Decision No. R14-0103-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1098CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SKY TAXI, LLC, AND

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

RESPONDENTS.

INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE MANA L. JENNINGS-FADER ADVISING RESPONDENT SKY TAXI THAT IT CANNOT PARTICIPATE IN THIS PROCEEDING

Mailed Date: January 27, 2014

I. STATEMENT

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

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

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

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

4. On December 24, 2013, by Decision No. R13-1589-I, the ALJ granted Staff's request to amend the caption of this Proceeding to name as respondents both Sky Taxi, LLC (Sky Taxi), and Mr. Sky Johann Wodraska, in his capacity as owner-operator of Sky Taxi (Wodraska).

5. Sky Taxi and Mr. Wodraska, collectively, are the Respondents. Staff and Respondents, collectively, are the Parties.

6. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity *provided* the requirements of § 13-1-127, C.R.S., are met and the Commission grants permission. The Commission has held that, unless an exception applies, a party must be represented by counsel in an adjudicatory proceeding. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by a non-attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in the proceeding (*e.g.*, in a hearing, a prehearing conference, or an oral argument).

7. This is an adjudication before the Commission. Respondent Sky Taxi is a Colorado limited liability company, is a party in this matter, and is not represented by legal counsel in this Proceeding.

8. By Decision No. R13-1589-I at ¶ 20 and Ordering Paragraph No. 6, the ALJ ordered Respondent Sky Taxi either to retain legal counsel for this Proceeding or to show cause why it should be permitted to proceed in this matter without legal counsel. If Respondent Sky

Taxi chose to retain counsel, its legal counsel was to enter an appearance on or before January 10, 2014. If Respondent Sky Taxi chose to show cause, it was to make its show cause filing on or before January 10, 2014.

9. Decision No. R13-1589-I contained the following advisements:

> **Respondent Sky Taxi, LLC, is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires Respondent Sky Taxi, LLC, to retain legal counsel in this Proceeding.**
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> **Respondent Sky Taxi, LLC, is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that requires Respondent Sky Taxi, LLC, to retain legal counsel in this Proceeding, Respondent Sky Taxi, LLC, will not be permitted to participate in this matter without an attorney.** This means, among other things, that Respondent Sky Taxi, LLC, will not be able to participate in the evidentiary hearing in this matter.

Id. at ¶¶ 23-24 (bolding in original).

10. On December 24, 2013, by first-class mail, the Commission mailed Decision No. R13-1589-I to Respondent Sky Taxi at the Breckenridge, Colorado mailing address known to the Commission and shown on the CPAN. As of the date of this Interim Decision, Decision No. R13-1589-I has not been returned to the Commission as undeliverable. Respondent Sky Taxi is presumed to have received, and thus to have notice of the requirements in, Decision No. R13-1589-I.

11. No attorney entered an appearance on behalf of Respondent Sky Taxi. Respondent Sky Taxi did not request additional time within which to retain legal counsel.

12. Respondent Sky Taxi did not make a filing in response to the order to show cause (*i.e.*, Decision No. R13-1589-I). Respondent Sky Taxi did not request additional time within which to respond to the order to show cause.

13. Without explanation, Respondent Sky Taxi failed to comply with the Decision No. R13-1589-I requirement that Respondent Sky Taxi either retain legal representation in this Proceeding or make a show cause filing. In clear language, the ALJ advised Respondent Sky Taxi of the consequences if it failed to comply with Decision No. R13-1589-I.

14. As a result, on January 14, 2014, by Decision No. R14-0048-I,the ALJ found that, although given reasonable opportunity to do so, Respondent Sky Taxi had not established that it comes within the Rule 4 CCR 723-1-1201(b)(II) exception. Therefore, in accordance with Rule 4 CCR 723-1-1201(a), the ALJ found that Respondent Sky Taxi must be represented by an attorney in this Proceeding.

15. By Decision No. R14-0048-I, the ALJ ordered Respondent Sky Taxi to retain an attorney to represent it in this matter and ordered the attorney for Respondent Sky Taxi to enter an appearance on or before January 23, 2014.

16. Decision No. R14-0048-I contained the following relevant advisements:

> **Respondent Sky Taxi is advised, and is on notice, that it cannot proceed in this case without an attorney who is admitted to practice law in, and who is in good standing in, Colorado.**
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> **Respondent Sky Taxi is advised, and is on notice, that if its legal counsel does not enter an appearance in this Proceeding as required by this Interim Decision, Respondent Sky Taxi will be unable to participate in, or to make filings in, this Proceeding.** This means, among other things, that Respondent Sky Taxi will not be able to participate in the evidentiary hearing in this case.
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> Because [Decision No. R14-0048-I] requires Respondent Sky Taxi to retain an attorney to represent it in this Proceeding, **Respondent Wodraska is advised, and is on notice, that he is prohibited from appearing on behalf of,**

> **or otherwise representing the interests of, Respondent Sky Taxi in this Proceeding**.

Decision No. R14-0048-I at ¶¶ 16-17, 19 (bolding in original); *see also* Ordering Paragraph Nos. 1-4 (same).

17. On January 14, 2014, by first-class mail, the Commission mailed Decision No. R14-0048-I to Respondent Sky Taxi at the Breckenridge, Colorado mailing address known to the Commission and shown on the CPAN. As of the date of this Interim Decision, Decision No. R14-0048-I has not been returned to the Commission as undeliverable. Respondent Sky Taxi is presumed to have received, and thus to have notice of the requirements in, Decision No. R14-0048-I.

18. As of the date of this Interim Decision, no attorney has entered an appearance on behalf of Respondent Sky Taxi. As of the date of this Interim Decision, Respondent Sky Taxi has not requested additional time within which to retain legal counsel.

19. Without explanation, Respondent Sky Taxi has failed to comply with the Decision No. R14-0048-I requirement that Respondent Sky Taxi retain legal representation in this Proceeding. In clear language, the ALJ advised Respondent Sky Taxi of the consequences if it failed to comply with Decision No. R14-0048-I.

20. For the foregoing reasons and in accordance with the advisements in the Interim Decisions issued in this Proceeding, by this Interim Decision the ALJ will prohibit Respondent Sky Taxi from participating in this Proceeding. If Respondent Sky Taxi's legal counsel enters an appearance in this Proceeding and if legal counsel makes an appropriate motion, then the ALJ will reconsider this ruling.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above and absent further order, Respondent Sky Taxi, LLC, is prohibited from participating in, or making filings in, this Proceeding.

2. Respondent Sky Johann Wodraska is prohibited from appearing on behalf of, or otherwise representing the interests of, Respondent Sky Taxi, LLC, in this Proceeding

3. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

4. This Interim Decision is effective immediately.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge