

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0014CP

IN THE MATTER OF THE APPLICATION OF GUNNISON TAXI COMPANY, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING FIRST AMENDED STIPULATED
MOTION; AMENDING APPLICATION; DISMISSING
INTERVENTIONS; GRANTING APPLICATION, AS
AMENDED UNDER MODIFIED PROCEDURE;
GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY; VACATING HEARING; AND WAIVING
RESPONSE TIME TO STIPULATED MOTION**

Mailed Date: April 17, 2014

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I. STATEMENT

1. Gunnison Taxi Company LLC (Gunnison Taxi or Applicant), initiated the above captioned proceeding on January 3, 2014, by filing an application seeking authority for a certificate of public convenience and necessity (CPCN) to operate as a common carrier by motor vehicle for hire with the Colorado Public Utilities Commission (Commission).

2. On January 13, 2014, the Commission provided public notice of the application by publishing a summary of the same in its Notice of Applications Filed as follows:

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

passengers in:

- (I) call and-demand taxi service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points within a 20-mile radius of the intersection of Main Street and Tomichi Avenue, Gunnison, Colorado on the other hand: and
- (II) call-and demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Crested Butte, Delta, Grand Junction, Lake City, Montrose, Mt. Crested Butte, and Salida, State of Colorado, on the other hand.

3. On January 17, 2014, AEX, Inc., doing business as Alpine Express (Alpine Express) filed its Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 12750 held by Alpine Express and a preliminary list of witnesses and exhibits.

4. On February 11, 2014 Tazco Inc., doing business as Sunshine Taxi (Sunshine Taxi) filed its Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 19429 held by Sunshine Taxi and a preliminary list of witnesses and exhibits.

5. Also on February 11, 2014, San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours (Telluride Express) filed their Entry of Appearance and Notice of Intervention. This filing attached Commission Authorities No. 1648 and No. 55679 held by Telluride Express.

6. On February 19, 2014, the Commission deemed the application complete and it was referred to an Administrative Law Judge (ALJ) for disposition.

7. By Interim Decision No. R14-0195-I, issued February 21, 2014 a prehearing conference was scheduled for March 14, 2014 and the Intervenor was ordered to make a filing concerning representation by March 7, 2014.

8. On March 14, 2014, the prehearing conference was held. Appearances were made by the Applicant, counsel for Alpine Express, and Kelly Milan of Sunshine Taxi. Telluride Express failed to appear.

9. At the prehearing conference the parties agreed to a procedural schedule and Sunshine Taxi was ordered to make a filing concerning representation. The parties also agreed to hold an evidentiary hearing on June 18 and 19, 2014 in Gunnison, Colorado.

10. By Interim Decision No. R14-0357-I, issued April 3, 2014, the agreed upon procedural schedule was adopted and the interventions of Alpine Express and Sunshine Taxi were granted and the intervention of Telluride Express was stricken.

11. On April 7, 2014, Applicant and Intervenor Alpine Express filed their Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time.

12. On April 9, 2014, Sunshine Taxi filed its Conditional Withdrawal of Intervention. Sunshine Taxi requested to withdraw its intervention if the Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time was accepted.

13. On April 14, 2014, Applicant and Intervenor Alpine Express filed their First Amended Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time (Stipulated Motion).

14. Under the amendment contained within in the Stipulated Motion, the restrictively amended authority will read:

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

passengers:

- (I) In call-and-demand taxi service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the following area of Gunnison County, Colorado: Beginning at the intersection of Colorado Highway 135 and Gunnison County Road 813; thence west along an imaginary line to the intersection of Gunnison County 737 and Gunnison County Road 730; then south by southwest along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 26; thence south by southeast along an imaginary line to the intersection of Colorado Highway 149 and Gunnison County Road 27; thence east along an imaginary line to the intersection of Colorado Highway 114 and Forest Road 804; thence north along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 45; thence north along an imaginary line to the intersection of Gunnison County Road 76 and Forest Road 771; thence northwest along an imaginary line to the point of beginning;
- (II) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand , and all points in the Cities of Delta, Lake City, and Salida, State of Colorado, on the other hand;
- (III) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Grand Junction and Montrose, State of Colorado, on the other hand.

RESTRICTIONS: The authority granted in this Certificate is restricted as follows:

- (a) Parts I, II and III of this Certificate are restricted to the use of no more than two (2) vehicles with a rated seating capacity of 8 passengers or less, including the driver;
- (b) Part II of this Certificate is restricted to trips that both originate and terminate in the City of Gunnison, Colorado, on the same day; and
- (c) Part III of this Certificate is restricted to trips to or from hospitals or medical or dental facilities located in Montrose, Colorado or Grand Junction, Colorado.

15. On April 16, 2014, Intervenor Sunshine Taxi filed its Motion for Conditional Withdrawal of Intervention based upon the adoption of the proposed amendment to the Application contained within the Stipulated Motion filed on April 14, 2014.

16. 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 contained wholly within the permit. Both must be worded so that a person will 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 by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority. The proposed amendment to the Application meets these standards.

17. The ALJ finds and concludes that the proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable.

18. The restriction to the authority sought by Applicant (*i.e.*, the amendment to the Application) will be accepted.

19. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment. Second, the intervention of the Intervenor will be withdrawn.

