

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03A-469CP-EXTENSION

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IN THE MATTER OF THE APPLICATION OF ARROW EXPRESS, LLC, FOR AN  
EXTENSION OF OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY NO. 55711.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
VACATING DECISION NO. R04-0013;  
ACCEPTING STIPULATION OF PARTIES;  
GRANTING UNOPPOSED MOTIONS;  
DISMISSING INTERVENTION; GRANTING  
APPLICATION, AS AMENDED, UNDER  
MODIFIED PROCEDURE; DENYING MOTIONS  
AS MOOT; AND CLOSING DOCKET**

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Mailed Date: March 25, 2004

**I. STATEMENT**

1. By its Application for an Extension of Certificate of Public Convenience and Necessity PUC Number 55711 (Application), Arrow Express, LLC (Applicant), seeks to extend operations under its existing Certificate of Public Convenience and Necessity (CPCN) as more specifically described in the Notice of Application Filed (Notice). The Application, filed on October 23, 2003, commenced this docket.

2. On October 27, 2003, the Commission gave public notice of the Application. *See* Notice, dated October 27, 2003, at 4.

3. On November 14, 2003, Golden West Commuter, LLC (Intervenor or Golden West), timely filed an intervention of right. This is the only intervention in this proceeding.

4. On December 1, 2003, the Commission issued an Order Setting Hearing and Notice of Hearing. This Order set the hearing in this matter for January 5, 2004.

5. On December 29, 2003, Intervenor filed a Motion to Vacate Hearing, Handle the Application under Rule 24 of the Commission's Rules of Practice and Procedure, and Grant Application as Restrictively Amended. On December 30, 2003, by Decision No. R03-1460-I, the undersigned Administrative Law Judge (ALJ) vacated the hearing and took under advisement the Motion to Handle Application under Rule 24 and Grant Application as Restrictively Amended.

6. On December 29, 2003, Applicant and Intervenor filed a Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention (Stipulation and Joint Motion).

7. On January 6, 2004, the ALJ issued a recommended decision (*see* Decision No. R04-0013) which granted the two then-pending motions; accepted the Stipulation; dismissed the intervention of Golden West; and granted the Application, as modified. The ALJ subsequently issued two errata notices to that recommended decision. *See* errata notices dated January 16, 2004 and January 28, 2004.

8. By Decision No. R04-0098-I, the ALJ extended the time within which exceptions to Decision No. R04-0013 could be filed.

9. On February 13, 2004, Golden West filed a Motion for Errata Notice, and Alternate Rule 3 Motion for Variance of Rules together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein. Because the ALJ had issued a recommended decision, the Commission initially considered this motion.

10. On February 27, 2004, the Commission remanded this proceeding to the ALJ for consideration of Golden West's Motion for Errata Notice, and Alternate Rule 3 Motion for Variance of Rules together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein. *See* Decision No. C04-0206. The Commission observed that this case is in an unusual procedural posture; that the remand is for consideration of the pending motion; and that the resolution could include, as appropriate the issuance of a revised recommended decision. *Id.* at ¶ 4.

11. Pursuant to the remand of this matter, the ALJ will vacate Decision No. R04-0013 and will issue this new recommended decision. Issuing a new recommended decision will eliminate any procedural uncertainty and will bring much-needed clarity and certainty.

12. Issuing a new recommended decision will render moot the pending Motion for Errata Notice, and Alternate Rule 3 Motion for Variance of Rules together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein.

13. As the previous decision addressing the Motion to Handle Application under Rule 24 and Grant Application as Restrictively Amended and the Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention has been vacated, it is necessary now to address each of these pending motions.

14. The ALJ turns first to the Motion to Handle Application under Rule 24 and Grant Application as Restrictively Amended. This motion is unopposed. For the reasons discussed below, the motion will be granted.

15. The ALJ now considers the Stipulation and Joint Motion. In that filing Applicant restrictively amends the Application, and the parties jointly ask the Commission to accept the

amendment. The Stipulation and Joint Motion states that, concurrent with a Commission finding that the amendment to the Application is acceptable, Intervenor will withdraw its intervention. The Stipulation and Joint Motion are unopposed.

16. The proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable. The Stipulation and Joint Motion states good grounds, and granting the Stipulation and Joint Motion will not prejudice any party. The Stipulation and Joint Motion will be granted. The amendment to the Application will be accepted.

17. Granting the Stipulation and Joint Motion has two impacts. First, the Application will be amended to conform with the restrictive amendment. Second, the intervention of Golden West will be dismissed.

18. Dismissal of the intervention leaves the Application uncontested. The Application now may be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-24, without a formal hearing.

19. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

## **II. FINDINGS AND CONCLUSIONS**

20. By the Application, as amended, Applicant seeks Commission approval of an extension of CPCN PUC No. 55711. Applicant seeks an extension to provide:

Transportation of

passengers and their baggage in call-and-demand limousine service

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

RESTRICTIONS: This authority is restricted as follows:

- (1) restricted against providing any transportation service that originates or terminates at Denver International Airport, Denver, Colorado;
- (2) restricted against providing any transportation service that originates or terminates at any hotel or motel located in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado;
- (3) restricted against providing any transportation service to Denver International Airport, Denver, Colorado, from points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
- (4) restricted against providing any transportation service from Denver International Airport, Denver, Colorado, to points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
- (5) restricted to providing transportation services for: (a) Aspen Place, 15351 East 12th Avenue, Aurora, CO 80011; (b) Marycrest Assisted Living Center, 2850 Columbine Road, Denver CO 80221; (c) Park Hill Assisted Living Center, 1901 Eudora Street, Denver, CO 80220; and (d) HealthOne Alliance, Johnson Adult Day Program, 3444 South Emerson Street, Englewood, CO 80110; and
- (6) restricted against providing any transportation service to, from, or between points in Jefferson County, State of Colorado, *except* that transportation service to or from hospitals, medical clinics, therapy centers, rehabilitation centers, child development centers, schools, and daycare centers located in Jefferson County, State of Colorado, may be provided.

21. The verified Application establishes that Applicant is familiar with the Rules, Regulations, and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicle for Hire, 4 CCR 723-31, and agrees to be bound by, and to comply with, those Rules. The verified Application and its supporting documentation also establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Therefore, Applicant is fit, financially and otherwise, to provide the proposed service.

22. Review of the verified Application and its supporting documentation indicates a need for the proposed service.

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

### **III. ORDER**

#### **A. The Commission Orders That:**

1. Recommended Decision No. R04-0013 is vacated.
2. The Motion to Restrictively Amend Application and to Withdraw Intervention is granted.
3. The amendment to the Application for an Extension of Certificate of Public Convenience and Necessity PUC Number 55711 filed by Arrow Express, LLC, is accepted.
4. The Application for an Extension of Public Convenience and Necessity PUC Number 55711 filed by Arrow Express, LLC, is amended.
5. The intervention filed by Golden West Commuter, LLC, is dismissed.
6. The Motion to Handle Application under Rule 24 of the Commission's Rules of Practice and Procedure and Grant Application as Restrictively Amended is granted.
7. The Application for an Extension of Certificate of Public Convenience and Necessity PUC Number 55711 filed by Arrow Express, LLC, as that Application has been amended, is granted.

8. Certificate of Public Convenience and Necessity PUC Number 55711 is extended to read as follows:

Transportation of

passengers and their baggage in call-and-demand limousine service

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

RESTRICTIONS: This authority is restricted as follows:

- (1) restricted against providing any transportation service that originates or terminates at Denver International Airport, Denver, Colorado;
- (2) restricted against providing any transportation service that originates or terminates at any hotel or motel located in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado;
- (3) restricted against providing any transportation service to Denver International Airport, Denver, Colorado, from points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
- (4) restricted against providing any transportation service from Denver International Airport, Denver, Colorado, to points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
- (5) restricted to providing transportation services for: (a) Aspen Place, 15351 East 12th Avenue, Aurora, CO 80011; (b) Marycrest Assisted Living Center, 2850 Columbine Road, Denver CO 80221; (c) Park Hill Assisted Living Center, 1901 Eudora Street, Denver, CO 80220; and (d) HealthOne Alliance, Johnson Adult Day Program, 3444 South Emerson Street, Englewood, CO 80110; and
- (6) restricted against providing any transportation service to, from, or between points in Jefferson County, State of Colorado, *except* that transportation service to or from hospitals, medical clinics, therapy centers, rehabilitation centers, child development centers, schools, and daycare centers located in Jefferson County, State of Colorado, may be provided.

9. Arrow Express, LLC, shall file an appropriate tariff with the Commission.
10. Arrow Express, LLC, shall cause to be filed with the Commission certificates of insurance as required by Commission rules.

11. Arrow Express, LLC, shall pay the issuance fee and annual vehicle identification fees.

12. Arrow Express, LLC, may not begin operations under its extended authority until it has met the requirements set out in Ordering Paragraphs 9 through and including 11, above.

13. If Arrow Express, LLC does not comply with the requirements of Ordering Paragraphs 9 through and including 11, above, within 60 days of the effective date of this Order, then Ordering Paragraphs 7 and 8, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.

14. The Motion for Errata Notice, and Alternate Rule 3 Motion for Variance of Rules together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein are denied as moot.

15. Docket No. 03A-469CP-Extension is closed.

16. 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.

17. 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.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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 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.

18. 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.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge