

Decision No. R14-0109

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0955-SUSP

IN THE MATTER OF THE APPLICATION OF SCHAFFER-SCHONEWILL AND ASSOCIATES, INC. D/B/A ENGLEWOOD EXPRESS AND/OR WOLF EXPRESS SHUTTLE TO VOLUNTARILY SUSPEND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY NOS. 50790, 52940, AND 55363.

PROCEEDING NO. 13C-0937-INS

IN RE: THE MATTER OF MOTOR CARRIERS LISTED ON APPENDIX A TO THIS DECISION, RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO DISMISS; BIFURCATING
PROCEEDINGS; VACATING HEARING AND GRANTING
SUSPENSION OF OPERATIONS *NUNC PRO TUNC***

Mailed Date: January 29, 2014

I. STATEMENT

1. On August 9, 2013, the Commission served, by United States mail at the address on file with the Commission, notification to Schaffer-Schonewill and Associates Inc., doing business as Englewood Express and/or Wolf Express Shuttle (Wolf Express) and other Respondents in Proceeding No. 13C-0937-INS that their authorities would be revoked for failure to maintain proof of financial responsibility with the Commission. The notification informed the Respondents that a hearing would be held on August 27, 2013.

2. Staff of the Public Utilities Commission (Staff) appeared at the designated time for the hearing and moved for a revocation of Wolf Express's authorities. Wolf Express did not attend the hearing.

3. On August 29, 2013, Recommended Decision No. R13-1074 (Recommended Decision) was issued, which revoked the authorities of a number of Respondents, including Wolf Express. The Recommended Decision stated that any Respondent that filed proof of insurance or surety bond with the Commission before the effective date of the Recommended Decision, September 18, 2013, would have the Recommended Decision voided and the case dismissed.

4. On September 3, 2013, Wolf Express filed an application to suspend operations under Certificates of Public Convenience and Necessity (CPCNs) PUC Nos. 50790, 52940 and 55363 for a period of one year. Wolf Express amended the application on September 6, 2013 clarifying that it was seeking a suspension of authorities *nunc pro tunc* dating from May 21, 2013, through May 20, 2014. No interventions were filed in this proceeding.

5. Wolf Express filed Exceptions to Recommended Decision No. R13-1074 on September 18, 2013.

6. On October 15, 2013 the Exceptions were denied by Commission Decision No. C13-1292 and Wolf Express's application to suspend authorities was denied as moot by Commission Decision C13-1291.

7. On November 4, 2013, Wolf Express filed its Application for Rehearing, Reargument, or Reconsideration (RRR) in both proceedings.

8. On December 3, 2013, by Commission Decision No. C13-1485, the Application for RRR filed by Wolf Express in Proceeding No. 13C-0927-INS was granted in part and remanded to an Administrative Law Judge (ALJ). The Commission directed an ALJ to

determine whether Wolf Express had notice of the insurance revocation hearing held on August 27, 2013, sufficient to sustain the Recommended Decision and if the Recommended Decision is vacated, for the ALJ to determine whether Wolf Express can establish good cause for not having insurance.

9. The Commission by a separate decision¹ referred Proceeding No. 13A-0955CP-Suspension for an ALJ to determine whether Wolf Express established good cause for a suspension of its authority *nunc pro tunc*.

10. The Commission, stated that in the interests of judicial economy, Proceeding No. 13A-0955CP-Suspension; Proceeding No. 13A-0937-INS and Proceeding No. 13A-0796CP-Transfer², all concerning Wolf Express, should be heard by the same ALJ.

11. By Interim Decision R13-1509-I, issued December 6, 2013, a prehearing conference was scheduled in Proceeding No. 13A-0937-INS to have the parties discuss possible consolidation of all or some of the proceedings involving Wolf Express.

12. At the prehearing conference Wolf Express requested that Proceeding No. 13A-0955CP-Suspension and Proceeding No. 13A-0937-INS be consolidated. Wolf Express argued that the witnesses in both proceedings would be the same and the issues in both proceedings were related and consolidation would avoid costs to the parties and maximize judicial economy.

¹ Commission Decision C13-1486.

² Proceeding 13A-0796CP-Transfer was filed by Wolf Express and Denver Airport Shuttle Services LLC on July 11, 2013. The proceeding involves the same CPCNs as 13C-0937-INS and Proceeding 13A-0955CP-Suspension. By Interim Decision R13-1295-I, issued October 15, 2013 by the undersigned ALJ, the proceeding was stayed pending a final Commission Decision in Proceeding 13C-0937-INS and Proceeding 13A-0955CP-Suspension.

13. Staff objected to a consolidation of the proceedings arguing that the issues were not similar in the proceedings and requested that Proceeding No. 13A-0937-INS be heard before Proceeding No. 13A-0955CP-Suspension.

14. In considering administrative efficiency, the ALJ found that consolidation of Proceeding No. 13A-0955CP-Suspension and Proceeding No. 13A-0937-INS was appropriate. With the consolidation of the proceedings, Staff became a party to Proceeding No. 13A-0955CP-Suspension. The consolidation was ordered in Decision No. R13-1576-I.

15. On January 15, 2004 Wolf Express and Staff filed their Joint Motion (Motion) requesting Wolf Express be dismissed without prejudice from Proceeding no. 13C-0937-INS pending the resolution of the Suspension Application; vacate the hearing for Proceeding No. 13C-0937INS; excuse Staff from participation in Proceeding No. 13A-0955CP-SUSPENSION; and Order that the evidentiary hearing in Proceeding No. 13A-0955CP-SUSPENSION proceed with Wolf Express as the only party.

II. DISMISSAL OF WOLF EXPRESS FROM PROCEEDING 13C-0937INS

16. In the Motion Staff states it no longer intends to pursue the revocation of Certificates of Public Convenience and Necessity (CPCNs) PUC Nos. 50790, 52940 and 55363 belonging to Wolf Express as ordered in Proceeding No. 13C-0937-INS. The parties agree and stipulate that evidence was not sufficient to sustain the Recommended Decision.

17. The Parties request that the undersigned ALJ vacate the Recommended Decision of ALJ Mirbaba Revoking Authorities and Permits Pursuant to Complaint as it relates to Wolf Express in Proceeding 13C-0937-INS. The parties also request that the evidentiary hearing scheduled for January 30 & January 31, 2014 be vacated as it relates to Proceeding No. 13C-0937-INS.

18. The undersigned ALJ finds good cause to grant the Motion to vacate the Recommended Decision of Administrative Law Judge Melody Mirbaba Revoking Authorities and Permits Pursuant to Complaint as it relates to Wolf Express in Proceeding No. 13C-0937-INS and the portion of the consolidated evidentiary hearing concerning Proceeding No. 13C-0937-INS.

III. BIFURCATION OF PROCEEDING NO.13C-0937-INS AND PROCEEDING NO.13A-0955CP-SUSPENSION

19. With the dismissal of Proceeding No. 13C-0937-INS as it relates to Wolf Express, there is no longer a need to consolidate Proceeding No. 13C-0937-INS and Proceeding No. 13A-0955CP-SUSPENSION.

20. Since there is no longer a need to consolidate the Proceedings, the undersigned ALJ shall *sua sponte* bifurcate Proceeding No. 13C-0937-INS and Proceeding No. 13A-0955CP-SUSPENSION.

21. With the bifurcation of Proceeding No. 13C-0937-INS and Proceeding No. 13A-0955CP, the parties revert to the status prior to the consolidation of the proceedings. Staff, which became a party to Proceeding No. 13A-0955CP-SUSPENSION by Decision No. R13-1576-I, is no longer a party to Proceeding No. 13A-0955CP-SUSPENSION.

22. By the bifurcation of the proceedings, Staff's request to be removed from Proceeding No. 13A-0955CP-SUSPENSION is moot.

23. With the removal of Staff as a party to Proceeding No. 13A-0955CP-SUSPENSION, it leaves the Application, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the uncontested application may be processed under the modified procedure, without a formal hearing.

24. The request of Wolf Express to proceed to an evidentiary hearing in Proceeding No. 13A-0955CP-SUSPENSION is denied as moot.

25. 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

IV. **FINDINGS AND CONCLUSIONS**

26. Applicant is a Colorado corporation in good standing.

27. Pursuant to Rule 6204 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, the information submitted with this application warrants the granting of the requested suspension.

28. The application for authority to suspend CPCN PUC Nos. 50790, 52940 and 55363, *nunc pro tunc*, for one year, from May 21, 2013 until May 20, 2014, is in the public interest.

V. **ORDER**

A. **The Commission Orders That:**

1. Recommended Decision R13-1074, of ALJ Mirbaba Revoking Authorities and Permits Pursuant to Complaint as it relates to Schafer-Schonewill and Associates Inc., doing

business as Englewood Express and/or Wolf Express Shuttle in Proceeding No. 13C-0937-INS is vacated.

2. Schafer-Schonewill and Associates Inc., doing business as Englewood Express and/or Wolf Express Shuttle is dismissed without prejudice from Proceeding No. 13C-0937-INS.

3. The evidentiary hearing scheduled in this consolidated proceeding concerning Proceeding No. 13C-0937-INS for January 30 and 31, 2014 is vacated.

4. Proceeding No. 13C-0937-INS and Proceeding No. 13A-0955CP-SUSPENSION are bifurcated. Future filings in Proceeding No. 13C-0937-INS shall include only the caption for such docket and shall not reflect Proceeding No. 13A-0955CP-SUSPENSION.

5. Staff which became a party to Proceeding No. 13A-0955CP-SUSPENSION by Decision No. R13-1576-I, shall no longer be party to Proceeding No. 13A-0955CP-SUSPENSION and shall be removed from the service list therefore. Only those parties to Proceeding No. 13A-0955CP-SUSPENSION prior to the effective date of Decision No. R13-1576-I will remain parties to Proceeding No. 13A-0955CP-SUSPENSION bifurcated by this Order.

6. The request of Staff to be removed from further participation in Proceeding No. 13A-0955CP-SUSPENSION is denied as moot.

7. The evidentiary hearing scheduled in this consolidated proceeding concerning Proceeding No. 13A-0955CP-SUSPENSION for January 30 and 31, 2014 is vacated.

8. The request of Schafer-Schonewill and Associates Inc., doing business as Englewood Express and/or Wolf Express Shuttle to proceed to an evidentiary hearing in Proceeding No. 13A-0955CP-SUSPENSION is denied as moot.

9. The application of Schafer-Schonewill and Associates Inc., doing business as Englewood Express and/or Wolf Express Shuttle for authority to suspend CPCN PUC Nos. 50790, 52940 and 55363, *nunc pro tunc*, for one year is granted.

10. The suspension of motor vehicle operations under Certificate of Public Convenience and Necessity PUC Nos. 50790, 52940 and 55363 is authorized from May 21, 2013 through May 20, 2014.

11. On May 21, 2014, 2014, Certificate of Public Convenience and Necessity PUC Nos. 50790, 52940 and 55363 shall be administratively reactivated.

12. Prior to commencing operations, Schafer-Schonewill and Associates Inc., doing business as Englewood Express and/or Wolf Express Shuttle shall: (a) cause proof of insurance or surety bond coverage to be filed with the Commission per Rule 6007, 4 *Code of Colorado Regulations* 723-6; (b) pay to the Commission the applicable vehicle identification fee for each vehicle to be operated under authority granted by the Commission; and (c) ensure that an effective tariff is on file with the Commission, in compliance with applicable Commission rules.

13. 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.

14. 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.

15. 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.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge