

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0254EC

IN THE MATTER OF ALTERNATIVE SUPPORT, INC. SEEKING A DECLARATORY ORDER PURSUANT TO THE COMMISSION'S RULE OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(1).

**DECISION DISMISSING PETITION
FOR DECLARATORY ORDER**

Mailed Date: July 30, 2020
Adopted Date: July 8, 2020

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. In this matter, the Commission considers a petition for declaratory order (Petition) filed by Alternative Support, Inc. (Alternative Support) on June 12, 2020. The Petition seeks an order stating that Alternative Support's nonmedical transportation services for "[i]ndividuals with Intellectual and Developmental Disabilities receiving Residential, Specialized Habilitation, and Supported Community Connection Services"¹ are exempt from regulation by the Commission under § 40-10-140(3), C.R.S., as refined by § 42-7-510(2)(b), C.R.S., and therefore fall outside the regulatory purview of the Commission and need no certificate of public convenience and necessity (CPCN).

2. Alternative Support explains that it is a "program approved service agency through Colorado Department of Health Care Policy and Financing,"² and that it uses minivans to transport individuals to and from its day habilitation locations. Alternative Support states that

¹ Petition at 1.

² *Id.*

the minivans used for its non-medical transportation services are not modified for wheelchair use, and that the minivans are Toyota Siennas that have not been changed from the original manufacturer specifications.

3. Article 10 of Title 40 of the Colorado Revised Statutes, including § 40-10-104, C.R.S., was repealed in 2011. Currently, § 40-10.1-105, C.R.S., sets forth exemptions from the Commission's regulation of motor carriers. Like the now-repealed § 40-10-104, C.R.S., it contains an exemption for "[t]ransportation by motor vehicles designed and used for the nonemergency transportation of individuals with disabilities as defined in [§] 42-7-510 (2)(b), C.R.S." § 40-10.1-105(e), C.R.S. Section 42-7-510(2)(b), C.R.S., defines such motor vehicles as vehicles that are:

designed to facilitate the loading of individuals with physical disabilities confined to a wheelchair except vehicles owned by the United States government, vehicles owned and operated by any special transportation district, or privately owned vehicles when such privately owned vehicles are used by the owner to transport the owner or members of the owner's family who are confined to a wheelchair.

4. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i)(II) of the Commission's Rules of Practice and Procedure. If a petition meets those requirements, we then exercise our discretion to accept or dismiss the petition.

5. We find the Petition does not present a controversy or uncertainty regarding a tariff, statute, rule, regulation, or order that the Commission may resolve. The requested exemption under § 40-10-140(3), C.R.S., is no longer available because the statute has been repealed. Even assuming Alternative Support intended to request a declaratory order that it is exempt from Commission regulation under § 40-10.1-105(e), C.R.S., the facts as presented in the

Petition reveal that Alternative Support's vehicles do not meet the relevant statutory definition in § 42-7-510(2)(b), C.R.S. While it is possible that Alternative Support qualifies for an exemption from the Commission's regulation,³ and therefore may not need a CPCN or permit⁴ for its transportation services, the Commission cannot accept the Petition because, as filed, it does not present a controversy or uncertainty the Commission may resolve.

6. Accordingly, we dismiss the Petition. However, the Petition is dismissed without prejudice. Alternative Support may file another petition for declaratory order or other appropriate pleading that clarifies the questions presented, the exemption referred to or requested, and how Alternative Support's transportation services meet each requirement of that exemption. Subsequent pleadings, if any are filed, should be in accordance with the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and support the relief requested.

II. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order filed by Alternative Support, Inc. on June 12, 2020, is dismissed without prejudice, consistent with the discussion above.

2. The 20-day time period provided pursuant to § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

³ There are multiple exemptions from Commission regulation under Article 10.1 of Title 40. For example, § 40-10.1-105, C.R.S., sets forth 11 types of transportation not subject to Commission regulation under Article 10.1, including people service transportation pursuant to Article 1.1 of Title 40 (§§ 40-1.1-101 to 40-1.1-106, C.R.S.).

⁴ Under §§ 40-10.1-301 to 40-10.1-304, C.R.S., certain types of nonmedical transportation require a permit.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners