

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0132CP

IN THE MATTER OF THE APPLICATION OF NDW ENTERPRISES LLC DOING BUSINESS AS SKI TOWN 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
CONOR F. FARLEY
ACCEPTING AMENDMENT OF APPLICATION,
ACCEPTING WITHDRAWAL OF INTERVENTION,
GRANTING APPLICATION AS AMENDED, AND CLOSING
PROCEEDING**

Mailed Date: May 8, 2023

I. STATEMENT

A. Background

1. On March 25, 2022, NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town), filed its Permanent Authority Application.

2. The Commission gave notice of the application on March 28, 2022. As originally noticed, the application sought 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 Shuttle service:

- (1) between the Yampa Valley Regional Airport, Hayden, Colorado, on the one hand, and the town of Steamboat Springs, Colorado, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area, on the other hand;

- (2) between the Yampa Valley Regional Airport, Hayden, Colorado, on the one hand, and the town of Craig, Colorado, including all points within one mile of the town limits of Craig, Colorado, on the other hand; and
- (3) between all points within the town of Steamboat Springs, Colorado, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area.

3. On April 13, 2022, Alpine Taxi/Limo, Inc., doing business as Alpine and/or Go Alpine (Go Alpine), timely intervened of right.

4. The Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held on May 4, 2022. The proceeding was subsequently assigned to Chief ALJ G. Harris Adams.

5. On May 11, 2022, Chief ALJ Adams issued Decision No. R22-0292-I that provided an opportunity for the parties to file a Statement Regarding the Hearing identifying the party's preference for an in-person, remote, or hybrid hearing.

6. On May 24, 2022, Chief ALJ Adams issued Decision No. R22-0322-I that, among other things, established a procedural schedule, including an in-person hearing in Steamboat Springs on September 12-13, 2022.

7. The in-person hearing took place on September 12-13, 2022. During the hearing on September 13, 2022, the parties stated on the record that they had reached a settlement of the dispute in this proceeding. Both parties stated that they would file a document detailing the settlement agreement and requesting further action by the Commission.

8. Subsequently, the proceeding was transferred to the undersigned ALJ.

9. Because the parties did not file the settlement agreement, the undersigned ALJ issued Decision No. R22-0808-I on December 16, 2022: (a) scheduling a remote prehearing conference on January 4, 2023 at 9:30 a.m.; ordering the parties to file a joint status report addressing: (i) the status of their settlement agreement, their failure to file the settlement document promised at the hearing on September 13, 2022, and any plan by the parties to file the promised settlement agreement; and (ii) waiver of the deadline imposed by § 40-6-109.5(2), C.R.S.; (c) ordering the parties to be prepared to discuss at the remote prehearing conference whether extraordinary conditions exist justifying the extension of the statutory deadline by an additional 130 days pursuant to § 40-6-109.5(4), C.R.S.; and (d) ordering Ski Town to be prepared at the remote prehearing conference to show cause why the Application should not be dismissed for failure to prosecute.

10. On December 20, 2022, Ski Town filed a Notice of its waiver of the statutory deadline imposed by § 40-6-109.5(2), C.R.S., and a Motion for Extension to file the status report required by Decision No. R22-0808-I.

11. On December 21, 2022, Ski Town filed an Amended Motion for Extension to file the status report required by Decision No. R22-0808-I.

12. On December 28, 2022, Ski Town filed the Status Report required by Decision No. R22-0808-I.

13. On January 4, 2023, the remote prehearing conference schedule in Decision No. R22-0808-I took place. At the conclusion of the remote prehearing conference, the ALJ ordered the parties to file a Second Status Report by January 27, 2023, and attend a remote prehearing conference on February 3, 2023. The ALJ memorialized these decisions in Decision No. R23-0031-I that issued on January 13, 2023.

14. On January 27, 2023, the parties filed the Second Status Report in which they stated that they had not resolved their differences over the purported settlement agreement.

15. As a result, the remote prehearing conference took place on February 3, 2023. At that remote prehearing conference, the parties stated that they still had not resolved their disagreements. The ALJ thus scheduled the continued hearing for May 10-11, 2023, in Steamboat Springs.

