Decision No. R17-0572

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17G-0159EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

RPM TRANSPORTATION, LLC, DOING BUSINESS AS JAKE'S MOUNTAIN TRANSPORTATION,

RESPONDENT.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE STEVEN H. DENMAN ASSESSING CIVIL PENALTY AND ISSUING CEASE AND DESIST ORDER

Mailed Date: July 14, 2017

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I. STATEMENT

A. Procedural History

1. This Proceeding was commenced on March 13, 2017 by the issuance of Civil Penalty Assessment or Notice of Complaint to Appear No. 117960 (CPAN) to "Jake's Mountain Transportation." The CPAN identified "Jake's Mountain Transportation" as the Respondent, and stated that this entity holds PUC Authority No. LL-01934.

2. The Commission's files, however, revealed that the owner of Luxury Limousine Permit No. LL-01934 is "RPM Transportation, LLC, doing business as Jake's Mountain Transportation." In Decision No. R17-0254-I (mailed on March 30, 2017), amended the CPAN and the caption of this proceeding to identify RPM Transportation, LLC, doing business as Jake's Mountain Transportation, as the Respondent. Decision No. R17-0254-I found that the omission of the name of the limited liability company and the phrase "doing business as" from the CPAN and the caption were inadvertent clerical errors.

3. The CPAN cites Respondent for violating Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2014), on February 24, 2017 by "Advertising (website – www.jakesmountinshuttle.com) in a name (Jake's Mountain Shuttle) other than that which said carrier's authority or permit is held." (Hearing Exhibit 1 at p. 1.)

4. For the violation cited, the CPAN assessed a civil penalty of $550.00, plus an additional 15 percent surcharge required by § 24-34-108, C.R.S., for a total of $632.50. The CPAN stated that, if the Respondent were to pay within ten calendar days, the total civil penalty would be reduced to $316.25, including the surcharge. If Respondent did not pay within ten days and contested the alleged violation, the CPAN would convert to a Notice of Complaint to Appear, and the Commission would set the CPAN for hearing.[1] (Hearing Exhibit 1 at p. 2.)

5. The CPAN gave notice to Respondent that, "Upon proof of any violation alleged on the preceding page(s), the PUC may order you to cease and desist activities in violation of statutes and Commission rules." (Hearing Exhibit 1 at p. 2.)

6. A copy of the CPAN and a document entitled "Pre-hearing and Hearing Procedures in Civil Penalty Assessment Proceedings" were served on Respondent by United States Certified Mail on March 8, 2017. These documents were delivered to Respondent on March 10, 2017. (Hearing Exhibit 1 at pp. 3-6.)

7. Respondent did not tender payment of the reduced amount of the civil penalty, including the surcharge, of $316.25 within the ten-day time period stated in the CPAN. On March 24, 2017, Mr. Robert P. Meckfessel, Owner, filed with the Commission on behalf of Respondent a Request for Hearing, and thereby contested the violation alleged in the CPAN.

8. On March 28, 2017, the Commission set this matter for an evidentiary hearing on June 5, 2017 at 9:00 a.m. in a Commission Hearing Room.

[1] For ease of reference, the CPAN and Notice of Complaint to Appear are referred to together in this Decision as "the CPAN."

9. On March 29, 2017, by Minute Order, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was assigned to hear this CPAN.

10. On April 4, 2017, counsel for Trial Staff of the Commission (Staff) filed an entry of appearance, pursuant to Rule 1007(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

11. The Parties to this Proceeding are Staff and Respondent.

12. Because Respondent, RPM Transportation, LLC, was not represented by legal counsel, Decision No. R17-0254-I addressed the representation of Respondent in four important respects. First, the Decision (at ¶ I.C.12, p. 4) advised Respondent that:

> Rule 1201(a), 4 CCR 723-1 of the Rules of Practice and Procedure requires a party in a proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, except that, pursuant to Rule 1201(b), 4 CCR 723-1, an individual may appear without an attorney: (a) to represent her/his own interests; or (b) to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has emphasized that *this requirement is mandatory and has found, if a party does not meet the criteria of this Rule, that: (1) a filing made by non-attorneys on behalf of that party is void and of no legal effect; and (2) a non-attorney may not represent a party in Commission adjudicative proceedings.* … (Emphasis added.)

Second, the Decision (at ¶ I.C.15, p. 4) advised Respondent that, "To proceed in this matter without an attorney, Respondent must meet the criteria of Rule 1201(b)(II), 4 CCR 723-1." Third, the Decision (at ¶¶ I.C.11 – 20, pp. 4 – 6; Ordering Paragraphs II.A. 4 – 6, pp. 8 – 9) ordered Respondent, by April 10, 2017, either to obtain legal counsel and to have counsel enter an appearance, or to make a verified (*i.e.,* a sworn) show cause filing satisfying its burden proving that it is entitled to proceed in this case without an attorney, pursuant to Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1. Fourth, the Decision (at ¶¶ I.C.19 – 20, pp. 5 – 6) clearly advised and gave notice to Respondent that if it failed to file the verified show cause filing, satisfying its burden to prove that it is entitled to proceed in this case without an attorney

pursuant to Rule 1201(a), 4 CCR 723-1, or failed to file its counsel's entry of appearance, by April 10, 2017, Respondent would be risking adverse findings and conclusions on the merits of this CPAN.

13. However, Respondent neither made the show cause filing nor had its counsel enter an appearance by the April 10, 2017 deadline.

14. Decision No. R17-0254-I also adopted a procedural schedule for Staff and for Respondent to file, and to serve on each other, their respective lists of witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits each will present at the hearing.

15. Pursuant to the adopted procedural schedule, on April 24, 2017, Staff filed and served on Respondent its list of witnesses, a detailed summary of the testimony of each witness, and copies of the exhibits it will present at the hearing.

16. On May 8, 2017, Respondent filed a Motion for Extension of Time requesting an extension from May 15 until May 26, 2017 to file its witness list, detailed summary of testimony of each witness, and copies of its exhibits for the hearing. Staff had no objection to the extension. Decision No. R17-0390-I (mailed on May 12, 2017) granted the unopposed extension of time to May 26, 2017.

17. Decision No. R17-0390-I (at ¶ I.8, p. 2), however, noted that Respondent had not filed the verified show cause filing satisfying its burden to prove that it is entitled to proceed in this case without an attorney, nor had its counsel filed an entry of appearance, by the deadline. Decision No. R17-0390-I reiterated the previous warning that, by its failure to file the verified show cause filing satisfying its burden to prove that it is entitled to proceed in this case without

an attorney, pursuant to Rule 1201(a), 4 CCR 723-1, or to file its counsel's entry of appearance, Respondent was risking adverse findings and conclusions on the merits of this CPAN.[2]

18. By close of business on Friday May 26, 2017, Respondent failed to file with the Commission its list of witnesses, a detailed summary of the testimony of each witness, and copies of the exhibits it will present at the hearing.

19. Decision No. R17-0443-I (mailed on May 30, 2017) granted Staff's Unopposed Motion to Amend Staff's Exhibit List, which was filed on May 26, 2017, and which sought to replace incorrect documents inadvertently filed as Staff's Exhibits 3 and 4 with amended Exhibits 3 and 4.[3] Staff served the corrected exhibits on Respondent on May 26, 2017.

20. After the Memorial Day Holiday weekend, at 8:00 a.m. on Tuesday, May 30, 2017, Respondent filed through the Commission's E-filing System "Respondent's Exhibits List" and 29 exhibits and served the same on counsel for Staff. In Decision No. R17-0453-I (mailed on June 1, 2017), the ALJ found that, "This filing is untimely and is not in compliance with the extension of time granted to Respondent in Decision No. R17-0390-I." (*Id.*, at ¶ I.14, p. 4.)

21. At 2:55 p.m. on Tuesday, May 30, 2017, again through the Commission's E-filing System, Mr. Meckfessel filed on behalf of Respondent an Unopposed Motion to Amend Respondent's Exhibit List, an Updated Exhibits List, and a copy of Exhibit F1a – Business Offering for Jake's Mountain Shuttle, all of which were served on counsel for Staff.

[2] Decision No. R17-0390-I also ordered that, "The procedural advisements set forth in Decision No. R17-0254-I shall continue to be in effect and to apply to the Parties." (*Id.*, at Ordering Paragraph No. II.A.3, p. 4.)

[3] Decision No. R17-0443-I also ordered that, "The procedural advisements set forth in Decision No. R17-0254-I shall continue to be in effect and to apply to the Parties." (*Id.*, at Ordering Paragraph No. II.A.3, p. 3.)

Mr. Meckfessel stated that the exhibit had been omitted inadvertently from the original Exhibits List when it was filed with the Commission. Because Staff did not oppose the relief requested and Staff's counsel was served with a copy of the omitted exhibit, Decision No. R17-0453-I granted the Unopposed Motion to Amend Respondent's Exhibit List, finding that Staff had not suffered any prejudice. (*Id.*, at ¶¶ I.19 and 20, p. 5.)

22. Decision No. R17-0453-I (at ¶ I.19, p. 5), however, found that

> … Mr. Meckfessel has disregarded, and failed to comply with[] previous Decisions of this Commission that: (1) ordered Respondent to file a verified (*i.e.*, sworn) show cause statement satisfying its burden to prove that it is entitled to proceed in this case without an attorney, pursuant to Rule 1201(a), 4 CCR 723-1, or to file its counsel's entry of appearance, by April 10, 2017; and (2) on or before May 26, 2017, to file and to serve on Staff and its counsel Respondent's list of witnesses, a detailed summary of the testimony of each witness, and copies of the exhibits it plans to offer into evidence at the hearing.

23. Decision No. R17-0453-I (¶ I.22, p. 6), again reiterated the previous warnings that, by its failure to file the verified show cause filing satisfying its burden to prove that it is entitled to proceed in this case without an attorney pursuant to Rule 1201(a), 4 CCR 723-1, or to file its counsel's entry of appearance, Respondent was risking adverse findings and conclusions on the merits of this CPAN.[4]

B. Representation of Respondent

24. The evidentiary hearing was called to order at 9:00 a.m. on June 5, 2017 in a Commission Hearing Room. Assistant Attorney General Bradford Jones appeared on behalf of Staff. Mr. Robert P. Meckfessel requested to represent Respondent in this Proceeding.

[4] Decision No. R17-0453-I also ordered that, "the procedural advisements set forth in Decision No. R17-0254-I and Decision No. R17-0390-I shall continue to be in effect and to apply to the Parties." (*Id.*, at Ordering Paragraph No. II.A.3, p. 6.)

25. As a preliminary matter, the ALJ conducted a colloquy with Mr. Meckfessel, under oath, regarding his desire to represent Respondent and established the following facts: Mr. Meckfessel is not an attorney licensed in Colorado. Respondent was not represented by counsel. The amount in controversy in this Proceeding does not exceed $15,000, excluding statutory penalties. Mr. Meckfessel is the sole owner of Respondent, is the managing member of the limited liability company, and has the authority to represent Respondent in this proceeding.

26. In spite of Mr. Meckfessel's previous failure to comply with Commission decisions regarding representation, the ALJ found that Mr. Meckfessel's testimony satisfied the standards of Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 CCR 723-1, allowing Respondent to proceed without an attorney. The ALJ concluded that Mr. Meckfessel could represent Respondent in this proceeding.

C. The Evidentiary Hearing

27. Mr. Adam String, a Criminal Investigator with the Commission's Transportation Staff, testified under oath on behalf of Staff. Staff offered Hearing Exhibits 1 through 4, which were admitted into evidence. Mr. String also testified in rebuttal, and Hearing Exhibit 36 was admitted during his rebuttal testimony.

28. Mr. Robert P. Meckfessel testified under oath on behalf of Respondent. Mr. Meckfessel marked for identification Hearing Exhibits 5 through 34. Hearing Exhibits 5, 7 through 15, 17, 19 through 21, 29, 31, and 34 were admitted into evidence. Confidential Hearing Exhibit 30 was also admitted. Staff's objections on various legal grounds were sustained as to Hearing Exhibits 6, 16, 18, 22 through 28, 32, 33, and 35, and those exhibits were not admitted into evidence. Mr. Meckfessel requested, and was allowed to make, an offer of proof as to Hearing Exhibit 23.

29. At the conclusion of the hearing, the ALJ closed the evidentiary record. Both Staff and Mr. Meckfessel made oral closing statements. The ALJ then took the matter under advisement and adjourned the hearing.

30. The ALJ has carefully reviewed and considered all the evidence offered or introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if some of the evidence is not specifically addressed in this Decision. Moreover, the ALJ has considered all arguments presented by the Parties during the hearing, including those arguments not specifically addressed in this Decision. The ALJ has also reviewed and considered Respondent's offer of proof as to Hearing Exhibit No. 23. In rendering this Recommended Decision, the ALJ has weighed the evidence and evaluated the credibility of the witnesses and the hearing exhibits. *See Durango Transportation, Inc. v. Colorado Public Utilities Comm'n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm'n.*, 702 P.2d 746, 750 (Colo. 1985).

31. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and hearing exhibits in this proceeding, along with a written Recommended Decision.

II. APPLICABLE LAW

32. Common carriers of passengers for hire in Colorado are thoroughly regulated by the Commission and must have a Certificate of Public Convenience and Necessity (Certificate) issued by the Commission. Section 40-10.1-201(1), C.R.S., provides that:

> 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.

33. The following definitions in Rule 6201 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, governing common carriers, are relevant to this CPAN:

> (f) "Common carrier" means every person directly or indirectly 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; except that the term does not include … a limited regulation carrier defined under § 40-10.1-301, C.R.S. …
>
> (m) "Shuttle 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. …
>
> (r) "Taxicab service" means passenger transportation by a common carrier on a call-and-demand basis in a taxicab, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.

34. Providers of luxury limousine service in Colorado are subject to limited regulation by the Commission under § 40-10.1-301 *et seq.*, C.R.S. (Part 3 of the Motor Carriers Act). Section 40-10.1-302(1)(a), C.R.S., provides in pertinent part that:

> A person shall not operate or offer to operate a … luxury limousine … in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this part 3.

Section 40-10.1-302(1)(b), C.R.S., provides in pertinent part that:

> A person may apply for a permit under this part 3 to the commission in such form and with such information as the commission may require. A permit is valid for one year after the date of issuance.

35. Effective May 20, 2016, § 40-10.1-302(1)(b), C.R.S., was amended to add the last sentence above – that permits for luxury limousines and other limited regulation services, are "valid for one year after the date of issuance." Subsection 40-10.1-302(5), C.R.S., was added on

the same effective date to require that: "Effective July 1, 2016, any existing permit issued pursuant to this part 3 expires on the anniversary of its issuance."[5]

36. Rule 6001(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, defines "advertise," which applies to the intransitive verb and the noun "advertising," as:

> (a) "Advertise" means to advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.

37. Rule 6016 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, as relevant to this Proceeding, provides that:

> (c) No motor carrier, or any officer, agent, employee, or representative of said carrier, shall offer to provide a transportation service without authority or permit to provide such service.
>
> (d) No motor carrier, or any officer, agent, employee, or representative of said carrier, shall offer a transportation service in a name, to the character, other than a name appearing on said carrier's authority or permit (e.g., A and B Transportation violates this rule when advertising as A & B Transportation).
>
> (I) If a motor carrier operates authority or permit under a trade name, nothing in this paragraph shall be construed to require advertising under all names appearing on said carrier's authority or permit.
>
> (II) If a motor carrier holds an authority or permit under more than one trade name, nothing in this paragraph shall be construed to require said carrier advertise under all the trade names. …
>
> (g) Each advertisement of a luxury limousine carrier in any newspaper or other publication, on radio, television, or any electronic medium, including more than the name and telephone number of the carrier shall include the phrase "PUC [LL- permit number]".

[5] *See* House Bill 16-1097 § 3, p. 3; 2016 Colo. Sess. Laws, ch. 186, p. 656, § 3.

38. The following definitions in Rule 6301 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, governing limited regulation carriers and luxury limousines, are relevant to this CPAN:

> (a) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including, selection of the origin, destination, route, and intermediate stops. …
>
> (e) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged charter basis as defined in paragraph 6301(a), memorialized in a contract. "Luxury limousine service" may not include taxicab service or any service provided between fixed points over regular routes at regular intervals.
>
> (f) "Prearranged" means that the charter order for luxury limousine service is entered into electronically or telephonically prior to provision of the service, or entered into in writing prior to the arrival of the luxury limousine at the point of departure.

39. Staff bears the burden of proof by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Commission,* 302 P.3d 241, 246 (Colo. 2013). That is, the finder of fact must determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue,* 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.[6]

[6] Findings in Commission decisions must be supported by substantial evidence in the record. *Douglas County Bd. of Co. Comm'rs. v. Public Utilities. Comm'n.,* 866 P.2d 919, 926 (Colo.1994). Proof of alleged unlawful conduct by a preponderance of the evidence constitutes substantial evidence to support the Commission's decision in a CPAN proceeding. Substantial evidence is more than a scintilla, and it must do more than create a suspicion of the existence of the fact to be established. *Integrated Network Services, Inc. v. Public Utilities Comm'n.,* 875 P.2d 1373, 1378 (Colo.1994).

40. In this case, Staff must prove by a preponderance of the evidence: (a) facts that support a finding that Respondent violated Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, by "Advertising (website – www.jakesmountinshuttle.com) in a name (Jake's Mountain Shuttle) other than that which said carrier's authority or permit is held;" and (b) facts that support the amount of the civil penalty and other remedies that Staff asks that the Commission impose. *See Colorado Public Utilities Commission v. Elvis Edwards, doing business as Papi Enterprise,* Decision No. R09-0548, ¶ II.25 at p. 5, (mailed on May 22, 2009), Docket No. 08G-562EC.

41. The burden of proving an affirmative defense rests on the defendant (or the respondent in Commission proceedings) asserting the defense. The defense must be proven by a preponderance of the evidence. *Western Distributing Co. v. Diodoso,* 841 P.2d 1053, 1057-1059 (Colo. 1992). In formal complaint, civil penalty assessment, and show cause proceedings before the Commission, the respondent has the burden to prove the defenses it raises by a preponderance of the evidence. *See Public Utilities Comm'n. v. Trans Shuttle, Inc.*, Decision No. R01-881 (Mailed Date of August 29, 2001) ¶ III.C, p. 9, in Docket No. 01G-218CP; *see generally* Rule 1302 of the Rules of Practice and Procedure, 4 CCR 723-1.

42. If violations of Colorado statutes or Commission rules have been proven in a Civil Penalty Assessment proceeding, Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1, provides:

> (b) The Commission may impose a civil penalty, when provided by law. The Commission will consider any 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 respondent's business; and

viii. such other factors as equity and fairness may require.

43. Section 40-10.1-112(1), C.R.S., provides in pertinent part that:

> Except as specified in subsection (3) of this section [relating to summary suspensions of certificates and permits], 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 . . . 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; …

44. Rule 6008(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, as relevant to this proceeding, provides that:

> (c) After a hearing upon at least ten days' notice to the motor carrier affected, and upon proof of violation, the Commission may issue an order to cease and desist, suspend, revoke, alter, or amend any certificate or permit for the following reasons:
>
> a violation of, or failure to comply with, any statute, order, or rule concerning a motor carrier; …

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

45. The CPAN was properly served on Respondent by certified mail, return receipt requested. (Hearing Exhibit 1, at pp. 3-6.) Respondent does not dispute service of the CPAN.

46. Respondent does not challenge the Commission's jurisdiction. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

47. Respondent is a limited liability company and currently holds Luxury Limousine Permit No. LL-01934. On the date of the citation (February 24, 2017), Respondent held Permit No. LL-01934 and provided luxury limousine service in Colorado under the name of RPM Transportation, LLC, doing business as Jake's Mountain Transportation. (Hearing Exhibit 15 at p. 4, and Hearing Exhibit 36, at p. 1.)

48. As a holder of a Luxury Limousine Permit, Respondent may be assessed civil penalties for violations of Title 40, Article 10.1, C.R.S., or Commission rules. (Sections 40-7-112, 40-7-113, 40-7-116, and 40-10.1-304, C.R.S., and Rule 6106, 4 CCR 723-6.)

A. Civil Penalty Assessment

49. Staff witness Adam String testified that he first investigated Respondent on November 15, 2016, as a result of a complaint that Respondent was advertising or offering to operate as a common carrier or as a taxi or shuttle service. During the investigation, Respondent offered Mr. String transportation on a per person basis, which is characteristic of a common carrier not a luxury limousine.[7] Mr. String's investigation revealed that throughout its website Respondent was advertising its services by using the company name "Jake's Mountain Shuttle" and the words "taxi" and "shuttle," and by failing to include its luxury limousine permit number. Respondent is only authorized to operate a luxury limousine service, but not as a common carrier, including taxicab service or shuttle service. (Hearing Exhibit 36.)

[7] Rule 6310(b) of the Rules Regulating Transportation by Motor Carrier, 4 CCR 723-6, provides that: "A luxury limousine carrier that charges or offers to charge for transportation services on a per person basis shall be presumed to be providing or offering to provide services as a common carrier."

50. Mr. String testified that he was specifically investigating Respondent for violating § 40-10.1-201(1), C.R.S., and Rules 6016(c), (d), and (g) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. (*See* ¶¶ II. 32 and 37, pp. 9 and 11, *supra.* for the text of the relevant statutes and rules.)

51. Hearing Exhibit 3 is a screen-shot of Respondent's website that Mr. String downloaded on November 8, 2016, which confirms that Respondent's advertising on its website used the company name "Jake's Mountain Shuttle" at the top of every page and repeatedly advertised "Shuttle Service" and "Taxi Service," in addition to "Limousine Service." The website URL was "www.jakesmountainshuttle.com." The advertised email address for making reservations was "jakesmountainshuttle@gmail.com." Hearing Exhibit 3 also confirms that Respondent's web-site failed to include its luxury limousine permit number.

52. As a result his first investigation, on November 21, 2016 Mr. Sting sent Respondent a Violation Warning Letter, apprising Respondent of the alleged violations. (Hearing Exhibit 2.) Mr. String advised Mr. Meckfessel, as the owner of Respondent, by telephone on how to correct these violations and to obtain compliance. Mr. String also advised Respondent that "any future complaints of similar violations that are validated, or failure to correct these violations immediately[,] can and will subject you to civil penalties and/or action being taken against your permit." (Hearing Exhibit 2 at p. 2.)

53. Mr. Meckfessel testified that after talking with Mr. String he made changes to the website in an attempt to comply with the rules noted in the Violations Warning Letter.

54. Mr. String conducted a follow-up investigation of Respondent in February 2017. During this second investigation, Mr. String again reviewed Respondent's website, and

concluded that Respondent was still not complying with Commission rules. Hearing Exhibit 4 is a screen-shot of Respondent's website that Mr. String downloaded on February 24, 2017.

55. Hearing Exhibit 4 shows that Respondent made some efforts to correct the obvious violations. For example, the name "Jake's Mountain Shuttle" and the words "Trailhead Shuttle" on the home page of the website are footnoted with asterisks and the text:

> Jake's fleet vehicles are all licensed and insured as luxury limousines.
> - We are not technically a "taxi" nor a "shuttle" service.
> - We do not have a meter nor do we run regular routes.

On the home page of the website, the term "Shuttle Service" has been changed to "Transportation Service." Respondent's revised website included its luxury limousine permit number, "COLORADO PUC# LL-01934." (*Compare* Hearing Exhibit 3, page 2, with Hearing Exhibit 4, page 2.) However, the changes Mr. Meckfessel made to Respondent's website still failed to mention the trade name Jake's Mountain Transportation.

56. Mr. String's testimony discussed these changes to the website, but he was concerned that the explanatory footnote appeared only on the home page, and if a person were on subsequent pages only the asterisk appears, without any explanation of its meaning. He concluded that these changes were insufficient to obtain compliance with Commission rules. He concluded that Respondent is not authorized to use "Jake's Mountain Shuttle" or the words "taxi" or "shuttle," based on the luxury limousine permit that it held at the time of the citation.

57. Mr. String testified on rebuttal that Respondent's current Luxury Limousine Permit No. LL-01934, which was in effect in February 2017, only authorized Respondent to operate or to advertise its services under the names "RPM Transportation, LLC," or "Jake's Mountain Transportation." (*See* Hearing Exhibit 36.)

58. Mr. String testified that he filed only one count in the CPAN for violation of Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, but he could have cited over 90 counts of the same violation, because over three months had passed between the November 21, 2016 Violation Warning Letter (Hearing Exhibit 2) and his second investigation on February 24, 2017. Mr. String's goal was to get Respondent into compliance; he viewed charging only one count as mitigation.

59. Mr. String identified as an aggravating factor that Respondent had failed to take heed of the warning he received in the Violation Warning Letter and had failed fully to correct noncompliant content in his website and advertising. Mr. String recommended that Respondent be assessed the full civil penalty of $632.50, including the 15 percent surcharge.

60. Mr. String's testimony and Hearing Exhibit 4 prove by a preponderance of the evidence that Respondent failed to comply with Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, as cited in the CPAN. While the term "Taxi Service" on the website has been changed to "'On The Fly' Service," the text that follows now states that this is a "taxi-type" service. (*Compare* Hearing Exhibit 3, page 2, with Hearing Exhibit 4, page 2.) By this advertising, the traveling public would still be induced to believe that Respondent is offering taxicab service, even though it has no lawful authority from the Commission to offer or to operate a taxicab service. The website URL continued to appear through the website as "www.jakesmountainshuttle.com." Respondent's advertising on its website continued to use the trade name "Jake's Mountain Shuttle" at the top of every page. At the bottom of most pages on the website the following contact information appears: "Jake's

Mountain Shuttle * (970) 401-0988 * Frisco, CO 80443 * jakesmountainshuttle@gmail.com."[8] (*See* Hearing Exhibit 4 at pp. 2-6, 8-15.) Significantly, Respondent's website fails even to mention the trade name Jake's Mountain Transportation, which is the only trade name authorized in Respondent's currently effective Luxury Limousine Permit No. LL-01934. (Hearing Exhibit 36 at p. 1.)

61. During his answer testimony, Mr. Meckfessel testified on cross-examination that he has never petitioned the Commission for a waiver of its rules regarding the use of the trade name "Jake's Mountain Shuttle." He testified that in his discussions with Commission Staff, a waiver petition was never brought up, but that he would be "very eager" to fill out a waiver form if one exists. Mr. String, however, testified in rebuttal that one option for compliance he provided to Mr. Meckfessel was to file for a waiver with the Commission for authorization to continue using the trade name "Jake's Mountain Shuttle," which would be allowed if the Commission approved the waiver. Another option Mr. String provided was for Respondent to file an application for a Certificate to provide common carrier service.[9]

62. During his answer testimony, Mr. Meckfessel testified that he was "not contesting anything that the complainant is filing against me." The ALJ construes this testimony to be an admission by Mr. Meckfessel that on February 24, 2017 Respondent violated Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, as cited in the CPAN, and to liability for the total civil penalty assessment.

[8] The asterisks in this contact information appear only to separate the text and do not appear to footnote to the disclaimers on the home page.

[9] During his closing argument, Mr. Meckfessel informed the ALJ that he had filed with the Commission an application for authority to provide common carrier shuttle service. The application was not offered into evidence, nor did Mr. Meckfessel provide the date of the filing or the proceeding number.

63. Based on substantial evidence in the record, the ALJ finds that Staff has satisfied its burden to prove by a preponderance of evidence that Respondent committed and is liable for the violation cited in the CPAN by advertising on its website and in its website URL – www.jakesmountinshuttle.com – in the name of Jake's Mountain Shuttle, a name other than the trade name in which Respondent's Luxury Limousine Permit LL-01934 is held. The ALJ finds that on February 24, 2017 Respondent violated Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, as cited in the CPAN.

64. Respondent will be ordered henceforth to comply fully with Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, with the laws of the State of Colorado, with the rules of the Commission, and with all Commission decisions.

65. After considering the evidence of mitigation and aggravation in the record, as well as the factors set forth in Rule 1302(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ finds and concludes that Respondent will be assessed the full civil penalty for this violation in the amount of $550.00, plus an additional 15 percent surcharge, for a total penalty of $632.50.

B. Staff's Request for a Cease and Desist Order.

66. Staff also requested that Respondent be ordered to cease and desist from advertising or offering taxicab service and shuttle services, and from using the trade name "Jake's Mountain Shuttle" on the Website, in the e-mail address, and in any other publications. Staff seeks the Cease and Desist Order for the purpose of getting Respondent to comply with the Commission's rules.

67. Mr. Meckfessel's testimony and offered exhibits were directed primarily to his defense against Staff's request for a Cease and Desist Order. Mr. Meckfessel testified that

RPM Transportation, LLC, is his company, and he bought the company, the trade name, the website, and the email address 3 and ½ years ago. (*See* Confidential Hearing Exhibit 30.) He testified that if he were to be required to abandon that trade name entirely, it would be financially detrimental to him and his company.

68. On November 12, 2013 and November 10, 2014, Respondent held Luxury Limousine Permit No. LL-01934 and provided luxury limousine service in Colorado under the name of RPM Transportation, LLC, doing business as *Jake's Mountain Shuttle* (emphasis added). (Hearing Exhibit 15 at pp. 2-3.)

69. Mr. Meckfessel believed that Respondent is authorized to operate using the trade name, Jake's Mountain Shuttle, because his Luxury Limousine Permit No. LL-01934, dated November 12, 2013 (as well as the Permit dated November 14, 2014), listed the trade name "Jake's Mountain Shuttle" and stated "This permit is continuous until cancelled or revoked." (Hearing Exhibit 5; *see* Hearing Exhibit 15 at pp. 2-3.) Mr. Meckfessel admitted, however, that he was advised by Ms. Alison K. Torvik of the Commission in a letter dated July 15, 2016 that:

> Rule 6010(b) requires "[a] carrier currently operating under a name or trade name [that] identifies a type of transportation service not currently authorized ... shall alter its name or trade name to comply with this rule within one year after the effective date of these rules." Because a shuttle is a specific form of common carriage, and your authority is for limousine service, the word "shuttle[“] cannot be in your company name or trade name, as filed with the Secretary of State.

(Hearing Exhibit 7.)

70. Mr. Meckfessel testified that he met with Gary Gramlick of the Commission Staff on July 19, 2016, and as a result of that meeting, he registered the trade name "Jake's Mountain Transportation." These actions were an attempt by Respondent to comply with Rule 6010(b) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

71. Ms. Torvik's letter referenced Proceeding No. 16V-0442EC, an age of vehicle waiver petition filed by Respondent. Mr. Meckfessel offered a print-out of the Details of Electronic Filing page for that Proceeding (Hearing Exhibit 16, which was not admitted because the exhibit was incomplete) as proof that the Commission's database mentioned the trade name "Jake's Mountain Shuttle" after he registered "Jake's Mountain Transportation." However, Mr. Meckfessel himself filed the waiver petition using "Jake's Mountain Shuttle" as the trade name. Decision No. C16-0754 (mailed on August 16, 2016) in Proceeding No. 16V-0442EC granted the age of vehicle waiver petition and confirms that Respondent filed the petition with the trade name "Jake's Mountain Shuttle." The Decision notes that Respondent had submitted a Statement of Trade Name from the Colorado Secretary of State and "[had] removed the word 'shuttle' from the trade name: the new trade name is Jake's Mountain Transportation." (*Id.*, ¶¶ I.A.1, Footnote 1 at p. 1, and I.A.9, p. 2.).[10]

72. Respondent offered evidence to raise four defenses to the Staff's request for a Cease and Desist Order.[11] An analysis of and findings on these four defenses follows.

1. Respondent's First Defense against the Cease and Desist Order.

73. The first defense was that Respondent is authorized to operate using the trade name "Jake's Mountain Shuttle," because Luxury Limousine Permit No. LL-01934 was issued by the Commission on November 12, 2013, with the trade name Jake's Mountain Shuttle, and the

[10] Pursuant to Rule 1501(c) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ takes administrative notice of Decision No. C16-0754 in Proceeding No. 16V-0442EC.

[11] Respondent also offered some evidence that his research on the Commission's public website reveals that a few other luxury limousine carriers that may use the word "shuttle" in their trade names or website URLs. (*See* Hearing Exhibits 18 (rejected), 19, and 20.) The ALJ finds that this evidence did not constitute a defense and was not compelling. Respondent could not prove whether or not these carriers also possessed certificates to provide common carrier shuttle services. If they did, this evidence would not have been relevant. If these carriers only possess luxury limousine permits, this evidence merely provides Staff with information to investigate whether these other carriers have also violated Rule 6016(d), 4 CCR 723-6.

Permit was "continuous until cancelled or revoked." (*See* Hearing Exhibit 5.) Mr. Meckfessel believed the Commission had authorized use of the trade name "Jake's Mountain Shuttle," including using that trade name in advertising, on the website, and in the email address continuously until "cancelled or revoked," by virtue of Luxury Limousine Permit No. LL-01934 issued on November 12, 2013.

74. Respondent failed to sustain its burden to prove its first defense. A preponderance of the evidence clearly shows that Luxury Limousine Permit No. LL-01934, the Permit in effect on the date of the citation, February 24, 2017, and the currently effective Permit, is valid from November 12, 2016 through November 12, 2017, and lists the trade name "Jake's Mountain Transportation." (Hearing Exhibit 15 at p. 5; Hearing Exhibit 36 at p. 1.) Mr. Meckfessel filed a Renewal Application for Luxury Limousine Permit No. LL-01934 on October 11, 2016 on behalf of "RPM Transportation, LLC, doing business as Jake's Mountain Transportation." (Hearing Exhibit 36 at pp. 2-3.) Moreover, on October 14, 2016, Respondent registered the trade name, Jake's Mountain Transportation, with the Colorado Secretary of State and listed Robert P. Meckfessel as its Registered Agent.

75. Significantly, § 40-10.1-302(1)(b), C.R.S., was amended in 2016 to provide prospectively that permits for luxury limousines (and other limited regulation services), are valid for one year after the date of issuance, and § 40-10.1-302(5), C.R.S., was added to require that: "Effective July 1, 2016, any existing permit issued pursuant to this part 3 expires on the anniversary of its issuance."[12] These amendments became effective on May 20, 2016, and were in effect five months later when Mr. Meckfessel renewed Luxury Limousine Permit

[12] The 2016 amendment to § 40-10.1-302(5), C.R.S., appears to be intended to ensure that, after July 1, 2016 and in the future, limited regulation carriers would apply for new permits annually.

No. LL-01934 on November 12, 2016, with the trade name Jake's Mountain Transportation.[13] This version of Luxury Limousine Permit No. LL-01934 was in effect on February 24, 2017, the date of the citation in the CPAN.

76. By operation of law, therefore, the 2016 amendment to § 40-10.1-302(1)(b), C.R.S., rendered any versions of Luxury Limousine Permit No. LL-01934, which may existed before May 20, 2016, prospectively invalid one year after their issuance dates, even if the Permit had once contained the notation "This Permit is continuous until cancelled or revoked."

77. The ALJ finds and concludes that the versions of Luxury Limousine Permit No. LL-01934 issued on November 12, 2013 and November 10, 2014, which listed the trade name "Jake's Mountain Shuttle" and which are relied on by Mr. Meckfessel in his first defense, became invalid one year after their issue dates. That is, the Permit issued on November 12, 2013, became invalid on November 12, 2014; and the Permit issued on November 10, 2014, became invalid on November 10, 2015 (Hearing Exhibit 5; Hearing Exhibit 15 at pp. 2 and 3) – more than a year and three months before the violation cited in the CPAN. The ALJ finds and concludes that those expired Permits do not authorize Respondent to use the trade name "Jake's Mountain Shuttle" or the terms "shuttle" or "shuttle service" in offering its services under its current Luxury Limousine Permit No. LL-01934, in its operations, in its advertising, on its website, in its website URL, or in its advertised email address.

[13] Mr. Meckfessel testified on cross-examination that he was unaware until the day of the hearing that these amendments made luxury limousine permits effective for only one year. However, ignorance of the law is no excuse for not following the law (*Lombard v. Colorado Outdoor Educations Center, Inc.,* 266 P.3d 412, 420 (Colo. App. 2011), nor is ignorance of the law a defense to charges of unlawful conduct (*see People v. Iverson*, 321 P.3d 573, 577 (Colo. App. 2013).

2. Respondent's Second Defense Against the Cease and Desist Order.

78. Respondent's second defense was that the Commission's database contained clerical errors regarding the trade name under which Respondent provides luxury limousine service, and Respondent should still be allowed to use "Jake's Mountain Shuttle." Luxury Limousine Permit No. LL-01934, dated November 12, 2013 (as well as the Permit dated November 14, 2014), listed the trade name Jake's Mountain Shuttle (Hearing Exhibit 5; Hearing Exhibit 15 at pp. 2 and 3), but Mr. Meckfessel's research of the Commission's website on May 24, 2017 lead him to the conclusion that these Permits had been altered (presumably by Commission personnel) to delete the trade name "Jake's Mountain Shuttle" and to replace it with "Jake's Mountain Transportation."

79. Respondent failed to sustain its burden to prove its second defense. The ALJ finds and concludes that the evidence of the results of Mr. Meckfessel's research on the Commission's public website for "Jake's Mountain Shuttle" fails to prove that the Commission has authorized Respondent to operate under the trade name "Jake's Mountain Shuttle" or to use "Jake's Mountain Shuttle" or the terms "shuttle" or "shuttle service" in operating its luxury limousine service, in its advertising, on its website, or in its advertised email address.

80. The ALJ specifically finds and concludes that there is no evidence in this record that any Commission personnel altered or falsified any valid version of Luxury Limousine Permit No. LL-01934 to delete the trade name "Jake's Mountain Shuttle" and to replace it with "Jake's Mountain Transportation." Mr. Meckfessel's belief in this regard is clearly erroneous. Instead, a preponderance of the evidence clearly shows that in October 2016 Mr. Meckfessel himself changed the trade name to Jake's Mountain Transportation" with the Colorado Secretary of State and filed an application with the Commission to renew Luxury Limousine

Permit No. LL-01934 for "RPM Transportation, LLC, doing business as Jake's Mountain Transportation."

3. Respondent's Third Defense Against the Cease and Desist Order.

81. Mr. Meckfessel's third defense was that, when he purchased the luxury limousine business in 2013, he purchased *inter alia* the trade name "Jake's Mountain Shuttle," the website and URL (www.jakesmountainshuttle.com), and the email address (jakesmountainshuttle@gmail.com), so Respondent should be allowed to continue to provide services and to advertise using "Jake's Mountain Shuttle." He argued that a Commission order for him to cease and desist from using "Jake's Mountain Shuttle" entirely would have an adverse financial impact on him and his company and that, if such an order was issued, the Commission should compensate him for his financial losses resulting for his expected loss of business.

82. The issue raised by Respondent's third defense is whether, when the Commission granted Mr. Meckfessel's first Luxury Limousine Permit No. LL-01934, effective November 12, 2013 with the trade name "Jake's Mountain Shuttle" after his purchase of the company, the Commission somehow approved the use of the trade name "Jake's Mountain Shuttle" in Respondent's advertising, on its website, in the URL, and in its email address. Mr. Meckfessel offered no evidence of any Commission decision that approved any such uses of the trade name "Jake's Mountain Shuttle." In his closing argument, Mr. Meckfessel offered no legal authority at all to support his third defense. Moreover, an examination of the Luxury Limousine Permits issued on November 12, 2013 and November 10, 2014, which listed the trade name "Jake's Mountain Shuttle," reveals that those Permits do not approve or authorize Respondent to use the trade name "Jake's Mountain Shuttle" in its advertising, on the website, in the URL, or in the email address. (*See* Hearing Exhibit 5; Hearing Exhibit 15 at pp. 2 and 3.) Those Permits did,

however, contain the warning that: "Full compliance with the laws of the State of Colorado, the rules of the Commission is required to maintain the permit. Failure to comply with the laws of the State of Colorado or the Rules of the Commission will result in civil penalties or revocation."[14] (*Id.*)

83. As the ALJ found *supra*, a change in Colorado law, through the 2016 amendment to § 40-10.1-302(1)(b), C.R.S., made Respondent's 2013 and 2014 luxury limousine permits expire prospectively one year after their issuance dates, invalidating them when they expired, and completely thwarting Respondent's first defense. Significantly, when Mr. Meckfessel purchased the luxury limousine business in 2013, he failed to protect his interests regarding any changes in Colorado law. (*Cf.* Confidential Hearing Exhibit 30.) A change in law provision in a contract governs what happens when statutes or rules existing at the time the contract is executed are materially changed or modified.[15] Usually, an agreed interpretation of the contract would be triggered, or the parties would have agreed to take steps to amend the contract to address the change in the law. Without the protection of a change in law provision, the parties to a contract may have to live with the consequences of the change in the law. Unfortunately for Mr. Meckfessel, that appears to be the situation in this Proceeding.

84. Based upon substantial evidence in the record, the ALJ finds and concludes that Respondent failed to sustain its burden to prove its third defense. By issuing Luxury Limousine Permit No. LL-01934, with the trade name "Jake's Mountain Shuttle," the Commission has never

[14] The currently effective Luxury Limousine Permit No. LL-01934, valid from November 12, 2016 through November 12, 2017, for RPM Transportation, LLC, doing business as Jake's Mountain Transportation, contains a similar warning: "To maintain the permit, full compliance with the laws of the State of Colorado, the rules of the Commission, and all Commission Decisions is required. Failure to comply will result in civil penalties or revocation of the permit." (*See* Hearing Exhibit 15 at p. 5; Hearing Exhibit 36 at p. 1.)

[15] *See e.g.* Decision No R06-1032-I (mailed on September 5, 2006) in Docket No. 05T-466, *In the Matter of the Application for Approval of Interconnection Agreement between Qwest Corporation and Pac-West Telecomm, Inc.*

approved the use of the trade name "Jake's Mountain Shuttle," or the terms "shuttle" or "shuttle service," in Respondent's advertising, on its website, in the website URL, or in its advertised email address.

4. Respondent's Fourth Defense Against the Request for a Cease and Desist Order.

85. Respondent's fourth defense was that customers do not understand the technical definition of "shuttle service" used in Commission rules and a lay definition of "shuttle" or "shuttle service" should be applied in this proceeding to allow Respondent to provide services and to advertise using "Jake's Mountain Shuttle." (*See e.g.* Hearing Exhibit 23; Staff's objections on the grounds of hearsay and relevancy were sustained.) Hearing Exhibit 23 was, according to Mr. Meckfessel, a 16-page exhibit consisting of emails or on-line inquiries from potential customers who were seeking a "shuttle" or "shuttle service" from Respondent. During the argument over Staff's objection to Hearing Exhibit 23, Mr. Meckfessel admitted in a colloquy with the ALJ that the people who made the inquiries in Hearing Exhibit 23 believed that Respondent was offering shuttle service. He also admitted that he decided not to subpoena any of those persons to testify to authenticate the documents in Hearing Exhibit 23 and that the exhibit was being offered for the truth of the matter asserted. Thus, Staff counsel did not have an opportunity to cross-examine such persons about the declarations in Hearing Exhibit 23. Mr. Meckfessel was allowed to make an offer of proof as to Hearing Exhibit 23: By offering Hearing Exhibit 23, Mr. Meckfessel was attempting to prove that there is a form of shuttle service which a luxury limousine is qualified to provide and that the general public recognizes this definition of shuttle service.

86. The ALJ finds that Hearing Exhibit 23 consists of written statements by persons who did not testify at the hearing and was offered for the truth of the matters asserted. No

exception to the hearsay rule was offered by which Hearing Exhibit 23 would be admissible. Therefore, Hearing Exhibit 23 was hearsay and was inadmissible. (*See* Rule 801(c) and Rule 802, Colorado Rules of Evidence.)

87. Had Hearing Exhibit 23 been admitted, the ALJ finds that the exhibit would have provided compelling evidence that Respondent's potential customers and the traveling public have been induced by Respondent's advertising, website, website URL, and advertised email address, all of which use the trade name "Jake's Mountain Shuttle," into believing that Respondent has authority to offer and to provide shuttle service as a common carrier.

88. In his answer testimony, Mr. Meckfessel voluntarily listed examples of the types of shuttle services that Respondent provides, including wedding shuttles, concert shuttles, hiker shuttles, and bicycle shuttles. This testimony was in support of his argument that Respondent should be permitted to advertise that it offers such shuttle services in words he believed the general public understands. When potential customers ask for "shuttle service," Mr. Meckfessel believed that Respondent provides luxury limousine service within its Permit. He testified that his cost for such trips was determined by the vehicle size, the time of the reservation, and the distance traveled, without regard to the number of passengers. Mr. Meckfessel did not explain that customers requesting "shuttle service" were provided transportation on a prearranged charter basis that was memorialized in a contract.[16] He did not explain how the prices to such customers were determined. Mr. Meckfessel did not deny that such customers were transported on a call-and-demand basis and charged a per-person rate.[17] Rule 6310(b) of the Rules Regulating

[16] These factors are required for luxury limousine service, as defined in Rule 6301(e) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

[17] If these criteria were met, the transportation would constitute shuttle service, as defined in Rule 6201(m) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

Transportation by Motor Vehicle, 4 CCR 723-6, warns that: "A luxury limousine carrier that charges or offers to charge for transportation services on a per person basis shall be presumed to be providing or offering to provide services as a common carrier."

89. Based upon substantial evidence in the record, the ALJ finds and concludes that Respondent failed to sustain its burden to prove its fourth defense. A layman's definition of "shuttle" or "shuttle service," or a layman's understanding of those terms, does not allow Respondent to violate Commission rules. A layman's definition of "shuttle" or "shuttle service" does not resolve the issue here of whether Respondent violated Rule 6016(d), nor does such a layman's definition provide a valid defense to this CPAN. The relevant definition of "shuttle service" that must be followed by luxury limousine permit carriers, and by Respondent, is the definition in Rule 6201(m) of the Rules Regulating Transportation by Motor Carrier, 4 CCR 723-6, governing common carriers:

> (m) "Shuttle 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. …

90. Section 40-10.1-201(1), C.R.S., prevents a luxury limousine permit carrier from operating or offering shuttle service (or taxicab service) in Colorado:

> 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.

Similarly, Rule 6016(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, warns that, "No motor carrier, or any officer, agent, employee, or representative of said carrier, shall offer to provide a transportation service without authority or permit to provide such service." A similar analysis and conclusion applies to Respondent's use of the term "taxi-type" service on its website.

91. Based upon substantial evidence in the record, the ALJ finds and concludes that Respondent's use of the terms "taxi" and "shuttle" in its advertising and on its website have had the effect of inducing potential customers and the traveling public into believing that Respondent possesses authority from the Commission to operate a taxicab service and a shuttle service in intrastate commerce in the State of Colorado. However, Respondent possesses no lawful authority from the Commission to operate a taxicab service or a shuttle service in intrastate commerce in the State of Colorado, or to offer to provide such common carrier services to the traveling public.

92. The Commission performs an important health, safety, and welfare function by assuring that luxury limousine carriers offer and provide only the services authorized within the scope of their permit issued by the Commission. Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, protects potential customers of luxury limousine carriers and the traveling public from being misled by the advertising of motor carriers by prohibiting a carrier from offering "a transportation service in a name, to the character, other than a name appearing on said carrier's authority or permit." Respondent's conduct, violation of Rule 6016(d), 4 CCR 723-6, as found in this Decision, has thwarted the Commission's efforts to protect potential customers and the traveling public.

93. After a hearing for which Respondent had more than ten days' adequate notice, and based on substantial evidence in the record as a whole proving the Respondent's violation of Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, the ALJ concludes that Respondent's violation warrants the entry of a Cease and Desist Order. The ALJ finds and concludes that entry of the Cease and Desist Order is also warranted, because substantial evidence in the record as a whole demonstrates that Respondent has exceeded

the authority granted in its Luxury Limousine Permit, due to its advertising in violation of Rule 6016(d), 4 CCR 723-6. Sections 40-10.1-112(1)(a) and (b), C.R.S., and Rule 6008(c), 4 CCR 723-6. Entry of the Cease and Desist Order is also warranted, because Respondent violated or refused to observe proper orders entered by the Commission (*i.e.*, Decision No. R17-0254-I [at ¶¶ I.C.11 – 20, pp. 4 – 6; Ordering Paragraphs II.A. 4 – 6, pp. 8 – 9] and Decision No. R17-0390-I [at Ordering Paragraphs II.A. 2 and 3, pp. 3 – 4]). Section 40-10.1-112(1)(c), C.R.S.

94. Respondent will be ordered to cease and desist from the use of the trade name "Jake's Mountain Shuttle" and the terms "taxi," "shuttle," and "shuttle service" in its advertising (as defined by Rule 6001(a) of the Rules Regulating Transportation by Motor Carrier, 4 CCR 723-6), on its website, in its website URL, or in its advertised email address.

95. During closing arguments at the hearing, the ALJ asked both Parties, if a cease and desist order were issued, what would be a reasonable time to give Respondent to reconfigure its website and its website URL to come into compliance with Commission rules. Respondent argued it would need 6 to 12 months, while Staff argued that 60 to 90 days would be sufficient.

96. In order to allow Respondent to reconfigure its website, its website URL, and its advertised email address to comply with Rule 6016(d), 4 CCR 723-6, by deleting the trade name "Jake's Mountain Shuttle" and the terms "taxi," "shuttle," and "shuttle service," the Cease and Desist Order to be issued by this Decision will be stayed for a period of 120 days from the effective date of this Decision. During the stay, Respondent must not provide or offer to provide any taxicab service, shuttle service, or any other service not within the scope of the authority in its currently effective Luxury Limousine Permit No. LL-01934.

97. The stay will be immediately terminated, and the Cease and Desist Order will become immediately effective, on the date (if any) that Staff issues any CPAN citing Respondent with a violation of any Colorado statute, Commission rule, or Commission decision.

98. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. RPM Transportation, LLC, doing business as Jake's Mountain Transportation (Respondent) is assessed a civil penalty in the amount of $550.00, plus an additional 15 percent surcharge, for a total civil penalty of $632.50, for its violation on February 24, 2017 of Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

2. Respondent shall pay the total amount of the civil penalty to the Commission within ten days from the date of a final Commission decision in this matter.[18] If Respondent submits the payment by U.S. mail, the payment must be made by money order or check and the date of payment is the date of the postmark.

3. Respondent shall comply fully with Rule 6016(d) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, the laws of the State of Colorado, the rules of the Commission, and all Commission decisions.

[18] As used in this Decision, "a final Commission decision" means the date on which this Recommended Decision becomes the decision of the Commission, which will be 20 days after the Mailed Date if no exceptions are filed. Section 40-6-109(2), C.R.S. If exceptions are filed, that date will be the Mailed Date of the Commission's decision on exceptions.

4. Respondent shall comply with this Decision and make the required civil penalty payment on time. Respondent's failure to pay by the deadline shall result in Respondent being subjected to further enforcement actions against its luxury limousine Permit, which may include additional civil penalties and possible suspension or revocation of its Permit.

5. Respondent shall cease and desist, as of the effective date of this Decision, from the use of any trade name not listed in its currently effective Luxury Limousine Permit No. LL-01934 (including "Jake's Mountain Shuttle") and from the use of the terms "taxi" and "shuttle" in its advertising (as defined by Rule 6001(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6), on its website, in its website URL, or in its advertised email address.

6. This Cease and Desist Order shall be stayed for a period of 120 days from the effective date of this Decision in order to allow Respondent to reconfigure its website, its website URL, and its advertised email address to comply with Rule 6016(d) of the Rules Regulating Transportation by Motor Carrier, 4 CCR 723-6, by deleting the trade name "Jake's Mountain Shuttle" and the terms "taxi" and "shuttle."

7. During the stay, Respondent shall not provide or offer to provide any taxicab service, shuttle service, or any other service not within the scope of the authority in its currently effective Luxury Limousine Permit No. LL-01934.

8. This stay shall be immediately terminated, and the Cease and Desist Order shall become immediately effective, on the date (if any) that Staff issues any Civil Penalty Assessment Notice citing Respondent with a violation of any Colorado statute, Commission rule, or Commission decision.

9. 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.

10. 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.

11. 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

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director