

Decision No. R04-0763

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-154CP

IN THE MATTER OF THE APPLICATION OF MICHAEL ALBERT MURRELL,
D/B/A VALLEY TAXI, P.O. BOX 1272, GLENWOOD SPRINGS, COLORADO 81602 FOR
AN EXTENSION OF OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY PUC NO. 55723.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DISMISSING APPLICATION**

Mailed Date: July 12, 2004

Appearances:

Michael Albert Murrell, doing business as Valley Taxi, Glenwood
Springs, Colorado, *pro se*, for Applicant; and

I. H. Kaiser, Esq., Denver, Colorado, for Intervenors, Hy-Mountain
Transportation, Inc., doing business as High Mountain Taxi, Inc.,
Vail Valley Taxi, Inc., and Snow Limousine, Inc.

I. STATEMENT

1. The captioned application of Michael Albert Murrell, doing business as Valley Taxi (Valley Taxi), was filed with the Colorado Public Utilities Commission (Commission) on May 29, 2004, and was published in the Commission's "Notice of Applications Filed" on April 5, 2004.

2. As noticed, the application seeks authority to extend operations under Certificate of Public Convenience and Necessity (CPCN) PUC No. 55723 as follows:

transportation of

passengers and their baggage, in taxi service,

from all points located within a 20-mile radius of each of the following named interchanges on Interstate 70: Interchange 75, Interchange 90, Interchange 116, Interchange 147, and Interchange 163, to all points in the State of Colorado.

3. Timely interventions were filed in this matter by Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi); Snow Limousine, Inc.; Hy-Mountain Transportation, Inc., doing business as High Mountain Taxi, Inc. (High Mountain); and Vail Valley Taxi, Inc. (Vail Valley) (collectively, Intervenor).

4. This matter was originally scheduled for hearing on June 8 and 9, 2004, but the hearing was continued to July 8 and 9, 2004, in Glenwood Springs, Colorado, at the request of Valley Taxi. *See*, Decision No. R04-0540-I.

5. On June 21, 2004, Valley Taxi and Sunshine Taxi filed a Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention (Stipulation). Under the terms of the Stipulation, Sunshine Taxi agreed to withdraw its intervention on the basis of Valley Taxi's agreement to amend the application to read as follows:

For authority to extend operations under CPCN No. 55723 to include the transportation of

passengers and their baggage, in taxi service,

from all points located within a 20-mile radius of each of the following named interchanges on Interstate 70: Interchange 75, Interchange 90, Interchange 116, Interchange 147, and Interchange 163, to all points in the State of Colorado.

RESTRICTIONS:

- i. Restricted against providing any service between points in Mesa County, Colorado.

- ii. Restricted against providing any service from points in Mesa County, Colorado.
- iii. Service to Mesa County, Colorado is restricted to transportation only to Walker Field Airport, the Greyhound Bus Station, or the AMTRAK Rail Station in Grand Junction, Colorado.

The above-described restrictive amendment was approved on June 22, 2004, and the Sunshine Taxi intervention was deemed withdrawn on that date. *See*, Decision No. R04-0678-I.

6. The matter was called for hearing by the undersigned administrative law judge (ALJ) at the assigned time and place. Mr. Murrell entered his appearance, *pro se*, on behalf of Valley Taxi. An appearance was entered on behalf of Vail Valley, High Mountain, and Peak by their legal counsel. During the course of the hearing testimony was presented by Mr. Murrell on behalf of Valley Taxi. Exhibits 1 through 5 were identified, offered, and admitted into evidence. Exhibit 6 was rejected.

7. At the conclusion of Valley Taxi's case-in-chief, Vail Valley, High Mountain, and Peak jointly moved for dismissal of the application on the ground that Valley Taxi had failed to present a *prima facie* case. After hearing argument from the parties, the ALJ granted the motion to dismiss.

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

II. FINDINGS OF FACT AND CONCLUSIONS THEREON

9. Valley Taxi is a common carrier of passengers providing taxi services within the Glenwood Springs, Colorado, area pursuant to authority issued to it by the Commission in CPCN PUC No. 55723. *See*, Exhibits 3 and 4. This application seeks to extend operations under that certificate as described in Section I, Paragraph 5 above. *See also*, Exhibit 5.

10. Letters in support of the application from 39 individuals working or residing in the involved service areas were admitted into evidence. *See*, Exhibit 1. None of these individuals appeared at the hearing to sponsor these statements or to otherwise testify in support of the application. Valley Taxi contends that these statements provide sufficient evidence of a need for additional taxi service as well as the inadequacy of existing taxi service within the scope of the application thereby warranting a grant of the same. It also contends that the recent request of Vail Valley for a six-month suspension of operations under its authorities supports an inadequacy finding within some of these areas. *See*, Exhibit 2.

11. At the hearing Valley Taxi failed to present specific evidence concerning either its financial or operational fitness to conduct the proposed additional services. For example, no financial statements documenting its assets or liabilities were offered into evidence and no testimony was presented on this point. Similarly, no testimony was presented concerning the type or number of vehicles that would be deployed to provide the proposed service or the manner in which they would be maintained; the manner in which qualified drivers would be secured, trained and supervised; or the adequacy of the communication system used in receiving service requests or in dispatching vehicles to honor such requests.

12. The legal standard governing this application for taxi service is that of regulated monopoly by virtue of the fact that Valley Taxi proposes to serve within or between counties with populations of less than 60,000 under the 1990 census. *Rocky Mountain Airways v. P.U.C.*, 181 Colo. 170, 509 P.2d 804 (1973); § 40-10-105(1), C.R.S. Under the doctrine of regulated monopoly, an applicant has the heavy burden of proving by reliable and competent evidence that the public needs its proposed service **and** that the service of existing certificated carriers within the proposed service area is “substantially inadequate”. *Rocky Mountain Airways v. P.U.C.*,

supra; *Colorado Transportation Co. v. P.U.C.*, 158 Colo. 136, 405 P.2d 682 (1965). The test of substantial inadequacy is not perfection. *Ephraim Freightways, Inc. v. P.U.C.*, 151 Colo. 596, 380 P.2d 228 (1963).

13. Valley Taxi has not sustained its burden of proof under the above-described legal standard. While the subject support letters may contain some generalized expressions of need for additional transportation services, they do not provide competent evidence that existing service is inadequate. No mention is made in any or the support letters of the existing carriers providing such service, the extent to which attempts have been made to use them, or any deficiencies encountered in connection with such use.

14. In addition, the letters constitute hearsay evidence. None of the individuals signing the statements appeared at the hearing to authenticate them or to have their reliability tested through cross-examination. Therefore, the weight that may be afforded the support letters is minimal.

15. Finally, Valley Taxi's failure to submit evidence concerning its financial or operational fitness precludes making the necessary finding that it is fit to conduct the service proposed by the application. Accordingly, Valley Taxi failed to present a *prima facie* case and the Intervenor's motion to dismiss the application on that ground must be granted.

16. The dismissal of this application is without prejudice. As a result, Valley Taxi is free to re-file the application at any time.

III. ORDER

A. The Commission Orders That:

1. The application of Michael Albert Murrell, doing business as Valley Taxi, is dismissed, and Docket No. 04A-154CP is closed.

2. 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.

3. 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.

a) 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.

b) 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.

4. If exceptions to this 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

Administrative Law Judge

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