

Decision No. R24-0562

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0123CP

IN THE MATTER OF THE APPLICATION OF MIDNIGHT RIDERS LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION
GRANTING MOTION TO DISMISS APPLICATION
WITHOUT PREJUDICE**

Mailed Date: August 19, 2024

I. STATEMENT

1. On March 15, 2024, Midnight Riders LLC (“Midnight Riders”) initiated the captioned proceeding by filing an application seeking a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (“Application”) with the Colorado Public Utilities Commission (“Commission”).

2. On March 21, 2024, Midnight Riders filed an amendment to the Application.

3. On March 25, 2024, the Commission provided public notice of the application to extend the permit by publishing a summary of the same in its Notice of Applications Filed:

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, Denver, Jefferson, and El Paso, State of Colorado.

4. On April 22, 2024, Mountain Star Transportation LLC, doing business as Explorer Tours (“Explorer”) filed its Intervention through Roman Lysenko. Mr. Lysenko is

identified as the president and owner of Explorer in the filing. This filing attached Commission Authority No. 55952 held by Explorer.

5. On April 24, 2024, Denvers Airport Transport, LLC (“Denvers Airport”) filed its Intervention through its counsel Gabriella Stockmayer. This filing noted Commission Authority No. 55995 held by Denvers Airport.

6. On May 1, 2024, the Commission deemed the application complete and referred it by minute entry to the undersigned Administrative Law Judge (“ALJ”) for disposition.

7. On May 21, 2024, by Decision No. R24-0343-I, the interventions were granted, and a prehearing conference scheduled for May 28, 2024.

8. On June 3, 2024, by Decision No. R24-0377-I, a procedural schedule was adopted. The procedural schedule called for the Applicant’s exhibits and witness list to be filed by June 28, 2024.

9. On July 19, 2024, Explorer filed its Motion to Dismiss Without Prejudice (“Motion to Dismiss”).

II. MOTION TO DISMISS

10. In its Motion to Dismiss, Explorer states that the Applicant has failed to file its exhibits or witness list by the June 28, 2024, deadline.

11. Explorer argues that the Applicant shall be unable to meet its burden without any evidence.

12. In addition, Explorer argues that the Applicant has failed to provide any information in the administrative record that demonstrates the inadequacy of the incumbent’s service.

13. Explorer requests that due to the failure of the Applicant to file the necessary documentation in accordance with Decision No. R24-0377-I, the Application should be dismissed without prejudice.

III. DISCUSSION

14. The Applicant has failed to file a response to the Motion to Dismiss.

15. Decision No. R24-0377-I required the Applicant to file a witness list, exhibit list and exhibits by June 28, 2024

16. As of the date of this decision, the Applicant has not made the required filings concerning witnesses and exhibits.

17. As of the date of this decision, the Applicant has not requested an extension of time to make the required filings.

18. Due to the failure of the Applicant to make the required filings the above captioned proceeding the ALJ finds that the Applicant has abandoned the Application.

19. The Application shall be dismissed without prejudice.

20. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss Application filed by Mountain Star Transportation LLC, doing business as Explorer Tours on July 19, 2024, is granted.

2. Midnight Riders LLC's above-captioned Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed March 15, 2024, is dismissed without prejudice, consistent with the above discussion.

3. The evidentiary hearing scheduled for August 15, 2024, is vacated.

4. 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.

5. 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.

6. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless this Recommended Decision is stayed by the Commission upon its own motion, this Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

7. 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.

8. If exceptions to this Recommended Decision are filed, they may 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

ROBERT I. GARVEY

Administrative Law Judge

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

Rebecca E. White,
Director