

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0749CP-LEASE

IN THE MATTER OF THE APPLICATION OF HEART OF THE ROCKIES, LLC, LESSOR,
AND BROTHERS AIRPORT SHUTTLE EXPRESS, LLC, LESSEE, FOR APPROVAL OF
THE LEASE OF CPCN NO. 55779.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING APPLICATION UNDER
MODIFIED PROCEDURE AND APPROVING
LEASE OF CPCN PUC NO. 55779 FOR A PERIOD
OF 24 MONTHS, SUBJECT TO CONDITIONS**

Mailed Date: October 30, 2014

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I. STATEMENT

1. On July 9, 2014, Heart of the Rockies Tours, LLC, and Brothers Airport Shuttle Express, LLC (collectively, Applicants), filed a verified Application for Lease Approval (Application). That filing commenced this Proceeding.

2. On July 14, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 6); established an intervention period; and established a

procedural schedule. On August 22, 2014, Decision No. R14-1022-I, among other things, vacated the procedural schedule.

3. On August 20, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission or Applicants' waiver of the statutory provision, a Commission decision on the Application should issue not later March 18, 2015.

4. On August 20, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

5. On August 12, 2014, Chajari LLC, doing business as Atlas Express Shuttle, filed a Notice of Intervention by Right or Alternative Petition to Intervene Permissively. Applicants filed a Motion to Strike Intervention[.]. On October 24, 2014, by Decision No. R14-1280, the ALJ struck the Notice of Intervention by Right and denied the Petition to Intervene Permissively.

6. On August 12, 2014, 1st ABC Transportation, LLC, doing business as ABC Shuttle, filed a Notice of Intervention by Right or Alternative Petition to Intervene Permissively. On October 24, 2014, by Decision No. R14-1281, the ALJ granted the Motion to Strike Intervention[] filed by Applicants; struck the Notice of Intervention by Right; and denied the Petition to Intervene Permissively.

7. No other person filed an intervention as of right or filed a motion for leave to intervene. There are no intervenors in this Proceeding.

8. This matter is uncontested and unopposed.

9. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,¹ an uncontested and unopposed application may be considered under the Commission's modified procedure and without a formal hearing. The ALJ finds that the Application should be considered, and will be considered, under the modified procedure and without a formal hearing.

10. 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, DISCUSSION, AND CONCLUSION

11. Heart of the Rockies Tours, LLC (Lessor), seeks Commission authority to lease Certificate of Public Convenience and Necessity (CPCN) PUC No. 55779 to Brothers Airport Shuttle Express, LLC (Lessee).

12. Lessor is a Colorado limited liability company and owns PUC CPCN No. 55779.

13. Lessee is a Colorado limited liability company.

14. The record establishes, and the ALJ finds, that the Commission has authority over the subject matter of this Proceeding. The record establishes, and the ALJ finds, that the Commission has *in personam* jurisdiction over Lessor and Lessee in this Proceeding.

15. On July 2, 2014, Applicants executed an Agreement to Lease Assets (Lease). Application at Appendix C. The subject of the Lease is CPCN PUC No. 55779, and the duration of the lease is four years from the date on which "Lessee fully complies with the decision approving the lease of [CPCN PUC No. 55779] to Lessee." Application at Appendix Cat 4. In this Proceeding, however, the Applicants "request that the lease of authority be for a *period of*

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

twenty-four (24) months.” Application at ¶ 2 (emphasis supplied). Thus, if granted, the approval will be for a period of 24 months and not for the full 48-month duration of the Lease.²

16. The terms and conditions under which Lessor has agreed to lease the subject authority to Lessee are set forth in the Lease.

17. Lessor seeks authority to lease PUC CPCN No. 55779 to Lessee; and Lessee seeks authority to operate PUC CPCN No. 55779, which provides authority to operate as a motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand limousine service:

- (A) Between all points in the Chafee County, State of Colorado;
- (B) Between the Colorado Springs Municipal Airport, on the one hand[,] and, on the other hand, all points within one mile of the following named route:

Beginning at the intersection of U.S. Highway 24 and Colorado Highway 67 in Teller County, Colorado; thence west along U.S. Highway 24 to its intersection with U.S. Highway 285 at Johnson Village, Colorado; thence south along U.S. Highway 285 to its intersection with U.S. Highway 50 at Poncha Springs, CO;

- (C) Between Denver International Airport, on the one hand, and, on the other hand, all points located within one mile of the following named route: beginning at the intersection of U.S. Highway 285 and Colorado Highway C-470 in Jefferson County, Colorado, thence west and south along U.S. Highway 285 to its intersection with U.S. Highway 285 to its intersection with U.S. Highway 50 at Poncha Springs, CO; [and]

- (D) Between Denver International Airport, on the one hand, and, on the other hand, all points located within one mile of the following named route:

Beginning at the intersection of Interstate 70 and Colorado Highway C-470 in Jefferson County; thence west along Interstate 70 to its intersection with Colorado Highway 82 in Glenwood Springs, CO; thence south along Colorado Highway 82 to its intersection with

² An enlargement of the requested approval of lease period from 24 months to 48 months, which would increase the authority sought in the Application, likely would require additional notice of the Application. Rule 4 CCR 723-1-1309.

Colorado Highway 133 at Carbondale, Colorado in Garfield County, Colorado.

RESTRICTIONS:

- (1) Against the transportation of passengers accompanied by their bicycles between all points within a 25-mile radius of the intersection of U.S. Highway 285 and U.S. Highway 50 in Poncha Springs, Colorado.
- (2) Against the use of vehicles with affixed bicycle racks of any kind, including, but not limited to, bumper mount or roof mount bicycle racks, or the use of any trailer capable of transporting bicycles.

RESTRICTIONS: To exclude transportation to or from:

- (1) points on U.S. Highway 285 between the summit of Kenosha Pass on U.S. Highway 285 and a point one mile west of the intersection of U.S. Highway 285 and Colorado Highway C-470; and
- (2) between Downieville, CO and a point one-mile west of the intersection of Interstate 70 and Colorado Highway C-470.

18. At present and at Lessor's request, operations under PUC CPCN No. 55779 are suspended pursuant to Decision No. C14-0079.³ In accordance with that Decision at Ordering Paragraph No. 3, the CPAN will be reactivated administratively (*i.e.*, without further order of the Commission) on December 16, 2014.

19. As a result of the suspension and absent a Commission decision that ends the suspension on an earlier date, no carrier may provide transportation service pursuant to CPCN PUC No. 55779 until December 16, 2014 when the suspension period ends in accordance with Decision No. C14-0079. In the Application, Applicants did not request early termination of the suspension period.

³ This Decision granted Lessor's application for suspension of operations under CPCN PUC No. 55779. This Decision was issued on January 21, 2014 in Proceeding No. 13A-1344CP-Suspension, *In the Matter of the Application of Heart of the Rockies Tours, LLC, for an Order of the Commission Authorizing a Suspension of Certificate of Public Convenience and Necessity No. 55779.*

20. Rule 4CCR 723-6-6205⁴ governs the transfer (in this case, lease) of an authority, and Rule 4CCR 723-6-6205(c) sets out the required content of an application to lease an authority. Importantly, Rule 4 CCR 723-6-6205(c)(XVI) provides:

(XVI) ... *The applicants have the burden of proving:*

- (A) that the transferor [in this case, Lessor] has not abandoned the authority and has not allowed the authority to become dormant;
- (B) that the transferor [in this case, Lessor] has been and is engaged in bona fide operations under its authority, or the extent to which bona fide operations have been excused because of a Commission-approved suspension;
- (C) that the transfer is not contrary to the public interest;
- (D) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and
- (E) that the transferee [in this case, Lessee] will engage in bona fide regulated intrastate carrier operations and is fit to do so, except in transfers involving foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order.

(Emphasis supplied.) The exceptions stated in Rule 4 CCR 723-6-6502(c)(XVI)(E) do not apply to the Lease at issue in this Proceeding.

21. The record establishes that Lessor: (a) has engaged in *bona fide* operations pursuant to CPCN PUC No. 55779 except during the period of the Commission-approved total suspension of operations pursuant to that CPAN; (b) has not allowed CPCN PUC No. 55779 to become dormant; and (c) has not abandoned CPCN PUC No. 55779. The record also establishes that Lessee: (a) will become familiar with the Rules Regulating Transportation by Motor Vehicle, found at Part 6 of 4 CCR 723, and agrees to be bound by and to comply with those Rules as applicable to it; (b) intends to provide transportation service under

⁴ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

CPCN PUC No. 55779, has sufficient equipment with which to render transportation service under that CPCN, has the experience to conduct operations under that CPCN, and is financially fit to conduct transportation operations under that CPCN; and (c) will engage in *bona fide* transportation operations pursuant to CPCN PUC No. 55779. The record further establishes that approving the Lease and authorizing Lessee to operate pursuant to CPCN PUC No. 55779 will not result in common ownership or control of overlapping or duplicating authorities. Lastly, the record establishes that it is not contrary to the public interest to approve, for a period of 24 months, the lease of CPCN PUC No. 55779 to Lessee.

22. The ALJ will grant the Application and will approve, for a period of 24 months, the lease of CPCN PUC No. 55779.

23. When it grants an application, the Commission may attach to its grant of authority the conditions that, in the Commission's judgment, are necessary and are in the public interest. It remains for the ALJ to determine whether to attach conditions to the grant of authority approved by this Decision.

24. To preclude the common control or ownership of overlapping or duplicating authority during the 24-month period of the approval granted by this Decision, the ALJ finds that granting the Application and approving the lease of CPCN PUC No. 55779 to Lessee should be subject to the following condition: during the 24-month period during which it is authorized by this Decision to provide transportation service pursuant to CPCN PUC No. 55779, Lessee must not obtain by any means (for example and by way of illustration only, purchase or lease) any Commission-issued authority that authorizes transportation service that overlaps with or that duplicates (or both) the authority found in CPCN PUC No. 55779.

25. In addition, the ALJ finds that granting the Application and approving the lease of CPCN PUC No. 55779 should be subject to the conditions contained in the Ordering Paragraphs below. **Questions concerning the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).**

26. The ALJ will grant the Application and will approve, for a period of 24 months, the lease of CPCN PUC No. 55779 to Lessee subject to the stated conditions.

27. The ALJ reminds Lessor that, pursuant to Rule 4 CCR 723-6-6205(f), it shall not cancel its insurance, surety bond, or tariffs until the Commission has approved the transfer, the transferee has filed all required documents in the transferee's own name, and the Commission has advised the transferee that it is authorized to begin operations.

28. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the verified Application for Lease Approval filed on July 9, 2014 by Heart of the Rockies Tours, LLC, and Brothers Airport Shuttle Express, LLC, is granted subject to the conditions set out below.

2. For a period of 24 months commencing on the date on which the conditions set out in Ordering Paragraph No. 6 are met, Brothers Airport Shuttle Express, LLC, is granted authority to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55779 under the terms of the Agreement to Lease Asset executed on July 2, 2014 by Heart of the Rockies Tours, LLC, and Brothers Airport Shuttle Express, LLC.

3. The authority granted in Ordering Paragraph No. 2 is conditioned on Brothers Airport Shuttle Express, LLC's meeting the conditions contained in this Decision and is not effective until Brothers Airport Shuttle Express, LLC, has met the conditions set out in Ordering Paragraph No. 6.

4. The authority granted in Ordering Paragraph No. 2 is subject to the following condition: Brothers Airport Shuttle Express, LLC, shall operate CPCN PUC No. 55779 in accordance with all applicable statutes and Commission rules.

5. The authority granted in Ordering Paragraph No. 2 is subject to the following condition: during the 24-month period during which it is authorized by this Decision to provide transportation service pursuant to CPCN PUC No. 55779, Brothers Airport Shuttle Express, LLC, shall not obtain by any means any Commission-issued authority that authorizes transportation service that overlaps with or that duplicates (or both) the authority found in CPCN PUC No. 55779.

6. Brothers Airport Shuttle Express, LLC, shall not begin operations under CPCN PUC No. 55779 until all of the following conditions are satisfied:

(a) Brothers Airport Shuttle Express, LLC, shall file with the Commission an adoption notice that adopts as its own the currently-effective tariffs of Heart of the Rockies Tours, LLC.

(b) Brothers Airport Shuttle Express, LLC, shall cause to be filed with the Commission *either* proof of insurance coverage (Form Eor self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4*Code of Colorado Regulations* 723-6-6007.

(c) For each vehicle to be operated under CPCN PUC No. 55779, Brothers Airport Shuttle Express, LLC, shall pay to the Commission the vehicle identification fee required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of that fee and if applicable, Brothers Airport Shuttle Express, LLC, shall pay to the Commission, for each vehicle to be operated under CPCN PUC No. 55779, the fee for those vehicles pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(d) The suspension of CPCN PUC No. 55779 has expired in accordance with Decision No. C14-0079 at Ordering Paragraph No. 3, and the CPCN has been reactivated administratively on December 16, 2014.

(e) Brothers Airport Shuttle Express, LLC, has received from the Commission written notice that: (1) conditions (a) through (d) in this Ordering Paragraph have been satisfied; and (2) Brothers Airport Shuttle Express, LLC, may begin providing transportation service pursuant to CPCN PUC No. 55779.

7. If Brothers Airport Shuttle Express, LLC, does not comply with the requirements of Ordering Paragraph No. 6 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 1 and No. 2 are void. On timely motion and for good cause shown, the Commission may grant Brothers Airport Shuttle Express, LLC, additional time within which to comply with the requirements of this Decision.

8. The right of Brothers Airport Shuttle Express, LLC, to operate under CPCN PUC No. 55779 as authorized by this Decision shall depend upon Brothers Airport Shuttle Express, LLC's compliance with: (a) all present and future laws applicable to Brothers Airport Shuttle Express, LLC, as lessee of CPCN PUC No. 55779; (b) all present and future Commission regulations applicable to Brothers Airport Shuttle Express, LLC, as lessee of

CPCN PUC No. 55779; and (c) all present and future Commission orders applicable to Brothers Airport Shuttle Express, LLC, as lessee of CPCN PUC No. 55779.

9. Heart of the Rockies Tours, LLC, shall not cancel its insurance, surety bond, or tariffs until the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6205(f) are met.

10. 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.

11. 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.

12. 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

MANA L. JENNINGS-FADER

Administrative Law Judge