20. Withdrawal of the interventions and dismissal of the Intervenor leaves the Application, as amended, 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.

21. 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

22. Applicant is a limited liability corporation in good standing.

23. Applicant requests authority to operate as a common carrier. By the Application, Gunnison Taxi seeks:

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

- (I) In call-and-demand taxi service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the following area of Gunnison County, Colorado: Beginning at the intersection of Colorado Highway 135 and Gunnison County Road 813; thence west along an imaginary line to the intersection of Gunnison County 737 and Gunnison County Road 730; then south by southwest along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 26; thence south by southeast along an imaginary line to the intersection of Colorado Highway 149 and Gunnison County Road 27; thence east along an imaginary line to the intersection of Colorado Highway 114 and Forest Road 804; thence north along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 45; thence north along an imaginary line to the intersection of Gunnison County Road 76 and Forest Road 771; thence northwest along an imaginary line to the point of beginning;
- (II) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Delta, Lake City, and Salida, State of Colorado, on the other hand;
- (III) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Grand Junction and Montrose, State of Colorado, on the other hand.

RESTRICTIONS: The authority granted in this Certificate is restricted as follows:

- (a) Parts I, II and III of this Certificate are restricted to the use of no more than two (2) vehicles with a rated seating capacity of 8 passengers or less, including the driver;

- (b) Part II of this Certificate is restricted to trips that both originate and terminate in the City of Gunnison, Colorado, on the same day; and
- (c) Part III of this Certificate is restricted to trips to or from hospitals or medical or dental facilities located in Montrose, Colorado or Grand Junction, Colorado.

24. The record establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicles, found at Part 6 of 4 CCR 723, and agrees to be bound by, and to comply with, those Rules as applicable to it. The record establishes that Applicant has sufficient equipment with which to render the proposed transportation service, has the experience to conduct operations under the authority requested, and is financially fit to conduct operations under the authority requested. Review of the record indicates a need for the proposed transportation service. Because the Applicant is fit, financially and otherwise, to perform the proposed transportation service and because the other prerequisites have been met, the ALJ will grant the Application, as amended, and will issue the CPCN.

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

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the First Amended Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time, which motion was filed on April 14, 2014, is granted.

2. Consistent with the discussion above, the restrictive amendment contained in the First Amended Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time is accepted.

3. Consistent with the discussion above, the verified Application for Authority to Operate as a Common Carrier by Motor Vehicle for Hire, which was filed by Gunnison Taxi Company LLC, on January 3, 2014, is amended to conform to the terms of the restrictive amendment contained in the First Amended Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time.

4. Consistent with the discussion above, AEX, Inc., doing business as Alpine Express, is dismissed as an intervenor in this proceeding.

5. Consistent with the discussion above, Tazco Inc., doing business as Sunshine Taxi, is dismissed as an intervenor in this proceeding.

6. The evidentiary hearing scheduled for June 18 and 19, 2014 in Gunnison, Colorado, is vacated.

7. Response time to the First Amended Stipulated Motion to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor's Intervention and for Waiver of Response Time, is waived.

8. Subject to the conditions stated below, Gunnison Taxi Company LLC, is granted a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire as follows:

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

- (I) In call-and-demand taxi service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the following area of Gunnison County, Colorado: Beginning at the intersection of Colorado Highway 135 and Gunnison County Road 813; thence west along an imaginary line to the intersection of Gunnison County 737 and Gunnison County Road 730; then south by southwest along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 26; thence south by southeast along an imaginary line to the intersection of Colorado Highway 149 and Gunnison County Road 27; thence east along an imaginary line to the intersection of Colorado Highway 114 and Forest Road 804; thence north along an imaginary line to the intersection of U.S. Highway 50 and Gunnison County Road 45; thence north along an imaginary line to the intersection of Gunnison County Road 76 and Forest Road 771; thence northwest along an imaginary line to the point of beginning;
- (II) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Delta, Lake City, and Salida, State of Colorado, on the other hand;
- (III) In call-and-demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Grand Junction and Montrose, State of Colorado, on the other hand.

RESTRICTIONS: The authority granted in this Certificate is restricted as follows:

- (a) Parts I, II and III of this Certificate are restricted to the use of no more than two (2) vehicles with a rated seating capacity of 8 passengers or less, including the driver;
- (b) Part II of this Certificate is restricted to trips that both originate and terminate in the City of Gunnison, Colorado, on the same day; and
- (c) Part III of this Certificate is restricted to trips to or from hospitals or medical or dental facilities located in Montrose, Colorado or Grand Junction, Colorado.

9. Gunnison Taxi Company LLC shall operate in accordance with all applicable Colorado laws and Commission rules.

10. Gunnison Taxi Company LLC shall not commence operations until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. [Gunnison Taxi Company LLC shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs)]; and
- (d) paying the applicable issuance fee (\$5).

11. If Gunnison Taxi Company LLC, does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the CPCN shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

12. The Commission will notify Gunnison Taxi Company LLC in writing when the Commission's records demonstrate compliance with paragraph 10.

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 § 40-6-109, 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 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 basic findings 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 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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge