

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0401CP

IN THE MATTER OF THE APPLICATION OF ASPEN RIDE COMPANY 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
GRANTING APPLICATION, AS AMENDED,
AND CLOSING PROCEEDING**

Mailed Date: December 3, 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 Aspen Ride Company (Aspen Ride or Applicant) on July 18, 2019, as amended by a second restrictive amendment filed on September 18, 2019.

A. Procedural History

2. On July 18, 2019, Aspen Ride, a Colorado Corporation, 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 July 25, 2019, Commission Staff emailed a Deficiency Letter to Aspen Ride, advising that the description in the Application of the authority sought was not clear and

¹ Pursuant to § 40-6-109.5(2), C.R.S. (2019), the Commission's decision in this proceeding shall be issued no later than 210 days after the Application was deemed complete, or no later than April 15, 2020.

requesting that Applicant amend the Application within ten days, or no later than Monday, August 5, 2019.

4. On August 5, 2019, Applicant filed its First Amendment to the Application in order to clarify the description of the proposed authority.

5. The Commission gave notice of the filing of the amended Application on August 12, 2019, noting that the Application was:

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

passengers:

(I) in call-and-demand taxi, shuttle, charter, and sightseeing service

between all points within a 10-mile radius of State Highway 82 from its intersection with State Highway 133 in Carbondale, Colorado and its intersection with West Lupine Drive in Aspen, Colorado; and,

(II) in scheduled service

between all points within Aspen, State of Colorado, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand.

Intervention pleadings were required to be filed within 30 days of the date of the Notice, or no later than September 11, 2019.

6. On August 19, 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 (High Mountain's Intervention). High Mountain asserted that the operating rights sought by Applicant would partially overlap the rights granted to High Mountain in Certificate PUC No. 14114. 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.²

² High Mountain's Intervention, at pages 1 and 2.

7. On August 19, 2019, High Mountain also filed “Intervenor’s Exhibit and Witness Summary,” which identified one witness, listed points about which he may testify, and provided a copy of Certificate PUC No. 14114 as an exhibit.

8. On September 4, 2019, Jerry’s Valley Taxi, LLC, doing business as Valley Taxi of Glenwood Springs, LLC, doing business as Valley Taxi (Valley Taxi), by and through its counsel, filed its Entry of Appearance and Petition for Intervention (Valley Taxi’s Intervention). Valley Taxi asserted that the operating rights sought by Applicant would overlap the rights granted to Valley Taxi in Certificate PUC No. L55723. Therefore, Valley Taxi 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. Valley Taxi requested a hearing and argued that the Application should be denied.³

9. On September 18, 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.

10. Also on September 18, 2019, Applicant filed its Second Amendment to the Application in order to remove Paragraph I of the proposed authority, which proposed to transport passengers in call-and-demand taxi, shuttle, charter, and sightseeing services. As amended, the Application now requests the following authority:

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

passengers in scheduled service

between all points within Aspen, State of Colorado, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand.

³ Valley Taxi’s Intervention, at pages 2 through 4.

11. Decision No. R19-0821-I (mailed on October 4, 2019) acknowledged the interventions by right of High Mountain and Valley Taxi. The Parties to this Proceeding at that point were Aspen Ride, High Mountain, and Valley Taxi.

12. Decision No. R19-0821-I also found 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., Aspen Ride had established that Gregory Larson, who is not an attorney licensed in Colorado, would be permitted to represent Aspen Ride in this Proceeding.⁴

13. By Decision No. R19-0821-I, the ALJ scheduled an evidentiary hearing on the amended Application for November 21 and 22, 2019 at 9:30 a.m. in a Commission hearing room; set a procedural schedule for each Party to file, and to serve on each other, their prehearing disclosures (*i.e.* lists of their witnesses, written summaries of the testimony of each witness, and copies of hearing exhibits); and advised the Parties of certain procedural requirements.

14. On October 30, 2019, counsel for High Mountain sent the following email to the ALJ: “The amendment filed by Applicant satisfies the interest of Hy Mountain Transportation. If the amendment is accepted by the Public Utilities [Commission,] Hy Mountain Transportation withdraws its Intervention.”⁵

15. In Decision No. R19-0825-I (mailed on November 7, 2019), the ALJ agreed that the Second Amendment to the Application removed the alleged partial overlap with Certificate PUC No. 14114, about which High Mountain was concerned and which prompted its

⁴ In the Application filed on July 18, 2019, which was signed by Mr. Larson, Aspen Ride stated that: (a) it did not believe the amount in controversy in this proceeding exceeded \$15,000; (b) it did not have more than three owners; and (c) Mr. Larson is the President of Aspen Ride.

⁵ Correspondence from Charles J. Kimball, counsel for High Mountain, to ALJ Steven Denman, time-stamped at 2:50 p.m. on October 30, 2019, which has been filed in this proceeding as Withdrawal of Intervention. By “amendment,” Mr. Kimball meant the Second Amendment filed by Aspen Rides on September 18, 2019.

intervention by right. The ALJ accepted the Second Amendment to the Application and deemed High Mountain's intervention to be withdrawn.

16. At that point, Aspen Ride and Valley Taxi were the only Parties to this proceeding.

17. In Decision No. R19-0825-I, the ALJ required additional information from Valley Taxi about its intentions. Therefore, the ALJ ordered Valley Taxi to file, no later than 5:00 p.m. on November 12, 2019, answers to the following questions:

- a. Does the Second Amendment to the Application remove the partial overlap with its authority in Certificate PUC No. L55723, as identified in Valley Taxi's Intervention, and its concerns with the Application that prompted Valley Taxi to intervene?
- b. Does Valley Taxi intend to withdraw, or to pursue to hearing, its intervention now that the ALJ has accepted the Second Amendment to the Application?⁶

18. On November 7, 2019, counsel for Valley Taxi filed a Notice of Withdrawal as counsel of record in this proceeding. Valley Taxi had 10 days within which to object.⁷

19. On November 18, 2019, Valley Taxi filed its Response to Order of Administrative Law Judge (Response). Valley Taxi stated, "[T]he Second Amendment to the Application does remove the partial overlap with Valley Taxi's authority in Certificate PUC No. L55723 and does remove its concerns with the Application that prompted Valley Taxi to intervene." Valley Taxi also stated that it desired to withdraw its intervention.⁸

⁶ Decision No. R19-0825-I, Ordering Paragraph No. 3 at page 7. The ALJ issued this Order in Decision No. R19-0825-I pursuant to § 40-6-101(1), C.R.S., which requires the Commission to conduct its proceedings in a manner "as will best conduce the proper dispatch of business and the ends of justice." *Id.*, ¶ 16 at page 6.

⁷ Valley Taxi's objection to the Notice of Withdrawal was due on November 18, 2019, but no objection was filed. However, Valley Taxi's counsel signed and filed the Response on November 18, 2019. Based on that development, it is unclear whether counsel still intended to withdraw. Because no objection was filed, no Commission decision on the Notice of Withdrawal is required. See Rule 1201(d), 4 CCR 723-1.

⁸ Response, ¶¶ 3 and 4 at pages 1 and 2. Under the circumstances described in Footnote No. 7, the ALJ will accept the Response even though it was late-filed.

20. In Decision No. R19-0944-I (mailed on November 20, 2019), the ALJ granted Valley Taxi's request to withdraw and deemed Valley Taxi's intervention by right to be withdrawn. At that point, the Application, as amended, was unopposed.

21. Decision No. R19-0944-I also vacated the evidentiary hearing scheduled for November 21 and 22, 2019 at 9:30 a.m. in a Commission hearing room.

II. FINDINGS AND CONCLUSIONS

22. High Mountain and Valley Taxi have withdrawn their interventions by right. This Application, as amended, is now unopposed.

23. 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.

24. As amended by the Second Amendment, file by Aspen Ride on September 18, 2019, the Application requests the following authority:

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

passengers in scheduled service

between all points within Aspen, State of Colorado, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand.

25. The ALJ accepted the Second Amendment to the Application in Decision No. R19-0825-I. Compared to the authority originally requested by Applicant, the Second Amendment to the Application constitutes a restrictive amendment.

26. Based upon the forgoing findings, the undersigned ALJ concludes that the restriction on the authority now proposed by Aspen Ride is restrictive in nature, clear and understandable, and administratively enforceable. The restriction is also unambiguous and will

be contained wholly within the authority granted. Because the Second Amendment is restrictive, no further public notice of the Application is required.⁹ Accordingly, the ALJ approves the restriction set forth in the Second Amendment.

27. The Application, as amended, establishes that Aspen Ride is familiar with the Rules Regulating Transportation by Motor Vehicle,¹⁰ and agrees to be bound by, and to comply with those Rules. The Application, as amended, and its supporting documentation establish that Aspen Rides has or will have sufficient equipment with which to render the proposed service. The Application, as amended, and its supporting documentation establish that Aspen Rides is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application, as amended, its supporting documentation, the reasonable inferences drawn therefrom, and the lack of opposition to the proposed service indicate a need for the proposed scheduled service.

28. The ALJ finds that the Application, as amended, is reasonable and not contrary to the public interest. Based upon the foregoing findings and conclusions, the Application, as amended, and the requested authority will be granted.

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

⁹ Rule 1309(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

¹⁰ See 4 CCR 723-6.

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 Aspen Ride Company (Aspen Ride) on July 18, 2019, as amended, shall be granted consistent with the findings and conclusions stated in this Decision.

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

Transportation of

passengers in scheduled service

between all points within Aspen, State of Colorado, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand.

3. Aspen Ride shall operate in accordance with all applicable Colorado laws and Commission rules.

4. Aspen Ride 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. Aspen Ride 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 Aspen Ride 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 Aspen Ride files the request for additional time within 60 days of the effective date of this Decision.

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

7. Proceeding No. 19A-0401CP 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

Doug Dean,
Director