheless, “only a complaint that states a plausible claim for relief will survive a motion to dismiss.”¹³

2. Parties’ Arguments

a. Respondent

10. Shuttles to Red Rocks argues that the Complaint must be dismissed because it “asserts [the following] claims and issues that were raised in Proceeding No. 24F-0236CP:”

On Location’s legal status as a “common carrier” or “shuttle” provider; On Location’s alleged lack of CPCN authority; On Location’s per-seat or individual ticketing; On Location’s relationship with Ace and Ramblin’ for Red Rocks transportation; Ace and Ramblin’s lawful federal permit authority and lawful transportation service to Red Rocks.¹⁴

According to Shuttle to Red Rocks, those “claims and issues” were “resolved with finality by Decision No. R25-0406”¹⁵ or could have been raised in Proceeding No. 24F-0236CP.¹⁶ For this reason, the Complaint in this proceeding is an impermissible collateral attack on Decision No.

⁹ *Id.* at 557.

¹⁰ *See Warne*, 373 P.3d at 596-597 (citing *Twombly* and *Iqbal*).

¹¹ *Rosenthal v. Dean Witter Reynolds*, 908 P.2d 1095, 1099-1100 (Colo. 1995). (Internal citations omitted)

¹² *Hirsch Trust v. Ireson*, 399 P.3d 777, 779 (Colo. App. 2017)

¹³ *Warne*, 373 P.3d at 591 (quoting *Iqbal*, 556 U.S. at 679).

¹⁴ *Id.*

¹⁵ Motion to Dismiss at 9.

¹⁶ *Id.* at 13.

R25-0406” and is thus barred by § 40-6-112(2), C.R.S. and the doctrines of claim and issue preclusion.¹⁷

11. Shuttles to Red Rocks also argues that it has fully complied with Decision No. R25-0406. In support, Shuttles to Red Rocks asserts that it changed its website to comply with Decision No. R25-0406 “at least 10 days earlier than Mr. Lysenko alleges” and it “fully complies with Transportation Broker Rules.”¹⁸ Shuttles to Red Rocks requests that the Motion to Dismiss be granted and the Complaint dismissed.

b. Complainant

12. Mr. Lysenko responds that the Complaint alleges violations of Decision No. R25-0406 that occurred after the issuance of that decision. As Decision No. R25-0406 was the final decision in, and thus closed, Proceeding No. 24F-0236CP, the claims alleged, and the issues raised, in the Complaint in this proceeding could not have been brought in Proceeding No. 24F-0236CP. For this reason, the Motion to Dismiss must be denied.

3. Analysis

13. The ALJ agrees with Mr. Lysenko. The allegations in the Complaint address conduct that allegedly occurred after the issuance of Decision No. R25-0406. In fact, the Complaint alleges violations of that very decision and requests relief solely for those alleged violations. As a result, the Complaint is not barred by § 40-6-112(2), C.R.S. or the doctrines of claim and issue preclusion. In addition, Shuttles to Red Rocks’ allegations that it has complied with Decision No. R25-0406 and the Commission’s rules cannot be adjudicated on a Motion to Dismiss. Accordingly, the Motion to Dismiss will be denied.

¹⁷ *Id.* at 7-14.

¹⁸ *Id.* at 17-23.

C. Requests for Subpoenas

14. Mr. Lysenko has submitted requests for the issuance of subpoenas to compel the attendance of witnesses for Shuttles to Red Rocks, Ace Express Coaches, LLC, and Ramblin' Express, Inc. Those requests will be granted. Mr. Lysenko is directed to file the requested subpoenas in this proceeding. A form subpoena can be found at <https://puc.colorado.gov/consumerfyi>.

D. Procedural Schedule

15. To facilitate the orderly and efficient litigation of this proceeding, the ALJ finds and concludes that a procedural schedule should be adopted, so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at the hearing. Therefore, this Decision will order the parties to file, and to serve on each other, a list of witnesses, a summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

16. On or before **October 17, 2025**, Mr. Lysenko will be ordered to file and serve on Shuttles to Red Rocks: (a) a list that identifies the witnesses Mr. Lysenko intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Mr. Lysenko intends to present at the hearing.

17. On or before **October 31, 2025**, Shuttles to Red Rocks will be ordered to file and serve on Mr. Lysenko: (a) a list that identifies the witnesses Shuttles to Red Rocks intends to call at the hearing, the last known address and telephone number of each witness, and a summary of

the anticipated testimony of each witness; and (b) copies of the exhibits Shuttles to Red Rocks intends to present at the hearing.

18. As referenced in this Decision, serving a party with any document (e.g., witness and exhibit lists and exhibits) means that the party is required to give the document to the other party or parties to the proceeding. Service must be accomplished pursuant to Rule 1205 of the Commission's Rules of Practice and Procedure.¹⁹ The Commission's Rules (including Rule 1205) are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

19. All parties must establish through a certificate of service that they have served a filed document on all other parties in the proceeding. A certificate of service is a statement indicating how and when a document was served on the other party (e.g., the filing was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).²⁰

20. All exhibits shall be identified by sequential numbers (e.g., Exhibit 1, Exhibit 2, and Exhibit 3). Each exhibit shall include the following information: (a) exhibit number; (b) proceeding number; (c) name of the witness who will testify to the exhibit's foundation; and (d) the date of the hearing. The parties shall work together to ensure that there are no overlaps in the numbering of the exhibits.

21. The filing of an exhibit with the Commission does not, by itself, admit an exhibit into the evidentiary record of the hearing.

¹⁹ 4 CCR 723-1.

²⁰ See Rule 1205(e), 4 CCR 723-1.

22. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

23. The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

E. Additional Advisements

24. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed by On Location Events, LLC doing business as Shuttles to Red Rocks ("Shuttles to Red Rocks") on July 14, 2025 is denied.

2. The Requests for Subpoenas filed by Roman Lysenko on August 8, 2025 are granted. Mr. Lysenko must follow the procedure described above for the issuance of the subpoenas.

3. On or before **October 17, 2025**, Mr. Lysenko shall file and serve on the Shuttles to Red Rocks: (a) a list that identifies the witnesses Mr. Lysenko intends to call at the hearing; (b) the last known address and telephone number of each witness; (c) a summary of the

anticipated testimony of each witness; and (d) copies of the exhibits Mr. Lysenko intends to present at the hearing.

4. On or before **October 31, 2025**, Shuttles to Red Rocks shall file and serve on Mr. Lysenko: (a) a list that identifies the witnesses Shuttles to Red Rocks intends to call at the hearing; (b) the last known address and telephone number of each witness; (c) a summary of the anticipated testimony of each witness; and (d) copies of the exhibits Shuttles to Red Rocks intends to present at the hearing.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director