

Decision No. R22-0520-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0132CP

IN THE MATTER OF THE APPLICATION OF NDW ENTERPRISES LLC DOING BUSINESS AS SKI TOWN TRANSPORTATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DENYING MOTION TO SET ASIDE AND
GRANTING MOTION TO COMPEL**

Mailed Date: September 7, 2022

I. STATEMENT

1. On September 2, 2022, Alpine Taxi/Limo, Inc., d/b/a Alpine and/or Go Alpine (Go Alpine), filed its Motion to Compel.

2. By Decision No. R22-0516-I, issued September 6, 2022, response time to the Motion to Compel was shortened to September 6, 2022.

B. Motion to Set Aside Interim Order

3. On September 6, 2022, NDW Enterprises LLC d/b/a Ski Town Transportation (Ski Town) filed its Motion to Set Aside Interim Order. After citing some dates during the proceeding, Ski Town requests that it be allowed up to and including September 8, 2022, to file a response to the Motion to Compel.

4. Go Alpine propounded the discovery upon which disputes remain on Ski Town on August 16, 2022.

5. By Decision No. R22-0468-I, Ski Town was granted the uncontested extension to Friday, August 23, 2022 to file and/or supplement: (a) a list that identifies the witnesses Ski Town intends to call at the hearing, including a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Ski Town will present at the hearing.

6. Ski Town responded to Go Alpine's discovery on August 30, 2022. However, obligations are not complete upon timely providing responses and objections to discovery. Rather, parties are obliged to participate in good faith effort to resolve the discovery disputes:

13. Discovery disputes are not looked upon with favor by the Commission. Parties are encouraged to resolve discovery disputes among themselves. However, in the event discovery disputes cannot be resolved, Rule 1405(b) provides for sanctions for parties and attorneys who fail to cooperate in discovery matters in good faith.

Decision No. R09-1070-I, Docket No. 09F-294E, issued September 22, 2009, at 5.

7. Counsel for Go Alpine began communicating with Counsel for Ski Town regarding the discovery disputes on August 31, 2022. Despite a further attempt by Go Alpine's counsel, Ski Town failed to respond or supplement responses previously made as of Friday, September 2, 2022.

8. Counsel for Ski Town acknowledges the filing of Go Alpine's motion to compel (including a request to shorten response time to September 6, 2022) at 12:54pm on Friday, September 2, 2022. Still, there is no explanation as to a lack of communication regarding attempts to resolve pending disputes. Further, as of the issuance of Decision No. R22-0468-I through the Commission's E-Filing System at 8:53 a.m., Ski Town made no responsive filing addressing any relief requested by Go Alpine.

9. Despite being afforded an opportunity to address the pending Motion to Compel, Ski Town chose not to do so. Rather, Ski Town chose to draft an entire pleading requesting two

full days (of the total of three full days available) to even file a response to the motion addressing disputes that have been unresolved since August 31, 2022.

10. An in-person hearing is scheduled to commence in this matter in Steamboat Colorado on September 12, 2022 at 9:00 a.m.

11. Pursuant to Rule 1400, 4 CCR 723-1, the responding party shall have 14 days after service of a motion, **or such lesser or greater time as the Commission may allow**, in which to file a response. In light of the foregoing circumstances, Ski Town clearly could have responded to the motion to compel if it had chosen to do so.

12. No party will suffer prejudice by shortening response time to the Motion to Set Aside Interim Order *sua sponte*. Response time will be shortened to the issuance of this Interim Decision.

13. It is found and concluded that Ski Town failed to show sufficient cause to set aside Decision No. R22-0468-I. The Motion to Set Aside Interim Order will be denied.

C. Motion to Compel

14. Go Alpine served its discovery on Ski Town on August 16, 2022. Ski Town provided timely responses on August 30 (See Exhibit D to the Motion to Compel).

15. Rule 1405 of the Commission's Rules of Practice and Procedure provides for discovery in proceedings such as the one pending within. With specified modifications, the Commission rules incorporate the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes. See Rule 1405 and Rule 1004(h), 4 CCR 723-1. Rule 1405(k) applies further limits in regulated intrastate carrier application proceedings.

16. All parties are required to disclose testimony or a detailed summary of testimony, and copies of its exhibits. In consideration of this obligation, the Commission rules strike an appropriate balance restricting the scope of discovery as compared to other proceedings.

17. Rule 1405 of the Rules of Practice and Procedure, 4 *Code of Regulations* (CCR)

723 limits discovery in transportation matters:

Parties shall be limited to a single set of not more than 20 interrogatories to each party, including all discrete subparts, requests for production of documents, or requests for admission.

Rule 1405(k)(IV), 4 CCR 723-1.

18. Rule 33(b) Colorado Rules of Civil Procedure (C.R.C.P.) incorporated by

Commission rules provides that:

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable....(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection will be deemed to be waived unless the party's failure to object is excused by the court for good cause shown.

19. Rule 34(b) C.R.C.P. incorporated by Commission rules similarly provides that:

[t]he response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified.

20. Ski Town objected to request nos. to request nos. 2, 4, 7, 10, 11, 13, 14, 15, 16, 19, and 20 as being over broad due to requesting data for an indefinite period of time and contrary to Rule 1405(k)(V), 4 CCR 723-1. On August 31, 2022, Go Alpine acknowledged the objection and restricted the scope of each of these requests to “the most recent 6 months of data.” *See*, Exhibit A to the Motion to Compel.

21. Ski Town objected to request nos. 1, 5, and 6 as follows:

Intervenor’s attention is directed to the letters of support attached to the permanent authority application, as well as the Temporary Authority application, Docket No. 22A-0131CP-TA. These are directly responsive. However, because this matter is set for oral hearing, and these witnesses are expected to testify in person, it is expected that they will have additional examples of materially inadequate service of the intervenor.

22. Go Alpine argues that no valid basis for objection is stated and that a response should be compelled.

23. Although Ski Town failed to raise a valid legal objection to the interrogatory, Interrogatory 1 is found to be overly broad not reasonably calculated to lead to the discovery of admissible evidence on its face. Objections to Interrogatories 5 and 6 are overruled.

24. Finally, Go Alpine seeks to compel disclosure of information filed by Ski Town subject to the Commission's rules to protect information filed subject to a claim of confidentiality.

25. Go Alpine states that it executed a non-disclosure agreement (NDA) in accordance with Commission rules and filed it with the Commission on August 24, 2022. Despite service of the NDA upon Ski Town, it has failed to disclose the information filed subject to the claim of confidentiality or respond in any way. Ski Town will be compelled to disclose the information filed subject to a claim of confidentiality in accordance with Commission rules.

II. ORDER

A. It Is Ordered That:

1. Response time to the Motion to Set Aside Interim Order filed by NDW Enterprises LLC d/b/a Ski Town Transportation (Ski Town) on September 6, 2022, is shortened to the issuance of this Interim Decision.

2. The Motion to Set Aside Interim Order is denied

3. The Motion to Compel Discovery filed by Alpine Taxi/Limo, Inc., d/b/a Alpine and/or Go Alpine (Go Alpine) on July 8, 2022, is granted in part.

4. Ski Town shall forthwith, but in no event later than 12:00 p.m. on September 9, 2022, deliver information to Go Alpine that was filed in this proceeding subject to a claim of confidentiality.

5. Ski Town shall forthwith, but in no event later than 12:00 p.m. on September 9, 2022, provide responses to Interrogatories 2, 4, 7, 10, 11, 13, 14, 15, 16, 19, and 20. The scope of such interrogatories are limited to the six-month period of time prior to the date of this Interim Decision.

6. Ski Town shall forthwith, but in no event later than 12:00 p.m. on September 9, 2022, provide responses to Interrogatories 5 and 6 propounded on August 16, 2022, by Go Alpine.

7. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director