

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-019CP-WAIVER

IN THE MATTER OF THE APPLICATION OF ALPINE SEDAN, INC., FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 2.3 (DISCRETIONARY VEHICLE) OF THE RULES AND REGULATIONS GOVERNING MOTOR VEHICLE CARRIERS EXEMPT FROM REGULATION AS PUBLIC UTILITIES AND ESTABLISHING CIVIL PENALTIES; 4 CCR-723-33.

COMMISSION ORDER DENYING WAIVER

Mailed Date: March 4, 2003
Adopted Date: February 26, 2003

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. By application filed January 19, 2003, Alpine Sedan, Inc., requested a waiver of Rule 2.3 (Discretionary vehicle), *4 Code of Colorado Regulations (CCR) 723-33*, as to certain vehicles it proposes to purchase and qualify to use as a luxury limousine under Article 16 of Title 40, *Colorado Revised Statutes (C.R.S.)*.

2. Alpine Sedan, Inc., filed a supplement to this application on February 19, 2003.

3. The Commission noticed this application to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on January 27, 2003. The Commission set this matter for hearing on February 26, 2003.

4. No petition to intervene or otherwise participate in this proceeding has been filed. This proceeding is therefore noncontested. Under Rules 24 and 59(g), *Rules of Practice and Procedure*, 4 CCR 723-1, this matter may be determined without a hearing.

5. Rule 10, 4 CCR 723-33, allows the Commission to grant a waiver from Rule 2.3, 4 CCR 723-33, to the extent authorized by applicable law, for good cause, and if it finds compliance to be impossible, impractical or unreasonable.

6. In its application, Alpine Sedan, Inc., identifies the vehicles for which the waiver is requested as “Jeep Grand Cherokee 1999 to date.” Alpine Sedan, Inc., does not request a waiver for a specific vehicle but states in its waiver application “these vehicles are to be used for client transport from DIA to and/or from Vail, Beaver Creek or other mountainous regions. These vehicles are to be used according to client demand and these vehicles are to be used for smaller groups of 1 to 3 passengers.”

7. In the supplement to its application, Alpine Sedan, Inc. states “In the original petition we failed to identify the number of vehicles that we would like to have this petition cover. We are requesting 2 vehicles under this petition. We feel that any vehicle included in this waiver should be required to pass an initial inspection by a Colorado PUC Safety and Compliance officer prior to purchase to ensure vehicle quality. Upon initial approval the vehicle would be properly outfitted and a Luxury Limousine Qualification Report would be conducted to certify the vehicle.”

8. A luxury limousine is defined in §40-16-101(3)(a) C.R.S. as “a chauffer-driven, luxury motor vehicle with a rear seating capacity of three or more, for hire on a chartered basis to transport passengers in luxury limousine service.” A vehicle may qualify for inclusion as a luxury limousine in one of five different categories. The category relevant to the Jeep Grand Cherokee named in this waver request is the executive sedan. § 40-16-101(3)(a)(IV)(B) C.R.S., defines an executive sedan as “a full-size, four-door, luxury sedan or sports utility vehicle with a

seating capacity of at least five, not including the driver, that has not been altered from the manufacturer's original specifications." The Jeep Grand Cherokee for which Alpine Sedan, Inc., requested this waiver does not have a capacity of five, not including the driver, and therefore does not qualify for inclusion as a luxury limousine in the executive van category. § 40-16-101(3)(a)(IV)(E), C.R.S., allows the Commission to determine what qualifies as a "discretionary vehicle". Rule 2.3, 4 CCR 723-33, states: "a vehicle may be qualified as a discretionary vehicle if the vehicle would have qualified as a luxury vehicle at the time the vehicle was new and if the vehicle is in exceptional physical condition at the time of registration." The type of vehicle named in this waiver application would not have qualified as a luxury limousine under any of the definitions contained in § 40-16-101(3)(a)(IV)(A)(B)(C), or (D), C.R.S., at the time it was new. Therefore, Alpine Sedan, Inc., must be granted a waiver of Rule 2.3, 4 CCR 723-33 to allow the type of vehicle named in the application to be considered for registration as a luxury limousine.

9. However, at this time, Alpine Sedan, Inc., has not purchased the vehicle named in the waiver request. Rather, Alpine Sedan, Inc., apparently is requesting that the Commission approve a waiver for any Jeep Grand Cherokee of the model year 1999 or newer. The Commission is of the opinion that a waiver of Rule 2.3, 4 CCR 723-33, may only be granted for a specifically identified vehicle.

10. Therefore, the Commission finds that the information submitted with this application does not warrant the granting of a waiver of Rule 2.3, 4 CCR 723-33.

II. ORDER

A. The Commission Orders That:

1. The application filed by Alpine Sedan, Inc., for a waiver of Rule 2.3, 4 *Code of Colorado Regulations* 723-33 (*Rules, Regulations, and Civil Penalties Governing Motor Vehicle Carriers Exempt From Regulation as Public Utilities*) is denied.
2. The hearing set for February 26, 2003, is vacated.
3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Order.
4. This Order is effective on its Mailed Date.

B. **ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING February 26, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 03A-019CP-WAIVER
Decision No. C03-0236
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I, Bruce N. Smith, Director of the Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination to the following:

APPLICANT:

Alpine Sedan, Inc.
P. O. Box 5678
Vail, CO 81658

ROUTE:

6, 60, all other PUC staff including staff that may be listed as parties, received this decision electronically.

S E A L



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
Director