

Decision No. R14-1409-I

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO MOTIONS
AS STATED IN THE INTERIM DECISION,
AND CONTAINING ADVISEMENTS**

Mailed Date: November 25, 2014

I. STATEMENT

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

2. On September 19, 2014, Boulder Lift filed a supplement to the September 11, 2014 filing. Unless the context indicates otherwise, reference in this Interim 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).

5. Colorado Cab Company LLC, doing business as Boulder SuperShuttle (SuperShuttle or Intervenor), timely intervened and is a party in this Proceeding. SuperShuttle opposes the Application.

6. On October 29, 2014, Colorado Jitney sought to intervene in this Proceeding. On November 18, 2014, for the reasons stated in Decision No. R14-1386, the ALJ dismissed Colorado Jitney from this case.

7. Applicant and Intervenor, collectively, are the Parties. Both Parties are represented by legal counsel.

8. On October 29, 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 Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later May 27, 2015.

9. The Intervenor opposes the Application. Thus, it is necessary to establish a procedural schedule and to schedule an evidentiary hearing date in this matter.

10. By Decision No. R14-1315-I, the ALJ required Applicant to consult with Intervenor and to make a filing that: (a) contained a procedural schedule, including hearing date, that is satisfactory to the Parties; and (b) addressed the issues discussed in that Interim Decision.

11. On November 21, 2014, Applicant filed a proposed procedural schedule, including proposed dates for a one-day evidentiary hearing, that is satisfactory to Intervenor.

12. The ALJ will hold the evidentiary hearing on **January 9, 2015**, which is one of the Parties' proposed dates. This date will allow the Commission to issue its decision in this matter not later than May 27, 2015.

13. The ALJ finds to be satisfactory and will adopt the following procedural schedule proposed by the Parties: (a) not later than **December 16, 2014**, Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than **December 23, 2014** and only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), Applicant will file its corrected list of witnesses and complete copies of corrected exhibits; (c) not later than **December 23, 2014**, Intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (d) not later than **December 30, 2014** and only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), Intervenor will file its corrected list of witnesses and complete copies of corrected exhibits; (e) not later than **December 30, 2014**, each party will file prehearing motions, including (but not limited to) dispositive motions, motions to strike, and motions *in limine*; (f) not later than **January 2, 2015**, the Parties will file any stipulation or settlement agreement reached; (g) the evidentiary hearing will be held on **January 9, 2015**; and (h) not later than **January 23, 2015**, each party will file its post-hearing statement of position, to which (absent further order) no response will be permitted.

14. **The Parties are advised and are on notice that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. Each witness who will be called to testify (except a witness offered in Applicant's rebuttal case) must be identified on the list of witnesses that ¶ 13 requires each party to file. The list of witnesses must contain the following information for each listed witness: (a) the name of the witness; (b) the address of the

witness; (c) the business telephone number or daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

15. **The Parties are advised, and are on notice, that** no person will be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 13 and 14 of this Interim Decision.

16. **The Parties are advised, and are on notice, that**, absent an order, no witness may present testimony by telephone. If a party desires to have a witness testify by telephone, the party must file an appropriate motion not later than the date for filing prehearing motions. Unless otherwise ordered, responses to such a motion must be written and must be filed within *two business days of service of the motion*.¹ The ALJ will rule, as soon as practicable, on a motion for leave to present testimony by telephone.

17. Complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed as required in ¶ 13.

18. **The Parties are advised, and are on notice, that** no document -- *including the Application and its supporting documents* -- will be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶ 13 of this Interim Decision.

19. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405² will govern discovery in this Proceeding.

¹ By this Interim Decision, the ALJ will shorten the response time to this type of motion.

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

20. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to such motions must be written and must be filed within *three business days of service of the motion*.³ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

21. **The Parties are advised, and are on notice, that** it is the responsibility of each party to have, at the evidentiary hearing, a sufficient number of copies of each document that the party wishes to offer as an exhibit.⁴ **The Parties are advised, and are on notice, that** the fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

22. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this matter shall be held on the following date, at the following time, and in the following location:

DATE: January 9, 2015
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The following procedural schedule is adopted: (a) not later than December 16, 2014, The Boulder Lift, LLC (Applicant), shall file its list of witnesses and complete copies of

³ By this Interim Decision, the ALJ will shorten the response time to discovery-related motions.

⁴ The Commission will not make copies of exhibits.

the exhibits it will offer in its direct case; (b) not later than December 23, 2014 and only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), Applicant shall file its corrected list of witnesses and complete copies of corrected exhibits; (c) not later than December 23, 2014, Colorado Cab Company LLC, doing business as Boulder SuperShuttle (Intervenor), shall file its list of witnesses and complete copies of the exhibits it will offer in its case; (d) not later than December 30, 2014 and only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), Intervenor shall file its corrected list of witnesses and complete copies of corrected exhibits; (e) not later than December 30, 2014, each party shall file prehearing motions; (f) not later than January 2, 2015, the Parties shall file any stipulation or settlement agreement reached; and (g) not later than January 23, 2015, each party shall file its post-hearing statement of position, to which (absent further order) no response will be permitted.

3. No person shall be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 13 and 14 of this Interim Decision.

4. Absent an order, no person shall be permitted to present testimony by telephone. If a party desires to have a witness testify by telephone, the party shall file an appropriate motion not later than the date for filing prehearing motions.

5. Response time to a motion to present testimony by telephone is shortened to two business days from the date of service.

6. No document shall be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶ 13 of this Interim Decision.

7. Rule 4 *Code of Colorado Regulations* 723-1-1405 governs discovery.
8. Response time to a motion pertaining to discovery is shortened to three business days from the date of service.
9. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential.
10. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.
11. This Interim Decision is effective immediately.

(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