

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21D-0098CP

IN THE MATTER OF THE PETITION OF ALC SCHOOLS, LLC FOR A DECLARATORY ORDER OR IN THE ALTERNATIVE PETITION FOR RULEMAKING.

**INTERIM DECISION
OF ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MOTIONS AND SCHEDULING
PREHEARING CONFERENCE**

Mailed Date: May 4, 2021

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I. STATEMENT AND BACKGROUND

A. Statement

1. This Decision grants the Colorado Department of Education’s (CDE) Unopposed Motion for Leave to File Brief as Amicus (Motion), filed on March 3, 2021, and the Motion to Intervene of HopSkipDrive, Inc. (Motion to Intervene) filed on April 23, 2021.

B. Background

2. On March 2, 2021, ALC Schools, LLC (ALC) filed a Petition for Declaratory Order or in the Alternative Petition for Rulemaking (Petition). The Petition seeks a declaratory order that Transportation Network Companies (TNCs), as defined at § 40-10.1-602(3), C.R.S., may not engage in the transportation of students to and from school, school-related activities, and school-sanctioned activities as defined in § 40-10.1-105(1)(b), C.R.S., unless they submit to the jurisdiction of and comply with CDE's regulations for school transportation as set forth in 1 *Code of Colorado Regulations* (CCR) 301-25 through 301-26 (per §§ 22-51-108 and 42-4-1904, C.R.S.). Petition at 1. In the alternative, the Petition asks the Colorado Public Utilities Commission (Commission) to initiate a rulemaking proceeding to promulgate rules clarifying when a TNC is acting as a school transportation provider, and to enact standards applicable to TNCs providing school transportation activities that are identical to CDE's standards. *Id.*

3. On March 3, 2021, CDE filed its Motion seeking leave to file an *amicus* brief "urging the Commission to accept the declaratory petition and resolve it." Motion at 2. CDE states that its Motion is unopposed. *Id.* With its Motion, CDE filed its Amicus Brief in Support of Petition, as Exhibit A (Amicus Brief).

4. On March 24, 2021, the Commission accepted the Petition, provided public notice of the Petition, and set April 23, 2021 as the deadline for interventions and responsive briefs. Decision No. C21-0180-I issued March 24, 2021. At the same time, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.

5. On April 23, 2021, HopSkipDrive, Inc.'s (HopSkipDrive) filed its Motion to Intervene and a response to the Petition.

II. FINDINGS AND CONCLUSIONS

A. **Unopposed Motion for Leave to File Brief as Amicus**

6. CDE's Motion is unopposed. As noted, CDE's Motion seeks leave to file an *amicus* brief for a narrow purpose: to urge the Commission to accept the Petition and resolve it. However, the Commission accepted the Petition without ruling on CDE's Motion. Nonetheless, the ALJ reviewed CDE's Amicus Brief, and finds that it includes background information that helps provide context for the Petition. *See generally* Amicus Brief. For this reason, and because the Motion is unopposed, the ALJ grants the Motion, and accepts CDE's Amicus Brief.

B. **Motion to Intervene**

7. HopSkipDrive files its Motion to Intervene under Rule 1401(c), of the Commission's Rules of Practice and Procedure, which governs permissive interventions. 4 CCR 723-1. Motion to Intervene at 1.

8. Responses to motions filed under Rule 1401(c), are due within seven days after service of the motion. Rule 1401(c), 4 CCR 723-1. Per Rule 1400(d), the Commission may deem a party's failure to respond to a motion as a confession of the motion. 4 CCR 723-1.

9. The response time to the Motion to Intervene has lapsed. No responses were filed.

10. A party seeking to permissively intervene "must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant . . . and that the movant's interests would not otherwise be adequately represented." Rule 1401(c), 4 CCR 723-1.

11. HopSkipDrive submits that it lawfully operates in Colorado under its Commission-issued TNC permit, and that its operations will be directly impacted by the outcome of this proceeding. Motion to Intervene at 2-3. HopSkipDrive asserts that its "pecuniary and

tangible interest will be substantially affected by the determinations made in this proceeding.” *Id.* at 2. HopSkipDrive explains that granting the Petition will cause it to be “thrust into a state of regulatory uncertainty, in part because CDE has disclaimed jurisdiction over TNCs like HopSkipDrive.” *Id.* HopSkipDrive argues that even if CDE’s administrative rules were ignored, it “would be facing different and conflicting rules for the student transportation part of its business and other parts, such as elderly care service and adults requiring extra care for TNC rides,” which would be burdensome and highly disruptive. *Id.*

12. HopSkipDrive also points to the Petition itself, which specifically refers to HopSkipDrive and attaches HopSkipDrive’s contracts with school districts. *Id.* at 3. HopSkipDrive asserts that the Petition makes “misleading and false allegations” about it and TNCs (generally), which HopSkipDrive seeks to address by participating in this proceeding. *Id.*

13. The Petition refers to HopSkipDrive as having pursued a “public campaign” boasting that it is 60 percent less expensive to use than a previous car service that the Littleton Public School District used. Petition at 3. The Petition asserts that ALC, a school transportation provider, is in the untenable position of competing with TNCs providing transportation for school districts while being subject to far less stringent and costly regulatory requirements. *Id.* at 1 and 3. What is more, the Petition attaches nine contracts between HopSkipDrive and various school districts to support an argument that TNCs’ contractual obligations arguably remove them from the statutory definition of a TNC, and contradict statutory TNC requirements that would subject them to CDE regulation. *Id.* at 3-4; Exhibits A-J to Petition. The Petition posits that the attached contracts demonstrate that “a TNC,” (HopSkipDrive), is operating as a school transportation provider, and not a TNC for multiple school districts. *Id.* at 4.

14. The ALJ deems ALC's failure to respond to the Motion to Intervene as a confession of the Motion. Rule 1400(d), 4 CCR 723-1. As such, the Motion to Intervene is unopposed.

15. The ALJ finds that the Petition invites HopSkipDrive's participation in this matter by making allegations about it, and by attaching HopSkipDrive's contracts with various school districts. Exhibits A-J to Petition. Indeed, the Petition appears to use HopSkipDrive's operations as an example of a TNC who should be subject to CDE's more stringent regulations. This directly draws HopSkipDrive's operations into this proceeding. The ALJ finds that the Petition seeks an order which, if granted, would impact HopSkipDrive's operations. For all of these reasons, the ALJ concludes that HopSkipDrive met its burdens under Rule 1401(c) to permissively intervene in this matter. For the reasons discussed, and because the Motion to Intervene is unopposed, the ALJ grants HopSkipDrive's Motion to Intervene.

C. Prehearing Conference

16. The ALJ is scheduling a prehearing conference to move this matter toward a resolution. The ALJ anticipates several potential avenues to resolve this proceeding. For example, the parties may wish to present undisputed material facts and to file dispositive briefs based on those undisputed facts. The parties may instead wish to present evidence at a hearing and argument via statements of position filed after the hearing. Or, the parties may wish to do both. If an evidentiary hearing is necessary, during the prehearing conference, the ALJ will schedule the evidentiary hearing and establish procedural deadlines relating to the hearing. The parties must be prepared for all of this. To this end, the parties are required to confer with each other prior to the prehearing conference on these issues, specifically including the manner in which this matter should progress to a resolution.

17. Due to the COVID-19 pandemic, in-person hearings at the Commission's offices are currently not permitted. By way of background, on March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. Executive Order D-2020 003. Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. Notably, public access to the building containing the Commission's offices and hearing rooms has been restricted. As a result, the Commission is currently unable to hold in-person hearings at the Commission's offices. As such, the prehearing conference will be held remotely by video-conference. In addition, the ALJ finds that holding the hearing remotely is consistent with public health advisories to prevent the spread of COVID-19 and is in the public interest.

18. The parties are on notice that at this time, it is unknown when the Commission will be able to hold in-person hearings. If an evidentiary hearing is scheduled, it will be scheduled as a video-conference hearing, and the parties, counsel, and witnesses will be expected to appear by video-conference and present all tangible evidence electronically.

19. The Commission will use the web-hosted service, GoToMeeting, to hold the prehearing conference remotely. This Decision and Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and Attachment A.

20. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.¹

21. *HopSkipDrive is on notice* that failure to appear at the prehearing conference may result in a decision dismissing it as a party. *ALC is on notice* that failing to appear at the prehearing conference may result in a decision dismissing the Petition without prejudice. *All parties are on notice* that the ALJ will deem any party's failure to appear at the prehearing conference as a waiver of objections to any ruling made during the prehearing conference.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, the Colorado Department of Education's Unopposed Motion for Leave to File Brief as Amicus filed on March 3, 2021, and the Motion to Intervene of HopSkipDrive, Inc. filed on April 23, 2021 are granted.

2. A remote prehearing conference on the above-captioned Petition is scheduled as follows:

DATE: May 19, 2021

TIME: 1:00 p.m.

METHOD: Join by video-conference online at the meeting link emailed to parties before the hearing.

¹ This information will be emailed to counsel for all parties at the email addresses on file for counsel in this proceeding.

3. Participants in the prehearing conference may not distribute the GoToMeeting link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, parties will participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. All participants must comply with the requirements in Attachment A to this Decision, which are incorporated into this Decision.

5. As discussed above, the parties are required to confer with each other before the prehearing conference.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director