

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0928CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF BOULDER LIFT (THE)* FOR AUTHORITY
TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55778.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING COLORADO JITNEY, LLC'S MOTION
FOR LEAVE TO FILE INTERVENTION OUT
OF TIME, DETERMINING THAT COLORADO
JITNEY, LLC, IS NOT AN INTERVENOR IN THIS
PROCEEDING, AND DISMISSING COLORADO
JITNEY, LLC, FROM THIS PROCEEDING**

Mailed Date: November 18, 2014

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I. STATEMENT

1. On September 11, 2014, The Boulder Lift, LLC (Applicant), filed a verified Application for Permanent Authority to Extend Current Operations Under Certificate of Public Convenience and Necessity (CPCN) PUC No. 55778. That filing commenced this Proceeding.

2. On September 19, 2014, Applicant filed a supplement to the September 11, 2014 filing. Unless the context indicates otherwise, reference in this Decision to the Application is to the September 11, 2014 filing as supplemented on September 19, 2014.

3. On September 22, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. On October 30, 2014, Decision No. R14-1315-I vacated that procedural schedule.

4. On October 29, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

II. DISCUSSION AND CONCLUSIONS

5. There are two filings addressed in this Recommended Decision. Both were made on October 29, 2014 by Colorado Jitney, LLC, doing business as Colorado Jitney (Colorado Jitney). Each filing is discussed below.

A. Motion for Leave to Intervene Out of Time.

6. On October 29, 2014, Colorado Jitney filed (in one document) a Request for Waiver in Order to Permissively Intervene, or Alternatively Motions to Supplement its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

7. On November 3, 2014, by Decision No. R14-1327-I, the ALJ stated that the Request for Waiver in Order to Permissively Intervene would be treated as a motion for leave to file an intervention out of time. The ALJ also stated that response to the October 29, 2014 filing

-- both the request to file an intervention out of time and the alternative motions¹ -- was due not later than November 12, 2014. Finally, the ALJ stated that Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400,² which includes Rule 4 CCR 723-1-1400(d), governs the October 29, 2014 filings. The ALJ stated that Rule 4 CCR 723-1-1400(d) provides: “The Commission may treat a failure to file a response as a confession of the motion.”

8. As of the date of this Recommended Decision, no response to the motion for leave to file an intervention out of time has been filed.

9. The ALJ finds that the motion for leave to file an intervention out of time states good cause; that the motion for leave to file an intervention out of time is unopposed; that the motion for leave to file an intervention out of time has been confessed; and that granting the motion for leave to file an intervention out of time will not prejudice any party. The ALJ will grant the motion for leave to file an intervention out of time and will permit Colorado Jitney to file, in one document and out of time, its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

10. The ALJ now turns to the substantive filing made on October 29, 2014.

B. Colorado Jitney’s Intervention as of Right and Alternative Motion for Permission Intervention.

11. On October 29, 2014, Colorado Jitney filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing. For the reasons discussed below

¹ These are discussed *infra*.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

, the ALJ concludes that Colorado Jitney is not an intervenor as of right; that the Colorado Jitney Alternative Motion for Permissive Intervention should be denied; and that Colorado Jitney is not a party in and should be dismissed from this Proceeding.

12. Rule 4CCR 723-1-1401 governs intervention. The Rule provides for two types of intervention: intervention as of right and intervention by permission.

13. On October 29, 2014, Colorado Jitney filed a *Notice of Intervention by Right* in this transportation proceeding. Rule 4CCR 723-1-1401(e)(I) governs intervention as of right in transportation proceedings and provides:

A notice of intervention as of right *must include* a copy of the common carrier's letter of authority, *must show* that the common carrier's authority is in good standing, *must identify* the specific parts of that authority that are in conflict with the application, and *must explain* the consequences to the common carrier and the public interest if the application is granted.

(Emphasis supplied.)

14. The Colorado Jitney Notice of Intervention by Right does not comply with Rule 4 CCR 723-1-1401(e)(I). Importantly, Colorado Jitney's CPCN is not attached to the filing; and Colorado Jitney does not identify the specific parts of its CPCN that conflict with the authority sought in the Application. In the absence of compliance with Rule 4CCR 723-1-1401(e)(I), Colorado Jitney has not: (a) demonstrated that Colorado Jitney has a common carrier authority that is in good standing; (b) identified the specific parts of Colorado Jitney's common carrier authority conflict with the authority sought by Applicant; and (c) explained neither how Colorado Jitney and the public interest will be harmed nor any other consequences if the Application is granted. The ALJ finds that Colorado Jitney has not established that it is an intervenor as of right in this Proceeding.

15. On October 29, 2014, Colorado Jitney filed an *Alternative Motion for Permissive Intervention*.

16. Rule 4 CCR 723-1-1400(d) provides: “The Commission may treat a failure to file a response as a confession of the motion.” As of the date of this Recommended Decision, no response to the Alternative Motion for Permissive Intervention has been filed; the Alternative Motion for Permissive Intervention is unopposed; and the Alternative Motion for Permissive Intervention has been confessed.

17. That the Alternative Motion for Permissive Intervention is uncontested and confessed does not require the ALJ to grant the Alternative Motion for Permissive Intervention. One is not entitled to intervention by permission, and whether to grant intervention by permission lies in the sound discretion of the Commission. The ALJ must consider the Alternative Motion for Permissive Intervention in light of the applicable standards.

18. Rule 4 CCR 723-1-1401(c) governs intervention by permission. In relevant part, that Rule provides:

A motion to permissively intervene *shall state* [a] the specific grounds relied upon for intervention; [b] the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and [c] why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion *must demonstrate* that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not sufficient basis to intervene.

(Emphasis supplied.)

19. As the moving party, Colorado Jitney carries the burden of proof with respect to the Alternative Motion for Permissive Intervention. Section 24-4-105(7), C.R.S.;

§ 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. Among other things, this means that Colorado Jitney is responsible for providing sufficient information to support its motion.

20. The Colorado Jitney Alternative Motion for Permissive Intervention does not contain sufficient information to allow the ALJ to make a determination with respect to the Rule 4 CCR 723-1-1401(c) standards.³ The ALJ finds that the Colorado Jitney Alternative Motion for Permissive Intervention does not meet the Rule 4 CCR 723-1-1401(c) requirements and is insufficient to support Colorado Jitney's intervention by permission. As a result, the ALJ finds that Colorado Jitney has not met its burden with respect to intervention by permission. The ALJ will deny the Colorado Jitney Alternative Motion for Permissive Intervention.

21. For the foregoing reasons, the ALJ finds that Colorado Jitney is not an intervenor in and should be dismissed from this Proceeding. This ruling ends Colorado Jitney's participation in this Proceeding. As a result, the ALJ will dismiss Colorado Jitney by recommended decision.

22. Pursuant to § 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, Colorado Jitney, LLC, doing business as Colorado Jitney, is ~~not~~ an intervenor by right in this Proceeding.

2. Consistent with the discussion above, the Alternative Motion for Permissive Intervention filed by Colorado Jitney, LLC, doing business as Colorado Jitney, is denied.

³ The absence of Colorado Jitney's CPCN makes consideration of the standards virtually impossible.

3. Colorado Jitney, LLC, doing business as Colorado Jitney, is not an intervenor in and is dismissed from this Proceeding.

4. Consistent with the discussion above, Colorado Jitney, LLC, doing business as Colorado Jitney's motion for leave to file an intervention out of time is granted.

5. Colorado Jitney, LLC, doing business as Colorado Jitney, is permitted to file out of time and in one document its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

6. 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.

7. 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.

8. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director