

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-410BP

IN THE MATTER OF THE APPLICATION OF BLUE PEAKS DEVELOPMENTAL SERVICES, INC., FOR AUTHORITY TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PETITION TO INTERVENE;
ACCEPTING STIPULATION; DISMISSING
INTERVENTION; GRANTING APPLICATION,
AS AMENDED, UNDER MODIFIED
PROCEDURE; AND CLOSING DOCKET**

Mailed Date: November 5, 2004

I. STATEMENT

1. On August 5, 2004, Blue Peaks Developmental Services, Inc. (Blue Peaks or Applicant), filed a verified Application to Operate as a Contract Carrier by Motor Vehicle for Hire (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Notice of Applications Filed dated August 9, 2004 (Notice) at 4. That Notice, *inter alia*, established the intervention period and the procedural schedule for this proceeding. The scope of the Application as originally filed is set out in the Notice.

3. On September 8, 2004, Golden West Commuter, LLC (Golden West), filed a Petition for Leave to Intervene (Petition) and Intervention. In view of the Stipulation filed on October 29, 2004, the Petition will be granted. Golden West is the only intervenor.

4. On September 15, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing. The Order established a hearing date of October 21, 2004.

5. On September 22, 2004, Golden West filed its Witness List, Exhibits, and Notice in Compliance with the Commission's Pre-filing Rules.

6. On October 1, 2004, Blue Peaks filed its List of Witnesses and Exhibits.

7. On October 14, 2004, Golden West filed a Motion to Dismiss, Motion to Postpone Hearing Pending Ruling on Motion to Dismiss, and Motion to Waive Response Time on Motion to Postpone Hearing. The undersigned Administrative Law Judge (ALJ) granted the Motion to Postpone Hearing and vacated the hearing scheduled for October 21, 2004. *See* Decision No. R04-1215-I.

8. On October 29, 2004, Blue Peaks and Golden West filed a Stipulation and a Motion to Restrictively Amend Application and to Withdraw Intervention (Stipulation). In that filing Applicant restricted the Application as follows:

Transportation of

passengers and their baggage

between all points in the Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, State of Colorado.

RESTRICTIONS:

1. This authority is restricted to providing transportation services for clients of Blue Peaks Developmental Services, Inc., 703 4th Street, Alamosa, Colorado 81101; and
2. This authority is restricted to providing transportation services for passengers who are recipients of Medicaid, and their attendants, residing in the Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, State of Colorado; and
3. This authority is restricted to providing transportation services to or from facilities owned, operated or overseen by, or affiliated with, Blue Peaks Developmental Services, Inc., located in the

Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, State of Colorado; and

4. This authority is restricted to providing non-emergency transportation services for passengers traveling to or from hospitals, medical offices, dental offices, rehabilitation centers, adult and child development centers, parks, libraries, recreation centers, schools, and daycare centers.

9. Golden West stated that the Commission may deem Golden West's intervention withdrawn if and when the Commission accepts the Stipulation as filed.

10. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be wholly contained within the permit. Both must be worded to permit a person to know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone used to determine whether the operation of a contract carrier is within the scope of its Commission-granted authority. The restrictions proposed in the Stipulation meet these standards. Therefore, the ALJ finds and concludes that the proposed amendments in the Stipulation are restrictive in nature, are clear and understandable, and are administratively enforceable.

11. The Motion to Restrictively Amend Application and to Withdraw Intervention states good grounds, and granting the Motion to Restrictively Amend Application and to Withdraw Intervention will not prejudice any party. The Motion to Restrictively Amend Application and to Withdraw Intervention will be granted.

12. The restrictions to the authority sought by Applicant will be accepted. The Application will be limited as set out above.

13. Granting the Motion to Restrictively Amend Application and to Withdraw Intervention has two impacts. First, the authority sought (as stated in the Notice and the Application) will be amended to conform with the restrictive amendments. Second, the Golden West intervention will be dismissed.

14. Dismissal of the Golden West intervention requires that the Motion to Dismiss be considered withdrawn because the Motion to Dismiss was filed by Golden West, which is no longer a party in this matter. The Motion to Dismiss will be considered withdrawn.

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

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

II. FINDINGS AND CONCLUSIONS

17. Applicant is a Colorado nonprofit corporation in good standing.

18. Applicant asks that the Commission issue to it a permit to operate as a contract carrier by motor vehicle for hire. By the Application, as amended, Blue Peaks seeks authorization (*i.e.*, a permit) to provide:

Transportation of

passengers and their baggage

between all points in the Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, State of Colorado.

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4. This authority is restricted to providing non-emergency transportation services for passengers traveling to or from hospitals, medical offices, dental offices, rehabilitation centers, adult and child development centers, parks, libraries, recreation centers, schools, and daycare centers.

19. The verified Application establishes that Blue Peaks is familiar with the Rules and Regulations Governing Contract Carriers by Motor Vehicle for Hire, 4 CCR 723-23, and agrees to be bound by, and to comply with, those Rules. The verified Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. In addition, the verified Application and supporting documents (including the support letter), establish that the service proposed is specialized and tailored to meet the customers' distinct needs. Finally, review of the verified Application and its supporting documentation indicates a need for the proposed service. Therefore, because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the permit should be granted.

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

III. ORDER

A. It Is Ordered That:

1. The Petition for Leave to Intervene filed by Golden West Commuter, LLC, is granted.
2. The Motion to Restrictively Amend Application and to Withdraw Intervention is granted.
3. The restrictions to the Application to Operate as a Contract Carrier by Motor Vehicle for Hire filed by Blue Peaks Developmental Services, Inc., as set out in the Stipulation and Motion to Restrictively Amend Application, are accepted.
4. The intervention filed of Golden West Commuter, LLC, is dismissed.
5. The Application to Operate as a Contract Carrier by Motor Vehicle for Hire filed by Blue Peaks Developmental Services, Inc., as that Application has been restricted, is granted.
6. Blue Peaks Developmental Services, Inc., is granted a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers and their baggage

between all points in the Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, State of Colorado.

RESTRICTIONS:

1. This authority is restricted to providing transportation services for clients of Blue Peaks Developmental Services, Inc., 703 4th Street, Alamosa, Colorado 81101; and

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4. This authority is restricted to providing non-emergency transportation services for passengers traveling to or from hospitals, medical offices, dental offices, rehabilitation centers, adult and child development centers, parks, libraries, recreation centers, schools, and daycare centers.

7. The authority granted in Ordering Paragraph No. 6 is conditioned on Blue Peaks Developmental Services, Inc.'s meeting the requirements contained in this Order and is not effective until these requirements have been met.

8. All operations under the permit granted by Ordering Paragraph No. 6 shall be strictly contract operations, and the Commission retains jurisdiction to make such amendments to this permit as deemed advisable.

9. The right of Blue Peaks Developmental Services, Inc., to operate shall depend upon its compliance with all present and future laws, regulations, and Orders of the Commission.

10. Blue Peaks Developmental Services, Inc., shall cause to be filed with the Commission tariffs as required by Commission rules.

11. Blue Peaks Developmental Services, Inc., shall cause to be filed with the Commission certificates of insurance as required by Commission rules.

12. Blue Peaks Developmental Services, Inc., shall pay the issuance fee and annual vehicle identification fees.

13. Blue Peaks Developmental Services, Inc., may not begin operations under its permit until it has met the requirements set out in Ordering Paragraphs No. 10 through and including No. 12, above.

14. If Blue Peaks Developmental Services, Inc., does not comply with the requirements of Ordering Paragraphs No. 10 through and including No. 12, above, within 60 days of the effective date of this Order, then Ordering Paragraphs No. 5 and No. 6, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.

15. Docket No. 04A-410BP 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

Administrative Law Judge