

Decision No. R25-0216-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0471CP-EXT

IN THE MATTER OF THE APPLICATION OF 303 PARTY BUS LLC FOR AUTHORITY TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55846.

**INTERIM DECISION
REGARDING MOUNTAIN STAR’S MOTION TO DISMISS
APPLICATION**

Issued Date: March 26, 2025

TABLE OF CONTENTS

I. STATEMENT.....2
 A. PROCEDURAL BACKGROUND2
 B. INTERVENOR MOTION TO DISMISS3
 C. APPLICANT RESPONSE3
II. FACTUAL BACKGROUND.....4
III. LEGAL STANDARDS5
 1. Pending Motions5
 2. Transportation at Issue7
IV. Discussion and Conclusions8
 1. Motion to Dismiss8
 2. Permissible Evidence10
V. ORDER.....12
 A. It Is Ordered That:12

I. STATEMENT

A. PROCEDURAL BACKGROUND

1. This proceeding concerns the above-captioned Application (“Application”) seeking to extend operations under Certificate of Public Convenience and Necessity (“CPCN”) No. 55846 filed by 303 Party Bus LLC (“303 Party Bus” or “Applicant”) on October 31, 2024.

2. On November 12, 2024, Mountain Star Transportation, LLC dba Explorer Tours (“Mountain Star” or “Intervenor”) filed its Petition for Intervention and Entry of Appearance claiming intervention of right.

3. On December 11, 2024, the Commission referred this matter for disposition to an administrative law judge (“ALJ”) by minute entry.

4. On January 29, 2025, Applicant filed a Motion to Adopt Procedural Schedule and Remote Hearing Procedures.

5. On January 31, 2025, the ALJ issues Decision No. R25-0072-I acknowledging Mountain Star’s intervention of right and shortening the response time to Applicant’s Motion to Adopt Procedural Schedule to February 6, 2025.

6. On February 6, 2025, Intervenor filed its Motion to Dismiss Application (“Motion”).

7. On February 7, 2025, Applicant filed its Response to Motion to Dismiss (“Response”).

B. INTERVENOR MOTION TO DISMISS

8. On February 6, 2025, Mountain Star filed its Motion to Dismiss the Application on the basis that Applicant has a history of illegal operations, a prior application for extension in a recent proceeding was denied, Applicant is unable to meet its burden to demonstrate managerial fitness, and Applicant's previous violations are ongoing.

9. In support of its Motion, Mountain Star attached Decision No. R24-0599 from proceeding number 23A-0552CP-EXT, in which 303 Party Bus's previous request for extension of its CPCN was denied.

10. In arguing that the deficiencies fatal to 303 Party Bus's previous application for extension are present in the current application, Mountain Star essentially argues that 303 Party Bus is unable to state a claim for relief because its position has not changed since the denial of the previous application.

C. APPLICANT RESPONSE

11. On February 7, 2025, Applicant filed its Response, arguing that Intervenor lacks a legal basis for its Motion to Dismiss because it seeks to dismiss an application, not a complaint. Applicant believes that Intervenor is attempting to circumvent an evidentiary hearing in this proceeding and introduce contested evidence from its pending complaint against Applicant in Proceeding No. 24F-0430CP. Applicant contends this is improper and prejudicial.

12. Applicant argues that it is prepared to address the merits and purpose of its application, the history of its operations, the denial of its previous application in Proceeding No. 23A-0552CP-EXT, and any other issues raised by Intervenor at an evidentiary hearing.

II. FACTUAL BACKGROUND

13. 303 Party Bus is a common carrier holding and operating CPCN No. 55846, which is attached to the Application and authorizes the following:

Transportation of passengers in call-and-demand shuttle and charter service between 6232 Beach Street, Denver, Colorado and the following venues: Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401; 1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021; Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204; Coors Field, 2001 Blake Street, Denver Colorado 80205; Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218; Fiddlers Green, 6230 Greenwood Plaza Boulevard, Englewood, Colorado 80111; Pepsi Center, 1000 Chopper Circle, Denver, Colorado 80204; Dicks' Sporting Goods Park, 6000 Victoria Way, Commerce City, Colorado 80022; Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206.

RESTRICTIONS. This authority is restricted: (a) to the use of one vehicle; (b) to the use of a vehicle with a maximum capacity of 44 passengers; (c) to round-trips originating and terminating at 6232 Beach Street, Denver, Colorado that may include stops only at the addresses identified herein; and (d) against service to or from hotels, motels, or airports.

14. If 303 Party Bus's Application is granted, CPCN No. 55846 will read:

Transportation of passengers in call-and-demand shuttle and charter service between: Empower Field 1601 Mile High Stadium Circle, Denver CO 80204; Red Rocks Park and Amphitheatre - Morrison, CO 80465; Ball Arena - 1000 Chopper Circle, Denver CO 80204; Fiddler's Green Amphitheatre - 6350 Greenwood Plaza Blvd, Greenwood Village, CO 80111; Dick's Sporting Goods Park - 6000 Victory Way, Commerce City, CO 80022; Folsom Field - 2400 Colorado Ave; University of Colorado, Boulder, CO 80309; Coors Field - 2001 Blake St, Denver, CO 80205 on one hand and all points in: Zip Codes 80202, 80203, 80204, 80205, 80211, 80214, 80216, State of Colorado on the other hand.

RESTRICTIONS. This authority is restricted: (a) to the use of a vehicle with a seating capacity of 16 to 48 seats; and (b) against service to or from any airports.

15. Mountain Star is a common carrier holding and operating CPCN No. 55952, which authorizes the following:

(I) Transportation of passengers in call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.

(II) Transportation of passengers in scheduled service and call-and-demand shuttle service: (A) Between all points in Denver County, on the one hand, and all points in Eagle county, on the other hand; (B) Between all points in Denver County, on the one hand, and all points in Pitkin County, on the other hand; and (C) Between all points in the Counties of Eagle and Pitkin, State of Colorado.

(III) Transportation of passengers in call-and-demand shuttle service between all points in Denver County and Origin Hotel Red Rocks at 18485 West Colfax Avenue in Golden, CO 80401, on the one hand, and Red Rocks Park and Amphitheatre, State of Colorado, on the other hand.

RESTRICTIONS:

Item (II) is restricted against the transportation of passengers in vehicles with a manufacturer's rate passenger capacity of less than 9 passengers, including the driver.

Item (III) is restricted against the transportation of passengers to and/or from Denver International Airport.

III. LEGAL STANDARDS

16. The Colorado Legislature regulates the transportation of passengers by motor vehicle for hire to protect the public health, safety, and general welfare.¹

1. Pending Motions

17. Rule 1400 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1 requires that "any motion involving a contested issue of law shall be supported by

¹ *Denver Cleanup Serv., Inc. v. Pub. Utils. Commerce*, 561 P.2d 1252, 1254 (Colo. 1977).

a recitation of legal authority incorporated into the motion.” Movant claims the proceeding should be dismissed without citing any legal authority supporting dismissal of this proceeding.

18. Pursuant to Rule 1308(a), 4 CCR 723-1, a response may only be filed to an application or petition to the extent it is included in a notice of intervention or motion for permissive intervention.

19. Rule 1308(e), 4 CCR 723-1, provides in relevant part:

A respondent may file a motion to dismiss a complaint or a counterclaim prior to filing an answer. Unless the Commission orders otherwise, a motion to dismiss tolls the time to answer the complaint or counterclaim until 14 days after a decision denying the motion to dismiss. A motion to dismiss may be [based] on ... [a] failure to state a claim upon which relief can be granted.

20. “Where not otherwise inconsistent with Title 40 or these rules, ... an Administrative Law Judge may seek guidance from or may employ the Colorado Rules of Civil Procedure.”² The Commission’s rules are consistent with the Colorado Rules of Civil Procedure (“C.R.C.P.”).

21. C.R.C.P. 12(b) enumerates certain defenses “to a claim for relief in any pleading, whether a claim, counterclaim, or cross-claim, or third-party claim.” The relevant defense must “be asserted in the responsive pleading thereto if one is required,” except those defenses under Rule 12(b) “may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C.R.C.P. 12(a) is due.”

22. C.R.C.P. 12(b)(5) allows a respondent to file a motion seeking to dismiss a complaint for “failure to state a claim upon which relief can be granted.” The purpose of a motion to dismiss for failure to state a claim is to test “the sufficiency of a claim.”³

² Rule 1001, 4 CCR 723-1.

³ *Lavarato v. Branney*, 210 P.3d 485, 488 (Colo. App. 2009).

23. In ruling on such a motion, the non-movant's allegations of material fact must be accepted as true. However, this tenet is inapplicable to legal conclusions.⁴ The Commission "may consider only matters stated in the complaint and must not go beyond the confines of the pleadings,"⁵ except for documents that are referenced in, and central to, the complaint.⁶ The ALJ may also consider documents that are subject to administrative notice.⁷

24. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face."⁸

2. Transportation at Issue

25. The regulated monopoly doctrine governs the granting of a certificate to operate a call-and-demand shuttle and charter service. The doctrine holds that the public benefits from fewer carriers who can make a reasonable return and that increasing providers deteriorates the standard of service and leads to higher rates.⁹

26. An existing carrier is protected from new competition so long as it provides service that is adequate to satisfy the needs of the public.¹⁰

27. Under the regulated monopoly doctrine, an applicant seeking to expand its operations must show that: (a) it is fit to conduct the proposed service; (b) any existing certificated

⁴ *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (adopting the standard for review of motions to dismiss for failure to state a claim enunciated by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

⁵ *Ashton Props., Ltd. v. Overton*, 107 P.3d 1014, 1018 (Colo. App. 2004).

⁶ *Prospect Dev. Co. v. Holland & Knight*, 433 P.3d 146, 149 (Colo. App. 2018).

⁷ *Walker v. Van Laningham*, 148 P.3d 391, 397-98 (Colo. App. 2006).

⁸ *Warne*, 373 P.3d at p. 591.

⁹ See *Archibald v. PUC*, 171 P.2d 421, 423 (Colo. 1946); *Morey v. PUC*, 629 P.2d 1061, 1066-67 (Colo. 1981).

¹⁰ *Ephraim Freightways, Inc. v. PUC*, 380 P.2d 228, 231 (Colo. 1963); *Miller Bros., Inc. v. PUC*, 525 P.2d 443, 446-47 (Colo. 1974).

carrier's service in the proposed service area is substantially inadequate; and (c) there is a public need for the service proposed by the applicant.¹¹

28. No person may "operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation."¹²

IV. DISCUSSION AND CONCLUSIONS

1. Motion to Dismiss

29. For the reasons discussed below, Mountain Star's Motion to Dismiss Application for failure to state a claim for which relief can be granted will be denied.

30. 303 Party Bus asserts that Mountain Star lacks a legal basis for its Motion to Dismiss as Rule 1308(e) only permits a respondent to "file a motion to dismiss a complaint or a counterclaim prior to filing an answer." The ALJ agrees that the Commission's rules do not provide a procedural mechanism to dismiss an application upon motion of an intervenor.

31. Rule 1300 provides that proceedings before the Commission may be commenced through: "(a) a complaint, by any interested person, or a show cause proceeding, including a proceeding for civil penalties, as provided by rule 1302; [or] (b) an application, as provided by rule 1303." Rule 1302 supplies the requirements for "Formal Complaint and Show Cause Proceedings," whereas Rule 1303 supplies the requirements for "Applications." The rules—which list complaints and applications separately and apply different pleading requirements to each—clearly treat complaints and applications as separate and distinct forms of pleadings.

¹¹ See *Durango Trans., Inc. v. PUC*, 122 P.3d 244, 247-52 (Colo. 2005).

¹² § 40-10.1-201(1), C.R.S.

32. Rule 1308 discusses responses to pleadings both generally and more specifically as to complaints.

33. Rule 1308(a) provides the following:

A response may only be filed to: an application or petition, to the extent included in a notice of intervention or motion for permissive intervention; a complaint, or counterclaim or order to show cause, as provided in this rule and paragraphs 1302(g) and (h); a motion, as provided in rule 1400; or exceptions, as provided in rule 1505.

34. While the rule groups applications and petitions for the purpose of filing responses, it groups complaints, counterclaims, and orders to show cause separately. The rule states different requirements for responding to the different types of pleadings. This is consistent with the purpose of different types of pleadings, as applications and petitions—unlike complaints, counterclaims, and orders to show cause—do not assert claims for relief against a specific party but rather seek some form of action or permission from the Commission.

35. Rule 1308(e) specifically permits a respondent to file a motion to dismiss a complaint or counterclaim; it does not have any similar provision for applications or petitions. As such, the rule clearly specifies the types of pleadings that may be challenged with a motion to dismiss.

36. While C.R.C.P. 12(b) allows a motion to dismiss to be filed “to any claim for relief in any pleading,” it specifies that this includes “a claim, counterclaim, or cross-claim, or third-party claim.” Within the context of the civil procedure rules—which do not provide for permitting applications such as the one at issue here—this indicates that motions to dismiss are applicable to claims for relief made against another party.

37. The undersigned declines to address the substance of the Motion, and Intervenor will have an opportunity to make its arguments opposing the Application at an evidentiary hearing or through an appropriate pleading.

2. Permissible Evidence

38. In denying the Motion on procedural grounds, the ALJ acknowledges Mountain Star's concerns that the Application may be futile due to the same deficiencies that led to the denial of 303 Party Bus's previous application for extension of its operations.

39. As Intervenor suggests, in Proceeding No. 23A-0552CP-EXT in which Applicant was seeking a similarly broad extension of its authority, Applicant was found to be operating outside the bounds of its existing authority and acting "in reckless disregard of the limitations on its Commission-issued authority."¹³

40. However, less than a year after the denial of its previous application, Applicant is seeking another extension of its current scope of authority, including call-and-demand shuttle and charter service between major concert and sporting venues, including Red Rocks Park and Amphitheatre, on one hand and all points in seven listed zip codes on the other hand. Included in those zip codes is 80211, the zip code in which Recess Beer Garden is located—the establishment from which 303 Party Bus was found to be illegally providing shuttle service.¹⁴

41. "The law is clear that a carrier cannot establish a public need for additional service by its unauthorized operations ... [if] the carrier knowingly carried on an unauthorized operation with the intent to violate the law or with a reckless disregard for the law."¹⁵ Further, as the ALJ

¹³ Decision No. R24-0599 in Proceeding No. 23A-0552CP-EXT issued August 20, 2024, at ¶ 56.

¹⁴ Decision No. R24-0599 at ¶¶ 21-22, 49, 56.

¹⁵ *Red Ball Motor Freight, Inc. v. PUC*, 626 P.2d 439, 441 (Colo. 1974) (citations omitted); see also *Donahue v. PUC*, 359 P.2d 1024 (Colo. 1961); Decision No. R24-0599 at ¶ 56.

noted in the previous proceeding, one of the factors in considering whether an application has shown managerial fitness is the complying with applicable laws and regulations.¹⁶

42. Accordingly, any evidence of Applicant's unauthorized operations cannot be used in this proceeding to establish operational, managerial, or financial fitness; nor can it support Applicant's claims of substantial inadequacy or public necessity.

43. The decision denying 303 Party Bus's previous application for extension was issued on August 20, 2024. Less than three months later, 303 Party Bus filed the current Application seeking another extension. Applicant cannot simply repackage its request and overcome the issues that were fatal to the previous application. However, at this stage, there is insufficient information in the Application to determine whether Applicant intends to use the same impermissible evidence to support its request to expand its operations.

44. While the ALJ declines to address a motion to dismiss in the context of an application where no claims are made directly against the movant, the ALJ cautions Applicant that evidence of its illegal operations may not be used to support its Application and may be used to establish its lack of fitness.

¹⁶ Decision No. R24-0599 at ¶ 35.

V. **ORDER**

A. **It Is Ordered That:**

1. The Motion to Dismiss Application filed by Mountain Star Transportation, LLC dba Explorer Tours is denied.
2. This Decision is effective immediately.

(SEAL)



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 "Rebecca E. White".

Rebecca E. White,
Director