

Decision No. R14-0418

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1234EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

KEVIN UPSHAW DOING BUSINESS AS PARTY ON WHEELS,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ASSESSING CIVIL PENALTY**

Mailed Date: April 18, 2014

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I. STATEMENT

1. On November 15, 2013, the Colorado Public Utilities Commission (Commission or PUC) served Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107955 on Kevin Upshaw, doing business as Party on Wheels (Respondent or Party on Wheels).

The CPAN alleged violations of state law and Commission regulations regarding one count of operating or offering to operate as a Luxury Limousine Carrier without an operating authority in violation of § 40-10.1-302(1)(a), C.R.S.; no evidence of liability insurance, in violation of *Rule 6007(a)(1) of the Rules Regulating Transportation by Motor Vehicle*, 4 *Code of Colorado Regulations* (CCR) 723-6; and no liability insurance on file with the Commission, in violation of *Rule 6007(f)(I)(A)*, 4 CCR 723-6.

2. On December 6, 2013, counsel for Staff of the Commission (Staff) entered their appearance.

3. On December 11, 2013, by Minute Order, the Commission referred the proceeding to an Administrative Law Judge (ALJ).

4. Pursuant to Decision No. R14-0023-I, issued January 8, 2014, an evidentiary hearing was scheduled for March 18, 2014.

5. At 9:00 a.m. on March 18, 2014, the undersigned ALJ called the proceeding for hearing. An Appearance was entered by counsel on behalf of Staff, the Respondent failed to appear. A recess was taken for 15 minutes to allow additional time for the Respondent to appear. At 9:15 a.m. the proceeding was called to order again and the Respondent failed to appear. During the course of the hearing, testimony was received from Mr. William Schlitter, and Mr. Nate Riley Criminal Investigators with the PUC. Hearing Exhibits 1 thorough 5 were offered and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement by the undersigned ALJ.

6. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

II. FINDINGS OF FACT

7. Mr. William Schlitter is employed as an investigator with the transportation section of the Colorado Public Utilities Commission.

8. Mr. Nate Riley is employed as an investigator with the transportation section of the Colorado Public Utilities Commission.

9. The Respondent is an individual and does not have any authority or permit from the PUC to operate as a common or limited regulation carrier.

10. In October of 2013 the transportation Staff of the Colorado Public Utilities Commission received a copy of an advertisement for a company called Party on Wheels. The advertisement offered transportation services in Colorado Springs and surrounding areas.

Hearing Exhibit 1

11. On October 24, 2013, Investigator Schlitter investigated the advertisement and located a website for Party on Wheels after conducting an internet search. *Hearing Exhibit 2*.

12. Investigator Schlitter then conducted a CCIC¹ check of the license plates associated with the vehicle advertised by Party on Wheels. The CCIC check identified the owner of the vehicle advertised by Party on Wheels to be Kevin Upshaw. One of the vehicles registered to Kevin Upshaw was a 1991 Ford van.

13. Upon investigation of the vehicle pictured in the Party on Wheels advertisement, Investigator Schlitter determined that the vehicle fit within the Commission's definition of a luxury limousine. Investigator Schlitter based this determination upon the type of vehicle,²

¹ CCIC stands for the Colorado Crime Information Center which is a database used by law enforcement organizations for various purposes including warrant checks, address checks, and to determine the registered owner of a vehicle through the vehicle's license plates.

² Investigator Schlitter described the vehicle as a "party bus" and also as a "motor coach".

the picture of the interior with couch seating, and the advertisement stating the vehicle had a premium sound system and a flat screen television.

14. Investigator Schlitter discovered that a warning letter had been sent to the Respondent, by Investigator Riley, on September 9, 2013 with instructions that the Respondent cease operating as a common carrier and/or limited regulation carrier. *Hearing Exhibit 3*.

15. Investigator Riley had observed the Respondent's vehicle in the Colorado Springs area in the fall of 2013 at a stop light. Investigator Riley noted that the vehicle had external markings inconsistent with Commission rules and regulations. He also wrote down the license plate number of the vehicle and observed the name "Party on Wheels" displayed on the vehicle.

16. In his investigation Investigator Riley determined that the license plate was registered to Kevin Upshaw with a primary residence of 4580 Gunbarrel Drive, Colorado Springs, Colorado and two additional addresses, 7060 Metropolitan Street, and P.O. Box 9144, both in Colorado Springs, Colorado..

17. Investigator Riley sent a warning letter to the Mr. Upshaw informing him that the Commission had started an investigation of Party on Wheels for operating without a valid common carrier/limited regulation carrier permit and to cease all operations. The letter contained the Commission definition of both common carrier, limited regulation carrier and liability insurance requirements. The warning letter was sent via certified mail to the three different addresses for the Respondent on the same day, September 9, 2013. Investigator Riley received a return receipt for the certified letter sent to 7060 Metropolitan Street.³

³ The letter sent to the 4580 Gunbarrel Drive address was forwarded to the 7060 Metropolitan Street address.

18. On September 11, 2013, Investigator Riley was contacted by Mr. Upshaw. Mr. Upshaw told Investigator Riley he had received the warning letter. In the conversation, Investigator Riley advised Mr. Upshaw that Party on Wheels was in violation of Commission rules and state statutes. Investigator Riley then advised Mr. Upshaw on what measures were necessary for Party on Wheels to be in compliance with state statutes and Commission rules.

19. On October 28, 2013, Investigator Schlitter called the phone number on the Party on Wheels website. A person who identified himself as “Kevin” answered the call. Investigator Schlitter inquired about “limousine services or party bus services for a bachelor party.” *Hearing Transcript p. 11, l. 11-12*. Kevin advised Investigator Schlitter that he had two vehicles available; a small party bus and a large party bus with a seating capacity of 15 and a stripper pole. Investigator Schlitter was advised that the cost of the large bus was \$360 for five hours in the Colorado Springs area and \$450 in the Denver area. *Id. at p. 11, l. 11-12, p. 12, 11-2*.

20. Investigator Schlitter is unaware of the Respondent having motor vehicle liability insurance or having any such insurance on file with the PUC at any time.

21. Based upon the conversation and his investigation, Investigator Schlitter prepared a CPAN for Kevin Upshaw, doing business as Party on Wheels for operating or offering to operate as a Luxury Limousine Carrier without an operating authority in violation of § 40-10.1-302(1)(a), C.R.S.; no evidence of liability insurance, in violation of *Rule 6007(a)(1) of the Rules Regulating Transportation by Motor Vehicle*, 4 CCR 723-6; and no liability insurance on file with the Commission, in violation of *Rule 6007(f)(1)(A)*, 4 CCR 723-6. *Hearing Exhibit 4*.

22. On October 29, 2013, Investigator Schlitter sent the CPAN via certified mail to the Respondent at the Gunbarrel address. It was returned as undeliverable.

23. After a conversation with Investigator Riley, Investigator Schlitter sent the CPAN to the Respondent via certified mail at the Metropolitan Street address. The CPAN was received by the Respondent on November 15, 2013. *See Hearing Exhibit 5*

24. Investigator Schlitter has had no further contact with the Respondent.

25. Investigator Schlitter is unaware of any mitigating factors in this proceeding.

III. DISCUSSION AND CONCLUSIONS

26. The Commission has subject matter jurisdiction over this matter and personal jurisdiction over the Respondent pursuant to §§ 40-1-103 and 40-10.1-102, C.R.S.

27. Section 40-10.1-201(1), C.R.S., provides as follows:

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

28. The term “Common Carrier” is defined in § 40-1-102(3)(a)(I), C.R.S., as:

Every person ... affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation...

29. The term “Compensation” is defined in §§ 40-1-102(4) and 40-10.1-101(5), C.R.S. as:

any money, property, service, or thing of value charged or received, or to be charged or received, whether directly or indirectly.

30. The § 40-10.1-301(7), C.R.S., definition of luxury limousine incorporates the Commission rule definition of luxury limousine. That rule definition is found in Rule 4 CCR 723-6-6308(a),⁴ which states:

(a) A luxury limousine *shall fit* one or more of the following categories:

(I) Stretched limousine, which is a motor vehicle whose wheelbase has been lengthened beyond the manufacturer's original specifications whether at the manufacturer's factory or otherwise.

(II) Executive car, which is a motor vehicle that has four doors and is:

(A) a sedan, crossover, or sport utility vehicle manufactured by: Acura, Audi, Bentley, BMW, Cadillac, Ferrari, Infiniti, Jaguar, Lexus, Lincoln, Maserati, Mercedes-Benz, Porsche, or Rolls Royce; or

(B) one of the following: Chrysler 300, Hyundai Equus, Saab 9-5, Chevrolet Suburban, Chevrolet Tahoe, Ford Excursion, Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version).

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a minivan as classified by the original manufacturer) whose interior has been enhanced by the installation of either:

(A) Captain's chairs, couch seats, or similar seating in place of standard bench seating; or

(B) Both of the following:

(i) An electronic video media system such as television with DVD that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least ten inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to

⁴ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723 (Transportation Rules).

The events that led to the issuance of the CPAN occurred in 2013. The Commission amended the Transportation Rules in 2014. Reference in this Decision to a Transportation Rule is to the version of the rule in effect in 2013 during the time period relevant to this Proceeding. The ALJ notes that the substance of Rule 4 CCR 723-6-6308(a) did not change when the Transportation Rules were amended in 2014.

the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

(IV) Other limousine, which is a classic, antique, or specially built motor vehicle that has or had a retail value of \$50,000.00 or more.

(Emphasis added.) In addition, Rule 4 CCR 723-6-6309 establishes operational requirements for luxury limousines, including the requirement that luxury limousine service be provided on a prearranged basis.

31. In the telephone conversation on October 28, 2013, the Respondent offered to provide a transportation service to Investigator Schlitter. In addition, the website page offers to provide “transportation” for “ocasion(sic) including birthdays, bachelor/bachelorette parties, and company events.”

32. In both the website ad and the telephone conversation, the transportation was to be provided for compensation. The website stated that rates start at \$250 in town and \$350 in Denver. *Hearing Exhibit 2, p. 4.* In the telephone conversation, “Kevin” stated that he could provide transportation in the large party bus for \$360 for five hours in Colorado Springs and \$450 in Denver. *Hearing Transcript p. 11-12 l.20 -25, 1-2.*

33. The evidence is undisputed that the Respondent indiscriminately offered transportation by motor vehicle for compensation. Indiscriminately affording a means of transportation by motor vehicle for compensation is the definition of common carriage. There is no evidence that the Respondent possesses a certificate of public convenience to operate as a common carrier. Had the Respondent been cited for offering to operate as a common carrier without Commission authority the analysis would be done, but he was not.⁵

⁵ It should be noted that in the warning letter sent to the Respondent in September 2013, the Respondent was told to cease operations as a common carrier as well as a limited regulation carrier.

The Respondent has been cited for offering transportation by luxury limousine without a Commission permit so additional analysis is necessary.

34. Transportation by luxury limousine requires that the transportation be conducted in a vehicle that meets one of the four definitions of luxury limousine listed above in ¶30. But in the instant proceeding, no transportation occurred and none is alleged to have occurred, only the offer of transportation.

35. It is not relevant if the Respondent possessed the actual means to provide transportation by luxury limousine. What is relevant is whether the Respondent *offered* (*emphasis added*) transportation by means of luxury limousine.⁶

36. It must be determined if the Respondent made a direct offer of transportation by luxury limousine service or if the transportation service offered by the Respondent can be construed to meet the definition of luxury limousine service.

37. Investigator Schlitter testified that in the telephone conversation On October 28, 2013, he had the following conversation with the Respondent:

I asked Kevin about limousine service or party bus services for a bachelor party that I had coming up. Kevin indicated he had two vehicles that we could potentially use. One was described as a small party bus, with an unknown seating capacity. The other vehicle he described as a large party bus, with a seating capacity -- he had described it as a vehicle with a seating capacity of 15, and what he said were stripper poles. *Hearing Transcript p. 11, l. 11-19.*

⁶ The undersigned ALJ distinguishes the instant proceeding from Recommended Decision No. R14-0394 in Proceeding No. 13G-1141EC issued on April 14, 2014. In Proceeding No. 13G-1141EC, there were no discussions between the parties using the term luxury limousine service and the advertisement placed by the Respondent did not mention luxury limousine service, nor could the advertised service be construed as offering luxury limousine service. The alleged violation was based upon the Respondent actually operating as a luxury limousine service as opposed to offering to provide luxury limousine service without Commission Authority. Since there was no oral or advertised offer by the Respondent in Proceeding No. 13G-1141EC to provide service as a luxury limousine, the actual vehicle used by the Respondent was determinative as to whether the Respondent was operating as a luxury limousine.

38. It is unclear if the Respondent's answer to Investigator Schlitter's question is in response to the inquiry of limousine service or party bus service. There was no evidence that the Respondent used the term luxury limousine service in the conversation, only that Investigator Schlitter used it. The definition of luxury limousine service does not contain any reference to the term "party bus." Although it is noted that the Respondent did not state the service was not luxury limousine service.⁷

39. The website advertisement does not mention the term luxury limousine. The advertisement does not define the service offered by the Respondent as anything more than a transportation service. *Hearing Exhibit 2*.

40. The statements made in the phone conversation and the website advertisement fail to provide sufficient evidence that the Respondent directly offered luxury limousine service.

41. The website advertisement shows a picture of a vehicle but gives no information as to the type of vehicle and does not state the vehicle is a luxury limousine. *Id.*

42. When asked by the ALJ if the investigation determined what type of vehicle the Respondent was advertising on the website, Investigator Schlitter responded:

The only way -- and I don't know if this was the specific vehicle, but, again, using the CCIC, the CCIC database, I did a search for what vehicle the Respondent had registered to him. One of the vehicles that he had registered to him was a 1991 Ford van. Now, I can't tell for sure, but that looks similar to the vehicle in the picture on the Website. It looks like a van chassis with a passenger compartment on it. *Hearing Transcript pp. 23-24 l.20-25, 1-2.*

43. Also included on the website advertisement are the features of the vehicle:

"Enjoy our premium sound system, flat screen TVs, and exceptional service."
Hearing Exhibit 2, p. 1.

⁷ The response of the Respondent testified to by Investigator Schlitter is an admission of a party-opponent and not hearsay.

44. The website advertisement also includes photos of the interior of the vehicle which shows couch seating. *Id. at p.2.*

45. There are four enumerated categories of luxury limousines in Commission Rules. One of the enumerated categories of luxury limousines is Executive van:

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a minivan as classified by the original manufacturer) whose interior has been enhanced by the installation of either:

(A) Captain's chairs, couch seats, or similar seating in place of standard bench seating; or

(B) Both of the following:

(i) An electronic video media system such as television with DVD that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least ten inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

Rule 4 CCR 723-6-6308(a)(III).

46. There is evidence that the Respondent owned a 1991 Ford van. There is evidence that the vehicle in the website advertisement is a van. A van is listed as one of the vehicles that can be an executive van as long as additional condition is met. The pictures also appear to show that the vehicle has been customized with couch seating. Couch seating is one of the additional conditions necessary for a van to be considered an executive van. The evidence is sufficient to

construe that the Respondent's vehicle depicted in the advertisement meets the definition of Executive Van under definition *Rule 4 CCR 723-6-6308(a)(III)(A)*.^{8 9}

47. Although there is no evidence that the Respondent actually owned or owns a vehicle which is a luxury limousine, Staff has met its burden to show that the Respondent offered transportation service in a vehicle that could be considered a luxury limousine. The Respondent's website advertisement to provide transportation by van with couch seating¹⁰, while not overwhelming, provides sufficient evidence to conclude the Respondent indirectly offered to provide transportation by luxury limousine without a Commission permit.¹¹

48. Count 2 alleges that on October 28, 2013, the Respondent violated *Rule 4 CCR 723-6-6007(a)(I)*. Count 3 alleges that on October 28, 2013, the Respondent violated *Rule 4 CCR 723-6-6007(f)(I)(A)*.

49. As relevant in this Proceeding, the elements of proof necessary to establish the alleged violation in Count 2 are: (a) on October 28, 2013, the Respondent was a motor carrier; (b) who did not maintain Motor Vehicle Liability Coverage.

50. As relevant in this Proceeding, the elements of proof necessary to establish the alleged violation in Count 3 are: (a) on October 28, 2013, the Respondent was a motor carrier;

⁸ It is noted that Investigator Schlitter testified that the vehicle was not an executive van. But when asked what type of vehicle was contained in the website advertisement, the investigator testified that it was a motor coach. *Hearing Transcript p. 24, l. 3-10 and p. 25, l.1-9*. A motor coach is a type of executive van. Commission rules do not currently contain a definition of motor coach. The Commission previously defined motor coach as "an over the road bus which has luggage storage and which usually has three axels." *Rule 4 CCR 723-6-6301(x)(2004)*. This confusion on the part of the Investigator does not negate the finding that the vehicle advertised by the Respondent is an executive van.

⁹ The website advertisement would not qualify as an executive van under *Rule 4 CCR 723-6-6308(a)(III)(B)*. There was no evidence that the TV contained in the vehicle was connected to a DVD or the measurements of the TV screen. In addition, there was no evidence of beverage service on the vehicle.

¹⁰ An Executive Van.

¹¹ Since the Respondent failed to appear for the hearing there was no evidence presented contrary to this conclusion.

(b) who did not have “on file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require[.]”

51. As pertinent here, § 40-10.1-101(10), C.R.S., defines a motor carrier as “any person owning, controlling, operating, or managing any motor vehicle that provides transportation in intrastate commerce pursuant to” title 40, article 10.1, C.R.S. The Commission rule that establishes the sums, the types of protection, and the forms for financial responsibility is Rule 4CCR 723-6-6007

52. Commission Rule 4 CCR 723-6-6007(a)(I) provides:

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

53. In addition, Rule 6007(f)(I)(A) provides that all common carriers, contract carriers, and limited regulation carriers are to file a Form E or G with the Commission in lieu of the original policy for motor vehicle liability coverage.

54. Section 40-10.1-107(1), C.R.S., and Rule 4 CCR 723-6-6007 apply only to those who provide transportation in intrastate commerce pursuant to article 10.1 of title 40, C.R.S. The evidence was sufficient to prove that the Respondent was a motor carrier on October 28, 2013.

55. There was no evidence that the Respondent maintained Motor Vehicle Liability Coverage.

56. There was no evidence that the Respondent filed proof of Motor Vehicle Liability Coverage with the PUC.

57. Staff has met its burden on the remaining alleged violations.

58. Proper service of the CPAN is vital. “The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice. *Bush v. Winker*, 892 P.2d 328, 332 (Colo. App. 1994).

59. On October 29, 2013, Investigator Schlitter sent the CPAN to the Respondent via certified mail and the CPAN was returned as undeliverable. Investigator Schlitter re-sent the CPAN via certified mail to the same address that Investigator Riley had successfully mailed a warning letter to the Respondent in September of 2013. On November 15, 2013, the certified letter was signed for by a person authorized to receive certified mail sent to the Respondent. These actions are consistent with proper service under § 40-7-116, C.R.S.

60. Service was made in accordance with § 40-7-116, C.R.S.

61. Having found the above violation of the cited regulation, it is necessary to determine the amount of the civil penalty to be assessed for these violations. Section 40-7-113, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments.

62. Pursuant to Commission Rule 4 CCR 723-1-1302(b) of the Rules of Practice and Procedure:

The Commission may impose a civil penalty ...[i]n a contested proceeding ... after considering evidence concerning some or all of the following factors:

- i. The nature, circumstances, and gravity of the violation;
- ii. The degree of the respondent’s culpability;
- iii. The respondent’s history of prior offenses;
- iv. The respondent’s ability to pay;
- v. Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;

- vi. The effect on the respondent's ability to continue in business;
- vii. The size of the business of the respondent; and
- viii. Such other factors as equity and fairness may require.

63. The Respondent was issued a warning for the same actions in September of 2013 and continued to offer to operate as a transportation carrier without authority or a permit.

64. The actions of the Respondent, operating without any regulation, put the welfare and the safety of the public at risk. There is no evidence of proper maintenance being performed on his vehicle, the number of hours of service for the Respondent, or any medical conditions that could affect the Respondent. By these actions the Respondent put himself above the law and the safety of the general public.

65. The Respondent failed to appear for the hearing and present any mitigation or take any responsibility for his actions.

66. The ALJ finds that the full civil penalty of \$13,612.50¹² achieves the following purposes underlying civil penalty assessments: (a) deterring future violations, whether by other similarly-situated carriers or by Respondent; (b) motivating Respondent to come into compliance; and (c) punishing Respondent for his past behavior.

67. The Respondent shall also be ordered to cease and desist from providing unauthorized transportation services in the State of Colorado. Respondent shall cease all such operations immediately upon the effective date of this Decision. Should Respondent continue with such unauthorized operations without a certificate of public convenience and necessity from this Commission, the Commission may take further action including assessing a civil penalty of

¹² This total includes the 10 percent surcharge.

up to \$1,100.00 for each violation of § 40-10.1-201(1), C.R.S., operating as a common carrier or limited regulation carrier without first obtaining a permit from this Commission.

IV. ORDER

A. The Commission Orders That:

1. The Respondent Kevin Upshaw, doing business as Party on Wheels is assessed a civil penalty in the amount of \$1,100.00 in connection with violation of Count 1, \$11,000.00 in connection with violation of Count 2 and \$275.00 in connection with violation of Count 3, of Civil Penalty Assessment Notice No. 107955, with an additional 10 percent surcharge, for a total amount of \$13,612.50. Respondent shall pay the total assessed penalty of \$13,612.50 within ten days of the effective date of this Decision.

2. Kevin Upshaw, doing business as Party on Wheels shall immediately cease and desist from operating as a common carrier or limited regulation carrier within the State of Colorado.

3. 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.

4. 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.

5. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge