

Decision No. R19-0878

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0233CP

IN THE MATTER OF THE APPLICATION OF GET2VAIL CORP 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
STEVEN H. DENMAN
APPROVING RESTRICTIVE AMENDMENT,
GRANTING APPLICATION, AS
AMENDED, AND CLOSING PROCEEDING**

Mailed Date: October 29, 2019

I. STATEMENT

1. This Recommended Decision grants the application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application), filed by Get2Vail Corp on May 6, 2019, as amended.

A. Procedural History

2. On May 6, 2019, Applicant Get2Vail Corp filed the above-captioned Application and commenced this Proceeding. Applicant did not file with its Application direct testimony, a list of witnesses, detailed summaries of witness testimony, or copies of exhibits.¹

3. On May 13, 2019, Applicant filed an Amendment to the Application in order to clarify the scope of the proposed authority.

¹ Pursuant to § 40-6-109.5(2), C.R.S. (2019), the Commission's decision in this proceeding must be issued no later than 210 days after the Application was deemed complete, or no later than January 22, 2020.

4. The Commission gave notice of the filing of the Application on May 20, 2019, noting that the Application was:

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

passengers in call-and-demand shuttle service:

- (I) between Denver International Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand; and
- (II) between Eagle County Regional Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand.

5. On June 18, 2019, Hy-Mountain Transportation, Inc., doing business as High Mountain Taxi (High Mountain), by and through its counsel, filed its Entry of Appearance and Intervention (Intervention). The Intervention asserted that the operating rights sought by Applicant would partially overlap the rights granted to High Mountain in Certificate PUC No. 14114, which was attached to the Intervention. High Mountain concluded that it has a legally protected right in the subject matter of this Proceeding, which would be affected if the Application were to be granted. High Mountain argued that the Application should be denied.

6. On June 26, 2019, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

7. On June 28, 2019, High Mountain filed a document entitled “Intervenor’s Exhibit and Witness Summary.”

8. In Decision No. R19-0570-I (mailed on July 9, 2019), the ALJ found that the operating rights sought by Applicant would partially overlap the rights granted to High Mountain in Certificate PUC No. 14114 and agreed that High Mountain was an intervenor by right.

9. Get2Vail Corp and High Mountain are the Parties to this Proceeding.

10. Decision No. R19-0570-I also found and concluded that, under Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and § 13-1-127, C.R.S., Get2Vail Corp had established that Serghei Timinschi, who is not an attorney licensed in Colorado, would be permitted to represent Get2Vail Corp in this Proceeding .²

11. Finally, Decision No. R19-0570-I scheduled an evidentiary hearing on the Application for Tuesday, September 24, 2019 at 9:00 a.m. in a Commission hearing room. The Decision also adopted a schedule for the Parties to file, and to serve on each other, their prehearing disclosures (*i.e.*, their lists of witnesses, a summary of the testimony of each witness, and copies of the exhibits they each intended to present at the hearing).

12. On September 17, 2019, Get2Vail Corp filed a document entitled “Service Restriction Agreement” (Agreement). While the Agreement states that it is between Get2Vail Corp and High Mountain, the Agreement is signed only by Serghei Timinschi on behalf of Get2Vail Corp. The Agreement was not signed by anyone on behalf of High Mountain and failed to reveal High Mountain’s position on the Agreement.³

13. Decision No. R19-0774-I (mailed on September 18, 2019) ordered counsel for High Mountain to make a filing in this Proceeding stating High Mountain’s position on the Agreement; whether High Mountain intends to withdraw its Intervention; its position on whether

² In the Application filed on May 6, 2019, which was signed by Mr. Timinschi, Get2Vail Corp stated that: (a) it does not believe the amount in controversy in this proceeding exceeded \$15,000; (b) it does not have more than three owners; and (c) Mr. Timinschi is an owner of Get2Vail Corp.

³ In the late afternoon of September 17, 2019, the ALJ sent an email to counsel for High Mountain and Mr. Serghei Timinschi, an owner of Get2Vail, advising them that Decision No. R19-0774-I was being issued and of its requirements. The ALJ’s email was filed in this proceeding as Correspondence from the PUC.

this Application should be granted as restricted; and regarding whether the evidentiary hearing should be held or vacated. That filing was due no later than 3:00 p.m. on September 20, 2019.

