

Decision No. R23-0806

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0457CP

IN THE MATTER OF THE APPLICATION OF DENVERS AIRPORT 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
MELODY MIRBABA
GRANTING MOTIONS TO AMEND APPLICATION,
ACKNOWLEDGING INTERVENTION WITHDRAWAL,
AND GRANTING PERMANENT AUTHORITY
SUBJECT TO CONDITIONS**

Mailed Date: December 6, 2023

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I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Summary

1. This Decision grants numerous motions to amend the above-captioned Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application); acknowledges Intervenor's withdrawal of their Interventions; and grants a permanent authority, subject to conditions.

B. Procedural History¹

2. On September 12, 2023, Denver's Airport Transportation, LLC² (Applicant or Denver's Airport Transportation) initiated this matter by filing the above-captioned Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application). As originally filed, 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 Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, and between said points, and all points in the State of Colorado.³

3. On September 18, 2023, the Commission provided public notice of the Application and the authority sought therein. The Notice describes the authority slightly different than the Application, as set forth below (differences underlined):

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, Boulder, Denver, Douglas, and Jefferson, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.⁴

¹ Only the procedural history necessary to understand this Decision is included.

² Although not reflected in the Proceeding caption, the Application indicates that Denver's Airport Transportation is a limited liability company, and thus, is treated as such in this Decision. Application at 2.

³ Application at 3.

⁴ Notice of Applications and Petitions, filed on September 18, 2023 at 1.

4. On September 21, 2023, Applicant filed an Amendment to Application (Motion to Amend), seeking to modify the authority sought in the Application.

5. On September 25, 2023, Mountain Star Transportation, LLC, doing business as Explorer Tours (Mountain Star) filed a Petition for Intervention and Entry of Appearance (Mountain Star's Intervention), seeking to intervene as of right.

6. On October 10, 2023, Alpine Taxi/Limo, Inc., AEX, Inc., San Miguel Mountain Ventures, LLC, Home James Transportation Services, LTD., and Estes Park Charters Corp., (Joint Intervenors) filed a "Joint Notice of Intervention by Right, Alternative Motion for Intervention, Entry, [sic] Entry of Appearance and Request for Hearing" (Joint Intervention), seeking to intervene as of right.

7. On October 25, 2023, the Commission deemed the Application complete by minute entry and referred this matter to an Administrative Law Judge (ALJ) for disposition.

8. On November 8, 2023, Applicant filed two separate Joint Motions, that is: a "Joint Motion of Applicant and Joint Intervenors for Approval of Settlement, Restrictive Amendment of Application, and Conditional Withdrawal of Intervention" (First Joint Motion); and a "Joint Motion of Applicant and Mountain Star Transportation, LLC for Approval of Settlement, Restrictive Amendment of Application, and Conditional Withdrawal of Intervention" (Second Joint Motion).

II. FINDINGS, ANALYSIS AND CONCLUSIONS

A. Requests to Amend Application

9. The Motion to Amend seeks to make minor clarifications to the authority sought in the Application, as follows (proposed changes underlined):

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, Boulder, Denver, Douglas, and Jefferson, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.⁵

10. The Motion to Amend's proposed changes identically match the description of the authority in the Commission's Notice.⁶ This raises questions as to whether the Commission already amended the Application as requested in the Motion to Amend. Nonetheless, the ALJ will address the Motion to Amend to ensure the record is clear.

11. To be acceptable, changes to an application's requested authority 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 permit. Both must be worded so that a person will know, from reading the permit 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 permit, which is the touchstone by which one determines whether the operation of a carrier is within the scope of its Commission-granted authority.

12. The proposed amendments merely clarify the authority so that it is clear, understandable, and administratively enforceable. Given that the Commission provided Notice of the exact language which the Motion to Amend seeks to add, the ALJ finds that it is unnecessary to determine whether the proposed changes are restrictive. For the reasons discussed, the ALJ grants the Motion to Amend, and amends the Application as requested.

⁵ Motion to Amend at 1.

⁶ *Supra*, ¶13. Notice of Applications and Petitions, filed on September 18, 2023 at 1.

13. The First Joint Motion seeks to amend the Application to add the following language:

Restriction: This authority is restricted against providing service to or from the following counties in Colorado: Grand, Routt, Moffat, San Miguel, Gunnison, and points in Larimer County west of U.S. Route 287 as it runs through Fort Collins.⁷

14. The Second Joint Motion seeks to amend the Application to add the following language:

Restrictions: This authority is restricted against:

- (1) Transportation services between Boulder and Denver Counties, on the one hand, and Rocky Mountain National Park, Pikes Peak, Garden of the Gods, Mount Blue Sky (aka Mount Evans), and Lookout Mountain, on the other hand.
- (2) Transportation services between Denver County, on the one hand, and Red Rocks Park and Amphitheater, on the other hand.⁸

15. The Joint Motions both indicate that the parties seek to amend the Application as set forth therein as a means to settle and resolve their disputes in this Proceeding; and if the proposed amendments are accepted, the Intervenors' interests in the Application would be eliminated or resolved, and Intervenors would withdraw their Interventions.⁹

16. The ALJ finds that the proposed amendments in the two Joint Motions are restrictive, clear, understandable, and administratively enforceable. The ALJ concludes that the proposed amendments meet the remaining requirements discussed in ¶ 11, above. For these reasons, the ALJ grants the First and Second Joint Motions, and amends the Application as

⁷ First Joint Motion at 2.

⁸ Second Joint Motion at 2.

⁹ First Joint Motion at 2-3; Second Joint Motion at 2-3.

requested, with minor and non-substantive modifications to ensure clarity and consistency.¹⁰ With the changes, the Application is amended to seek:

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, Boulder, Denver, Douglas, and Jefferson, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS:

- (1) This authority is restricted against providing transportation services to or from the following counties in Colorado: Grand, Routt, Moffat, San Miguel, Gunnison, and points in Larimer County west of U.S. Route 287 as it runs through Fort Collins, Colorado.
- (2) This authority is restricted against providing transportation services between Boulder and Denver Counties, on the one hand, and Rocky Mountain National Park, Pikes Peak, Garden of the Gods, Mount Blue Sky (also known as Mount Evans), and Lookout Mountain, on the other hand.
- (3) This authority is restricted against providing transportation services between Denver County, on the one hand, and Red Rocks Park and Amphitheater, on the other hand.

17. Since the proposed amendments are accepted, consistent with the requests in the First and Second Joint Motions, Mountain Star and Joint Intervenors' Interventions are acknowledged as withdrawn. As a result, Mountain Star and the Joint Intervenors are no longer parties to this Proceeding, and the Application, as amended, is not contested.

¹⁰ The ALJ adds "transportation" before "service" (to be consistent with other proposed language), and "Colorado" immediately after "Fort Collins" (to ensure clarity) in the first restrictive amendment. The ALJ slightly modifies the last two restrictive amendments to include "This authority is restricted against" in each restrictive amendment, rather than including that language next to the word "RESTRICTIONS." This facilitates combining all three restrictive amendments into a single list that is clear and understandable. In addition, the ALJ replaces "aka" with "also known as" in the second restrictive amendment to ensure clarity. None of these changes are substantive.

B. Amended Application

18. Because the Amended Application is uncontested, verified, includes sufficient facts to make a determination on the relief sought, is supported by the required documents and information, and a hearing is not required or requested, the ALJ will consider the Amended Application based on the record without a formal hearing.¹¹

19. The record shows that Denver's Airport Transportation is a Colorado limited liability corporation organized in Colorado and in good standing.¹² The verified Application establishes that Denver's Airport Transportation is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, and agrees to be bound by, and to comply with, those Rules.¹³ The Application establishes that Denver's Airport Transportation has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested.¹⁴ The Application establishes that Denver's Airport Transportation's owner has experience in the transportation industry, which establishes that Denver's Airport Transportation is managerially fit to operate the requested authority.¹⁵ Finally, a review of the verified Application indicates a need for the proposed service.¹⁶

20. Based on the foregoing and the record, the ALJ concludes that because Denver's Airport Transportation is fit, financially and otherwise, to perform the proposed service

¹¹ § 40-6-109(5), C.R.S., and Rule 1403, of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

¹² See Certificate of Good Standing Filed on September 12, 2023.

