

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0554CP

IN THE MATTER OF THE APPLICATION OF SOS SHUTTLE FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING MOTION TO DISMISS, VACATING
HEARING, DISMISSING APPLICATION WITHOUT
PREJUDICE, AND CLOSING PROCEEDING**

Mailed Date: March 4, 2024

I. STATEMENT

A. Background

1. On November 6, 2023, SOS Shuttle (Applicant or SOS Shuttle)¹ filed its Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application).

2. On November 15, 2023, the Commission's Manager in the Rates and Authorities Unit sent a deficiency letter to the Applicant noting several deficiencies in the Application and requesting that the Application be supplemented.

¹ The ALJ notes that Applicant's name on the Application was identified as "Michael A. Johnson," and Applicant's trade name was identified as "SOS Shuttle Service." Application at 1. However, the Certificate of Good Standing submitted by Applicant with its amended Application on November 16, 2023 lists the Applicant as "SOS Shuttle." See Certificate of Good Standing, filed by Applicant on November 16, 2023.

3. On November 16, 2023, SOS Shuttle resubmitted the Application (hereinafter, Application), including additional information therein and attaching two new documents thereto.

4. On November 20, 2023, the Commission gave notice of the application (Notice). As noticed, the Application seeks:

...authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service between all points in the Counties of Arapahoe, Denver, Douglas, Eagle, El Paso, Grand, Pueblo, and Summit, State of Colorado.²

5. On November 21, 2023, Explorer Tours Transportation LLC, doing business as Explorer Tours Transport (Explorer Tours), timely intervened of right.

6. On December 18, 2023, Home James Transportation Services, LTD (Home James) timely intervened of right.

7. During the Commission's Weekly Meeting held December 27, 2023, the Commission deemed the Application complete and referred this Proceeding to an Administrative Law Judge (ALJ) for resolution, by minute entry. This Proceeding was subsequently assigned to the undersigned ALJ.

8. By Decision No. R24-0001-I, issued January 2, 2024, the undersigned ALJ scheduled an evidentiary hearing for March 7, 2024 and established procedures. Pursuant to Decision No. R24-0001-I, SOS Shuttle was to file and serve a list that identifies the witnesses SOS Shuttle intends to call at the hearing and copies of the exhibits SOS Shuttle will present at the hearing by January 24, 2024. Paragraph 15 of Decision No. R24-0001 states:

The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also

² Notice at 2.

result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

9. On January 26, 2024, Explorer Tours filed its Motion in Limine and Motion to Dismiss without Prejudice (Motion to Dismiss). In the Motion to Dismiss, Explorer Tours states that “Applicant has failed to file a list that identifies the witnesses SOS Shuttle intends to call at the hearing,”³ as well as “copies of the exhibits SOS Shuttle will present at the hearing.”⁴ Explorer Tours further states that Applicant’s failure to make the requisite filings “prejudices all other parties to the case by precluding them from properly conducting discovery.”⁵ Lastly, Explorer Tours states that “dismissal without prejudice is appropriate.”⁶

B. Findings, Conclusions, and Analysis

10. Response time to the Motion for Extension of Time has passed, and no response to the same has been filed. As such, pursuant to Rule 1308(f) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the allegations made in the Motion to Dismiss may be deemed admitted.

11. The undersigned ALJ finds and concludes that Applicant failed to abide by the requirements set forth in Decision No. R24-0001 and has not otherwise made a filing in this Proceeding since November 16, 2023.

12. The Motion to Dismiss is unopposed and state good cause for the requested dismissal of the Application. Accordingly, Explorer Tours’ request to dismiss the Application without prejudice will be granted, as ordered below.

³ Motion to Dismiss at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

13. Given the dismissal without prejudice of the Application herein, all other requests made in the Motion to Dismiss, if any, are deemed moot and will be denied, as ordered below.

14. Given the dismissal without prejudice of the Application herein, there is no need to hold an evidentiary hearing in this Proceeding and the same will be vacated, as ordered below.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed January 26, 2024, by Explorer Tours Transportation, LLC, doing business as Explorer Tours (Explorer Tours) is granted consistent with the discussion above.

2. Any additional request in the Motion to Dismiss that is not specifically addressed herein is denied as moot.

3. The hearing scheduled for March 7, 2024 is vacated.

4. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by SOS Shuttle⁷ on November 16, 2023, as supplemented on November 16, 2023, is dismissed without prejudice.

5. Proceeding No. 23A-0554CP is closed.

6. 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.

- 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

⁷ See *supra*, footnote 1.

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.

7. If exceptions to this Recommended 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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director