16. On May 1, 2023, the parties filed a Stipulation and Motion to Restrictively Amend Application and to Withdraw Intervention (Stipulation and Motion) in which they propose to modify the existing proposed authority and add restrictions thereto as follows:

1. Shuttle service between Yampa Valley Regional Airport, Hayden, CO, on the one hand, and the town of Steamboat Springs, CO, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area, on the other hand.
2. Shuttle service between Yampa Valley Regional Airport, Hayden, CO, on the one hand, and the town of Craig, CO, including all points within one mile of the town limits of Craig, CO, on the other hand.
3. Shuttle service between all points within the town of Steamboat Springs, CO, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area.

Restrictions:

1. Operations under Items 1 through 3 are restricted to the use of vehicles with a seating capacity of 28 passengers or fewer plus the driver according to vehicle manufacturer specifications.
2. Until December 31, 2024, operations under Items 1 through 3 are restricted to the use of no more than 30 vehicles at any one point in time, and on and after January 1, 2025, operations under Items 1 through 3 are restricted to the use of no more than 35 vehicles at any one point in time.¹

¹ Stipulation and Motion at 2-3 (¶ III).

17. In the Stipulation and Motion, the parties state if the restrictive amendment is approved, Go Alpine agrees to withdraw its opposition to the application.

18. After reviewing the Stipulation and Motion, the ALJ informed the parties by email on May 2, 2023, that the Stipulation and Motion would be granted, and the hearing would be vacated. The ALJ also informed the parties that a Recommended Decision would issue as soon as reasonably possible.

B. Analysis

19. The amendments proposed by the parties are restrictive in nature, clear and understandable, and administratively enforceable. They are contained wholly within the scope of the authority sought in the Application. Accordingly, the restrictive amendments proposed by the parties will be accepted.

20. Accepting the amendments has two relevant results. First, the authority sought in the Application will be amended to conform to the restrictive amendments set forth in paragraph 9 above. Second, because Intervenors' intervention has been withdrawn, the Application, as revised by the amendment, is unopposed and, pursuant to § 40-6-109(5), C.R.S. and Commission Rule 1403,² will be considered under the modified procedure, without a formal hearing.

² 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure.

21. The Application establishes that Ski Town is familiar with the Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.³ The Application and its supporting documentation establish that Ski Town has or will have sufficient equipment with which to render the proposed service, and is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application and the lack of opposition thereto indicate a need for the proposed service as amended. The ALJ finds that the Application, as amended, is reasonable and in the public interest. For the foregoing reasons, the requested authority will be granted.

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

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Motion to Restrictively Amend Application and to Withdraw Intervention filed by NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town) and Alpine Taxi/Limo, Inc., doing business as Alpine and/or Go Alpine (Go Alpine) on May 1, 2023, is granted.

2. The restrictive amendments proposed by Ski Town and Go Alpine on May 1, 2023, are approved.

³ 4 CCR 723-6.

3. The withdrawal of the intervention of Go Alpine is accepted.
4. Go Alpine is dismissed from this proceeding.
5. The Application is amended as set forth in paragraph 16 above.
6. The Application, as amended, is granted.
7. Ski Town is granted authority to operate as a common carrier by motor vehicle for

hire as follows:

a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire for the transportation of passengers, in Shuttle service:

- (1) between the Yampa Valley Regional Airport, Hayden, Colorado, on the one hand, and the town of Steamboat Springs, Colorado, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area, on the other hand;
- (2) between the Yampa Valley Regional Airport, Hayden, Colorado, on the one hand, and the town of Craig, Colorado, including all points within one mile of the town limits of Craig, Colorado, on the other hand; and
- (3) between all points within the town of Steamboat Springs, Colorado, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area.

Restrictions:

1. Operations under Items 1 through 3 are restricted to the use of vehicles with a seating capacity of 28 passengers or fewer plus the driver according to vehicle manufacturer specifications.
2. Until December 31, 2024, operations under Items 1 through 3 are restricted to the use of no more than 30 vehicles at any one point in time, and on and after January 1, 2025, operations under Items 1 through 3 are restricted to the use of no more than 35 vehicles at any one point in time.

8. Ski Town shall operate in accordance with all applicable Colorado law and Commission rules.

9. Ski Town shall not commence operation under the authority until it has complied with the requirements of Colorado law and Commission rule, 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 for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paying 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 must comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 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: www.dora.state.co.us/pls/efi/EFI.homepage; and
- f. pay the applicable fee for the issuance of the authority.

10. If Ski Town does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the extended authority shall be void. 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.

11. The in-person hearing scheduled for May 10-11, 2023, in Steamboat Springs is vacated.

12. Proceeding No. 22A-0132CP is closed.

13. 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 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director