¹³ Application at 9.

¹⁴ Application at 5-6.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 5.

and because the other prerequisites have been met, the requested authority should be granted, subject to the below conditions.

21. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the Amendment to Application filed on September 21, 2023 is approved, and the Application is amended as set forth above.

2. The “Joint Motion of Applicant and Joint Intervenors for Approval of Settlement, Restrictive Amendment of Application, and Conditional Withdrawal of Intervention” and the “Joint Motion of Applicant and Mountain Star Transportation, LLC for Approval of Settlement, Restrictive Amendment of Application, and Conditional Withdrawal of Intervention” both filed on November 8, 2023 are granted, and the Application is amended as set forth above.

3. Consistent with the above discussion, the Petition for Intervention and Entry of Appearance filed by Mountain Star Transportation LLC, doing business as Explorer Tours (Mountain Star) on September 25, 2023 is withdrawn. Mountain Star is no longer a party to this Proceeding.

4. Consistent with the above discussion, the “Joint Notice of Intervention by Right, alternative Motion for Intervention, Entry, [sic] Entry of Appearance and Request for Hearing” filed by Alpine Taxi/Limo, Inc., AEX, Inc., San Miguel Mountain Ventures, LLC, Home James

Transportation Services, Ltd., and Estes Park Charters Corp., on October 10, 2023 is withdrawn. Such entities are no longer parties to this Proceeding.

5. Denvers Airport Transportation, LLC (Denvers Airport Transportation) is granted a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle as follows:

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, Boulder, Denver, Douglas, and Jefferson, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS:

- (1) This authority is restricted against providing transportation services to or from the following counties in Colorado: Grand, Routt, Moffat, San Miguel, Gunnison, and points in Larimer County west of U.S. Route 287 as it runs through Fort Collins, Colorado.
- (2) This authority is restricted against providing transportation services between Boulder and Denver Counties, on the one hand, and Rocky Mountain National Park, Pikes Peak, Garden of the Gods, Mount Blue Sky (also known as Mount Evans), and Lookout Mountain, on the other hand.
- (3) This authority is restricted against providing transportation services between Denver County, on the one hand, and Red Rocks Park and Amphitheater, on the other hand.

6. Denvers Airport Transportation must operate in accordance with all applicable Colorado Laws and Commission rules.

7. Denvers Airport Transportation may not commence operation under the authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee 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) having an effective tariff on file with the Commission. To this end, Denver's Airport Transportation must file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff must be filed as a new Advice Letter proceeding and must comply with all applicable rules. 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 effective date. (Additional tariff information can be found on the Commission's website at www.colorado.gov/pacific/dora/common-carriers); and
- (d) paying the applicable issuance fee.

8. If Denver's Airport Transportation 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 Permit will 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.

9. The Commission will notify Denver's Airport Transportation in writing when the Commission's records demonstrate compliance with ordering paragraph 7 above.

10. Proceeding No. 23A-0457CP is closed.

11. 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.

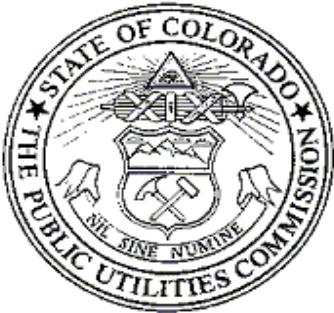
12. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

13. 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.

14. 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.

15. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E White,
Director

