

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0326CP

IN THE MATTER OF THE APPLICATION OF DANHOUNSROU TRANSPORTATION SERVICES LLC DOING BUSINESS AS BOULDER CREEK TRANSPORTATION 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
G. HARRIS ADAMS
AMENDING APPLICATION; DISMISSING
INTERVENTIONS; AND GRANTING PERMANENT
AUTHORITY SUBJECT TO CONDITIONS**

Mailed Date: August 5, 2019

I. STATEMENT

1. On June 10, 2019, Danhounsrou Transportation Services LLC, doing business as Boulder Creek Transportation (Applicant) filed its Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). Applicant filed an Amendment to the Application on June 14, 2019.

2. The Commission gave notice of the application on June 18, 2019. As originally noticed, the application sought the following authority:

to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service and call-and-demand charter service

between all points in Boulder County, State of Colorado.

3. On June 25, 2019, Eight Black Partnership, LLC, doing business as Longmont Shuttle, Eight Black Transport, and Alpenglow Express (Intervenor) timely intervened of right.

4. On July 24, 2019, Applicant and Intervenor filed a Stipulation. It states that Applicant further amends the Application to restrict the requested authority as follows: Transportation restricted to non-emergent medical transportation and wheelchair transportation. The Stipulation states that Intervenor withdraws its intervention upon acceptance of the Stipulation by the Commission and amendment of the scope of authority sought by Applicant.

5. The matter was referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held July 25, 2019.

6. 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

7. 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.

8. The ALJ finds and concludes that the amendment in the Stipulation is restrictive in nature, is clear and understandable, and is administratively enforceable.

9. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment. Second, the intervention of Intervenor will be withdrawn.

10. Withdrawal of the intervention and dismissal of Intervenor 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.

11. The verified Application, as amended and now clarified in the Stipulation, 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.

12. 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 certificate of public convenience and necessity should be granted.

13. 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. The verified Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) filed by Danhounsrou Transportation Services LLC, doing business as Boulder Creek Transportation (Boulder Creek Transportation or Applicant) on June 10, 2019, is amended as provided in the Amendment filed on June 14, 2019, and the Stipulation filed on July 24, 2019.

2. The intervention filed by Eight Black Partnership, LLC, doing business as Longmont Shuttle, Eight Black Transport, and Alpenglow Express is dismissed.

3. The Application, as it has been amended, is granted.

4. The issuance of a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier of passengers by motor vehicle for hire is granted to Boulder Creek Transportation, conditioned upon Applicant’s full compliance with the requirements contained in Ordering Paragraph No. 5, as follows:

Transportation of

passengers: in call-and-demand shuttle service and call-and-demand charter service

between all points in Boulder County, State of Colorado.

RESTRICTION: This certificate is restricted:

(A) To non-emergent medical transportation and wheelchair transportation.

5. Applicant shall not be granted a CPCN and shall not commence operations until it has fully complied with the following conditions:

(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 (\$45) 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 filing shall consist of an advice letter and the corresponding tariff. The advice letter and tariff shall be filed as separate documents in one new Advice Letter proceeding. Applicant shall file the advice letter and tariff 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. Information can be found at <https://www.colorado.gov/pacific/dora/Trans-Tariffs>;

(d) submit an Annual Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection

must be done by an inspector who meets the qualification requirements in 49 *Code of Federal Regulations* § 396.19, the inspection must have been completed within 60 days of the effective date of this Decision, and the inspection must show that the vehicle passed the inspection;

- (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 www.dora.state.co.us/pls/efi/EFI.homepage; and
- (f) pay the applicable fee (\$5) for the issuance of the authority.

6. The CPCN shall not be issued and Applicant shall not operate under the requested CPCN authority unless Applicant complies with all of the conditions in Ordering Paragraph No. 5.

7. If Applicant does not comply with each requirement in paragraph no. 5, 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.

8. Applicant, shall operate in accordance with all applicable statutes, orders, and rules of the Commission. The Commission may issue an order to cease and desist or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112 (1), C.R.S.

9. Proceeding No. 19A-0326CP is closed.

10. 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.

11. 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.

12. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director