

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0350CP

IN THE MATTER OF THE APPLICATION OF DAWN'S TIME LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION VACATING PREHEARING
CONFERENCE; AMENDING APPLICATION; DISMISSING
INTERVENTIONS; AND GRANTING PERMANENT
AUTHORITY SUBJECT TO CONDITIONS**

Issued Date: November 12, 2024

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I. STATEMENT

1. On August 19, 2024, Dawn’s Time, LLC (“Dawn’s Time”) filed the above-captioned application for a Certificate of Public Convenience and Necessity (“CPCN”) to operate as a common carrier by motor vehicle for hire. On August 30, 2024, Dawn’s Time filed an amendment to the original application (“Application”).

2. Notice of the Application was provided by the Commission to all interested persons on September 3, 2024. As originally noticed, the application sought the following authority:

For 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 Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, Jefferson, and Park, State of Colorado.

3. The matter was referred by minute entry to an Administrative Law Judge for resolution during the Commission's Weekly Meeting held September 16, 2024.

4. On September 18, 2024, Aspire Tours LLC (“Aspire Tours”) timely intervened of right.

5. On September 23, 2024, Mountain Star Transportation LLC doing business as Explorer Tours (“Explorer Tours”) timely intervened of right.

6. By Decision No. R24-0798-I, issued November 1, 2024, a prehearing conference was scheduled in anticipation of hearing.

7. On November 8, 2024, the Unopposed Joint Motion for Approval of Stipulation Regarding Restrictions and Withdrawal of Interventions was filed by Dawn’s Time on behalf of Dawn’s Time, Aspire Tours, and Explorer Tours. All parties to the proceeding have agreed to a stipulation resolving their differences. If the stipulation is approved by the Commission, Dawn’s Time amends the Application to restrict the authority sought, and based thereupon, Explorer Tours and Aspire Tours withdraw their interventions.

8. By the stipulation, Dawn's Time seeks to amend the Application to request the following authority:

Transportation of passengers in call-and-demand shuttle service between all points in the Counties of Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, Jefferson, and Park, State of Colorado.

RESTRICTIONS:

1. Restricted against the transportation of any passengers to/from Red Rocks Park and Amphitheatre, Lookout Mountain, Rocky Mountain National Park, and Mount Evans/Mount Blue Sky.

2. Any passenger trips originating in Denver County shall terminate in Park, Jefferson, Gilpin, Clear Creek, or Douglas Counties.

9. Upon amendment of the Application pursuant to the stipulation, Aspire Tours and Explorer Tours withdraw their interventions.

10. The requested relief being unopposed, it is appropriate that response time be waived.

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

II. FINDINGS AND CONCLUSIONS

12. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the certificate. Both must be worded so that a person will know, from reading the certificate and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the certificate, which

is the touchstone by which one determines whether the operation of a common carrier is within the scope of its Commission-granted authority.

13. The proposed restrictions in the requested amendment effectively prohibit Dawn's Time from providing transportation service originating or terminating at Red Rocks Park and Amphitheatre, Lookout Mountain, Rocky Mountain National Park, and Mount Blue Sky (formerly known as Mount Evans). Further, any transportation service originating in Denver County must terminate in Park, Jefferson, Gilpin, Clear Creek, or Douglas County.

14. The ALJ finds and concludes that the requested amendment is restrictive in nature, is clear and understandable as clarified herein, and is administratively enforceable.

15. In substance pursuant to the stipulation, and as construed for clarity, the Application is amended to seek the following authority:

A Certificate of Public Convenience and Necessity 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 Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, Jefferson, and Park, State of Colorado.

RESTRICTIONS:

1. Against the transportation of passengers originating or terminating at Red Rocks Park and Amphitheatre, Lookout Mountain, Rocky Mountain National Park, and Mount Blue Sky (formerly known as Mount Evans).

2. Any passenger trips originating in Denver County shall terminate in Park, Jefferson, Gilpin, Clear Creek, or Douglas Counties.

16. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment, as modified. Second, the interventions of Aspire Tours and Explorer Tours will be withdrawn.

17. Withdrawal of the interventions and dismissal of intervenors leaves the Application, as amended, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the uncontested application may be processed under the modified procedure, without a formal hearing.

18. Applicant is a limited liability company in good standing.

19. Applicant requests authority to begin operations as a common carrier.

20. The verified Application, as amended and clarified, establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those Rules.

21. The verified Application, including supporting documentation, establishes that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. In addition, the verified Application including supporting documents (*e.g.*, support letters) indicates a public need for the proposed service. Therefore, because Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the requested CPCN should be granted.

22. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, response time to the Unopposed Joint Motion for Approval of Stipulation Regarding Restrictions and Withdrawal of Interventions filed by Dawn's Time, LLC ("Dawn's Time") on November 8, 2024, is waived and the request is granted as clarified.

2. The interventions filed by Aspire Tours LLC on September 18, 2024, and Mountain Star Transportation LLC doing business as Explorer Tours on September 23, 2024, are withdrawn and they are dismissed as parties.

3. The verified Application filed by Dawn's Time, as it has been amended and clarified, is granted consistent with the discussion above.

4. The prehearing conference scheduled to commence in this matter on November 14, 2024, is vacated.

5. Subject to Applicant's full compliance with the requirements contained in this Recommended Decision, Dawn's Time is granted a Certificate of Public Convenience and Necessity ("CPCN") to operate as a common carrier by motor vehicle for hire as follows:

Transportation of passengers

in call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, Jefferson, and Park, State of Colorado.

RESTRICTIONS:

1. Against the transportation of passengers originating or terminating at Red Rocks Park and Amphitheatre, Lookout Mountain, Rocky Mountain National Park, and Mount Blue Sky (formerly known as Mount Evans).

2. Any passenger trips originating in Denver County shall terminate in Park, Jefferson, Gilpin, Clear Creek, or Douglas Counties.

6. The authority granted in Ordering Paragraph No. 5 is conditioned on Dawn's Time meeting the requirements contained in this Decision and is not effective until these requirements have been met.

7. Dawn's Time shall operate in accordance with all applicable Colorado laws and Commission rules.

8. Dawn's Time shall not commence operation until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) pay to the Commission, the motor vehicle fee (\$50.00) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) file with the Commission and have an effective, publicly available tariff. The tariff should comply with Rules 6208 and 6209 of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations ("CCR") 723-6. The tariff shall be filed in a *new* Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the proposed effective date;
- (d) submit a Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection must be done in accordance with Rules 6103 and 6104 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6; and the inspection must show that the vehicle passed the inspection. The inspection report may be found at: <https://puc.colorado.gov/common-carriers>;
- (e) register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system ("E-Filings") and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>; and

(f) pay the applicable fee (\$5.00) for the issuance of the authority.

9. If Dawn's Time does not comply with each requirement in Ordering Paragraph No. 8, within 60 days of the effective date of this Decision, the CPCN is denied without further action of the Commission. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

10. The CPCN shall not be issued, and Dawn's Time shall not operate under the requested CPCN authority unless Applicant complies with all of the conditions in Ordering Paragraph No. 8.

11. Proceeding No. 24A-0350CP is closed.

12. 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.

13. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.

14. 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

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

Rebecca E. White,
Director