

Decision No. R25-0855-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0202CP

IN THE MATTER OF THE APPLICATION OF EMERALD EXPRESS TRANSPORTATION INC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION ADDRESSING PREHEARING
MOTIONS**

Issued Date: December 1, 2025

I. STATEMENT

A. Background

1. On May 19, 2025, Emerald Express Transportation Inc. (“Emerald Express”) filed the application described in the caption above (“Application”).

2. On May 23, 2025, Emerald Express filed: (a) an amendment to the Application that revised the description of the geographic scope of the authority sought (“Amendment”); and (b) Application for Temporary Authority for the same geographic scope of authority sought in the Amendment. The Application for Temporary Authority was a duplicate of the same application filed in Proceeding No. 25A-0197CP-TA, which the Colorado Public Utilities Commission (“Commission”) denied in Decision No. C25-0456 on June 16, 2025.

3. On May 27, 2025, the Commission issued public notice of the authority sought by Emerald Express in the Application as follows:

For permanent authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers as follows:

(1) Transportation of passengers in call-and-demand shuttle service between all points within the city of Steamboat Springs, Colorado, and between said points, on the one hand, and the Yampa Valley Regional Airport, Hayden, Colorado, on the other hand.

(2) Transportation of passengers in call-and-demand shuttle service between all points within the city of Craig, Colorado, and between said points, on the one hand, and the Yampa Valley Regional Airport, Hayden, Colorado, on the other hand.

4. On June 11, 2025, Alpine Taxi/Limo, Inc. (“Alpine Taxi”) filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for Hearing.

5. On June 17, 2025, NDW Enterprises LLC d/b/a Ski Town Transportation (“Ski Town Transportation”) filed an Intervention by Right to Permanent Authority Application.

6. On July 9, 2025, the Commission deemed the Application complete and referred the proceeding by minute entry to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

7. On July 23, 2025, the ALJ issued Decision No. R25-0540-I that established a procedural schedule; a deadline of August 1, 2025 for any statements to be filed in which the filing party could specify the party’s preference for an in-person, remote, or hybrid hearing, and; if the party prefers an in-person hearing, identification of the preferred location for the hearing and an explanation of why the hearing should not take place in one of the Commission’s hearing rooms in Denver.

8. On August 1, 2025, each party filed a Statement Regarding Hearing. All parties prefer an in-person hearing in Steamboat Springs.

9. On August 28, 2025, the ALJ issued Decision No. R25-0627-I that scheduled a remote prehearing conference for September 25, 2025 at 3:00 p.m. and an in-person hearing in Steamboat Springs for September 30-October 1, 2025.

10. On September 12, 2025, Alpine Taxi filed a Motion to Reschedule Hearing and for a Status Conference (“Motion to Reschedule Hearing”).

11. On September 18, 2025, Alpine Taxi filed a Motion in Limine requesting that any evidence regarding Yampa Valley Regional Airport’s (“YVRA”) decision to bar Alpine Taxi from providing transportation service to the airport be barred from admission at the hearing in this proceeding.

12. On September 19, 2025, Ski Town Transportation filed a Motion for Extension to File Witness List and Exhibits (“Motion for Extension”).

13. On September 25, 2025, the ALJ issued Decision No. R25-0694-I that granted the Motion to Reschedule Hearing, vacated the hearing, and rescheduled the remote prehearing conference to October 10, 2025 at 11:00 a.m.

14. On October 3, 2025, Emerald Express filed an Unopposed Motion for Extension of Time to Respond to Motion in Limine (“Unopposed Motion”) seeking a one-week extension. On the same day, the ALJ sent an email to the parties stating that the Unopposed Motion was granted.

15. On October 10, 2025, Emerald Express filed its Response to Alpine Taxi’s Motion in Limine.

16. On October 10, 2025, the remote prehearing conference took place as scheduled. The ALJ took oral argument on the Motion in Limine and then held it in abeyance. The parties informed the ALJ that they and their witnesses are available for the evidentiary hearing on December 2-4, 2025. The ALJ informed Emerald Express that the evidentiary hearing could be held that week only if it waived the statutory deadline. Emerald Express responded that it would so waive the statutory deadline. The ALJ instructed Emerald Express to file a pleading in which it formally waives the statutory deadline.

17. On October 15, 2025, Alpine Taxi filed a Petition for Declaratory Judgment requesting an order addressing whether YVRA has the authority to bar Alpine Taxi from serving the airport (“Petition”). The Commission accepted the Petition and assigned it Proceeding No. 25D-0435CP (“Declaratory Judgment Proceeding”).

18. On October 16, 2025, Emerald Express filed a pleading waiving the statutory deadline in § 40-6-109.5, C.R.S.

19. On October 29, 2025, the ALJ issued Decision No. R25-0778-I that scheduled the evidentiary hearing in Steamboat Springs for December 2-4, 2025 and a remote prehearing conference for November 24, 2025 at 11:00 a.m.

20. On November 21, 2025, Ski Town Transportation filed a Motion to Dismiss and for Waiver of Response Time.

21. On November 24, 2025, Emerald Express filed a Motion in Limine for Discovery Sanctions and a Motion to Strike.

22. On November 24, 2025, the remote prehearing conference scheduled in Decision No. R25-0778-I took place. The ALJ set a deadline of November 26, 2025 at noon to file

responses to the Motions filed on November 21 and 24, 2025. The ALJ granted-in-part and denied-in-part Alpine Taxi's Motion in Limine filed on September 18, 2025.

23. On November 26, 2025, Ski Town Transportation filed responses to Emerald Express' Motion in Limine and Motion to Strike, and Emerald Express filed a response to Ski Town Transportation's Motion to Dismiss and an amended witness list substituting Michael Buccino for Steve Muntean.

B. Motions

1. Alpine Taxi's Motion in Limine

a. Parties' Positions

24. As noted above, the ALJ granted-in-part and denied-in-part Alpine Taxi's Motion in Limine at the November 24, 2025 remote prehearing conference. The following memorializes that decision.

25. Alpine Taxi seeks a decision barring the admission of evidence concerning the dispute between Alpine Taxi and YVRA that has resulted in the latter not permitting the former to provide transportation services to or from the airport. Alpine Taxi contends the evidence regarding the dispute is irrelevant to the issues in this proceeding. Alpine Taxi also argues that it will be unfairly prejudiced if the Motion in Limine is not granted because it cannot conduct "proper discovery" of YVRA.

26. Emerald Express responds that evidence concerning Alpine Taxi's inability to provide transportation service to the airport is relevant to the question of whether existing service is substantially inadequate and there is a public need for additional service. Emerald Express also asserts that the evidence should be admitted, and the ALJ should determine the appropriate weight to give to it. Emerald Express concludes that Alpine Taxi's Motion in Limine should be

denied, and decisions regarding the admissibility of specific pieces of evidence should be made at the hearing.

b. Analysis

27. As stated at the remote prehearing conference on November 24, 2025, Alpine Taxi's Motion in Limine is granted-in-part and denied-in-part. One of the elements that Emerald Express must prove in this proceeding is that the existing transportation service to the airport is substantially inadequate.¹ As the Supreme Court has held, "[a]n applicant for passenger-service authority can demonstrate the substantial inadequacy of an incumbent carrier by showing that the incumbent carrier is not 'ready, willing, and able at all times to render service to anyone who might demand it.'"² As a result, the evidence that is the subject of the Motion in Limine is relevant.

28. In addition, Alpine Taxi can conduct discovery of non-parties like YVRA. Rule 1406 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-I specifically permits parties to obtain and serve subpoenas on third-parties. Alpine Taxi thus could have conducted discovery of YVRA. Alpine Taxi's argument to the contrary is incorrect.

29. Based on the foregoing, the request to prohibit all evidence regarding Alpine Taxi's inability to serve the YVRA will be denied. However, as the ALJ stated at the remote prehearing conference, the ALJ does not need to hear in-depth evidence regarding the reasons for YVRA's ban of Alpine Taxi. Such evidence will be addressed in Proceeding No. 25D-0435CP. Instead, evidence regarding Alpine Taxi's past transportation service to the airport and whether it satisfied the need for such transportation service, either alone or in tandem with Ski Town

¹ *Durango Transp., Inc. v. PUC*, 122 P.3d 244, 247 (Colo. 2005).

² *Id.* (quoting *Ephraim Freightways, Inc. v. PUC*, 380 P.2d 228, 232 (1963)).

Transportation's service, is the most relevant. The ALJ will make decisions regarding the admissibility of particular evidence at the hearing.

2. Ski Town Transportation's Motion to Dismiss

a. Parties' Positions

30. Ski Town Transportation asserts that the Application must be dismissed because: (a) Emerald Express has not disclosed and filed exhibits as required by Decision No. R25-0540-I; and (b) the Declaratory Judgment Proceeding should proceed first to a final determination before this proceeding is taken up. As to the first ground, Ski Town Transportation argues that Emerald Express cannot prove its case without exhibits and, if it presents exhibits at the hearing, Ski Town Transportation will be prejudiced. As to the second ground, Ski Town Transportation contends that YVRA's barring of Alpine Taxi from the airport:

is the primary basis for the Emerald Express application and the basis of the alleged "need" for the service of Emerald Express. Thus, should the Commission rule that YVRA lacks the authority to bar Alpine from serving the airport under its [CPCN], the basis for the Emerald Express application and alleged need therefor is extinguished. Under such circumstances, prudence dictates that this matter be dismissed and not be re-filed until a final determination is made in [Proceeding No.] 25D-0435CP.³

31. Emerald Express responds that it is not required to prove its case with exhibits, and can do so without exhibits.⁴ In addition, Emerald Express argues that YVRA's barring of Alpine Taxi from providing transportation to the airport is not even mentioned in its Application, and it intends to prove that there is a public need for its proposed transportation because Alpine

³ Motion to Dismiss at 3.

⁴ Response to Motion to Dismiss at 4.

Taxi and Ski Town Transportation are not satisfying that need.⁵ Based on the foregoing, Emerald Express requests that the Motion to Dismiss be denied.

b. Analysis

32. The Motion to Dismiss will be denied. Emerald Express is correct that it was not required to disclose exhibits by the deadline established in Decision No. R25-0540-I. Instead, it was required to disclose any exhibits it intended to use in its case-in-chief by that deadline. Whether any exhibits will be permitted to be used for impeachment or in rebuttal will be determined at the hearing. That Emerald Express has not disclosed exhibits is not a basis for dismissing the Application.

33. In addition, Emerald Express can prove a public need for its proposed transportation service without reference to Alpine Taxi's current inability to serve the airport. In fact, Emerald Express will have to prove that the transportation service provided by *both* Alpine Taxi *and* Ski Town Transportation is substantially inadequate, and has been for some time. As a result, the Declaratory Judgment Proceeding also is not a basis for dismissing the Application.

34. Accordingly, the Motion to Dismiss will be denied.

3. Emerald Express' Motion to Strike

35. Emerald Express requests that Ski Town Transportation's Motion to Dismiss be struck because Ski Town Transportation failed to confer in violation of Rule 1400(a).⁶ Based on the decision above, Emerald Express' Motion to Strike will be denied as moot.

⁵ *Id.* at 5.

⁶ 4 *Code of Colorado Regulations* 723-1.

4. Emerald Express' Motion in Limine

a. Parties' Positions

36. Emerald Express asserts that Ski Town Transportation did not adequately answer discovery requests, which “severely prejudice[s] [] its ability to meet its burden of proof.”⁷ Emerald Express seeks a decision: (a) “barring Ski Town from benefitting from the fruit of those violations at the upcoming hearing—whether through testimony, argument, or the admission of evidence and exhibits;”⁸ and (b) “award[ing] [Emerald Express] its fees and costs incurred as a result of these discovery violations and for an award of such other relief as the Commission may deem just and proper.”⁹

37. Ski Town Transportation responds that its responses to Emerald Express' discovery complies with the Commission's Rules of Practice and Procedure. Further, Ski Town Transportation contends that Emerald Express did not make a good faith attempt to confer before filing its Motion in Limine. Ski Town Transportation concludes that the Motion in Limine should be denied.

b. Analysis

38. Emerald Express' Motion in Limine will be denied. Ski Town Transportation responded to the discovery on September 29, 2025 and Emerald Express sent a letter disputing the responses on October 27, 2025. Yet, Emerald Express did not file its Motion in Limine until November 24, 2025 (the Monday of the Thanksgiving week), and four business days before the hearing (not considering that December 1, 2025 is a travel day to the hearing in Steamboat Springs). In addition, Emerald Express did not file a motion seeking to compel answers to its

⁷ Emerald Express' Motion in Limine at 2.

⁸ *Id.*

⁹ *Id.* at 3.

discovery. Finally, Emerald Express has not provided the discovery requests with its Motion in Limine, thus depriving the ALJ the ability to analyze the requests. Under these circumstances, the Motion in Limine seeking discovery sanctions and requesting its attorneys' fees and costs will be denied.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Extension of Time to Respond to Motion in Limine filed by Emerald Express Transportation Inc. ("Emerald Express") on October 3, 2025 is granted.

2. The Motion in Limine filed by Alpine Taxi/Limo, Inc. ("Alpine Taxi") on September 18, 2025 is granted-in-part and denied-in-part consistent with the discussion above.

3. The Motion to Dismiss and for Waiver of Response Time filed by NDW Enterprises LLC d/b/a Ski Town Transportation ("Ski Town Transportation") on November 21, 2025 is denied.

4. The Motion to Strike filed by Emerald Express on November 24, 2025 is denied as moot.

5. The Motion in Limine for Discovery Sanctions filed by Emerald Express on November 24, 2025 is denied.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director