14. On the morning of September 19, 2019, Get2Vail Corp filed a document entitled “Restrictive Amendment,” stating the restriction differently from the one stated in the Agreement filed on September 17, 2019, and asking that the hearing be vacated and that the Application [as amended] be granted. The Restrictive Amendment is the second amendment to the Application and restricts the scope of the authority “against transportation of passengers in vehicles with a manufacturer’s rated passenger capacity [of] less than nine, plus the driver.” The Restrictive Amendment also states that Get2Vail Corp reserves “the right to promote private transportation (Limo Service) for the parent company True Luxury [Corp].”⁴

15. Later in the morning of September 19, 2019, Mr. Charles J. Kimball, counsel for High Mountain, emailed the ALJ and stated that, “The restrictive amendment attached to the PUC Notice of 9-19-19, at 9:09 AM, satisfies the interest of Hy Mountain Transportation, Inc. and it requests that its intervention be deemed withdrawn and that the 9-24-19 hearing be vacated.”⁵

16. By Decision No. R19-0780-I (mailed on September 20, 2019), the ALJ construed both Get2Vail Corp’s filing and the email correspondence from counsel for High Mountain to be compliant with the filing requirements of Decision No. R19-0774-I. Decision No. R19-0780-I also vacated the evidentiary hearing scheduled for September 24, 2019 at 9:00 a.m.

⁴ Restrictive Amendment, page 1.

⁵ Correspondence from Charles J. Kimball, counsel for Hy-Mountain, to ALJ Steven Denman, dated 10:04 a.m. on September 19, 2019, filed in this proceeding as Withdrawal of Intervention. The “PUC Notice” referenced in Mr. Kimball’s email is the E-filing System’s Notice of Get2Vail’s filing of the Restrictive Amendment, which was served on both Parties and the ALJ.

II. FINDINGS AND CONCLUSIONS

17. The Commission encourages the settlement of contested proceedings.⁶ The Parties have resolved their dispute over this Application through a negotiated agreement to restrict the scope of the authority sought in the Application. Applicant has filed the Agreement and the Restrictive Amendment to amend the Application according to the negotiated Agreement. High Mountain has withdrawn its intervention, and this Application is now unopposed.

18. Because the Application is now unopposed, this Proceeding will be determined using the Commission's modified procedure, without a formal hearing, pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1.

19. Pursuant to the Agreement between Get2Vail Corp and High Mountain and the Restrictive Amendment, the complete statement of the authority sought, as reflected in the Application as amended, is the following:

Transportation of

passengers in call-and-demand shuttle service:

- (I) between Denver International Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand; and
- (II) between Eagle County Regional Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand.

RESTRICTION:

Restricted against transportation of passengers in vehicles with a manufacturer's rated passenger capacity of less than nine passengers, plus the driver.

⁶ See Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1.

20. Applicant has agreed to the proposed restriction, as stated in the Restrictive Amendment.

21. Based upon the forgoing findings and conclusions, the undersigned ALJ finds that the restriction on the authority now proposed by Get2Vail Corp is restrictive in nature, clear and understandable, and administratively enforceable. The restriction is also unambiguous and will be contained wholly within the authority granted. Accordingly, the Restrictive Amendment proposed by Get2Vail Corp and agreed to by High Mountain will be approved.

22. The Application, as amended and as restricted, as well as the Application's supporting attachments, establish that Applicant has sufficient equipment with which to render the proposed transportation service under the authority requested.

23. The Application, as amended, and the Application's supporting attachments establish that Applicant is financially, operationally, and managerially fit to conduct operations under the amended authority requested. Finally, the Application, as amended, and the Application's supporting attachments, as well as the lack of opposition to the Application, as amended, indicate a need for the proposed call-and-demand shuttle service as restricted.

24. The Application, as amended, and the Application's supporting attachments demonstrate that Applicant is familiar with the Commission's Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.⁷

25. The proposed transportation of passengers as requested in the Application, as amended and as restricted, is reasonable and not contrary to the public interest.

⁷ 4 CCR 723-6.

26. Based upon the foregoing findings and conclusions, the Application, as amended and restricted, will be granted.

27. 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. The application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed by Get2Vail Corp on May 6, 2019, as amended, shall be granted consistent with the findings and conclusions stated in this Decision.

2. Get2Vail Corp is granted authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand shuttle service:

- (I) between Denver International Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand; and
- (II) between Eagle County Regional Airport, on the one hand, and all points within the Town of Aspen, the Town of Avon, the Town of Vail, or Edwards, State of Colorado, on the other hand.

RESTRICTION:

Restricted against transportation of passengers in vehicles with a manufacturer's rated passenger capacity of less than nine passengers, plus the driver.

3. Get2Vail Corp shall operate in accordance with all applicable Colorado laws and Commission rules.

4. Get2Vail Corp shall not commence operations under the authority granted by this Decision until it has complied with the requirements of Colorado law 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 (\$45) 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. Get2Vail Corp 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 Commission 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 <https://www.colorado.gov/dora/puc> and by following the transportation common and contract carrier links to tariffs); and
- d. paying the applicable issuance fee.

5. If Get2Vail Corp 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 authority shall be void. For good cause shown, the Commission may grant additional time for compliance if Get2Vail Corp files the request for additional time within 60 days of the effective date of this Decision.

6. The Commission will notify Get2Vail Corp in writing when the Commission's records demonstrate compliance with Ordering Paragraph II.A.4.

7. Proceeding No. 19A-0233CP is closed.

8. 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.

9. 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 within 20 days after service, 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.

10. 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

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director