

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0742CP

IN THE MATTER OF THE APPLICATION OF ARROWHEAD TAXI LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
REGARDING REPRESENTATION
AND REQUIRING PARTIES TO CONFER
AND TO FILE JOINT STATUS REPORT
ON HEARING DATES AND LOCATION**

Mailed Date: February 25, 2020

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I. STATEMENT

A. Procedural History

1. December 30, 2019, Arrowhead Taxi LLC (Applicant or Arrowhead) filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On January 6, 2020, the Commission issued its Notice of Application Filed (Notice). As originally noticed, 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 taxi service

between all points in Garfield County, State of Colorado; and between said points, on the one hand, and the Grand Junction Regional Airport, the Eagle County Regional Airport, the Aspen/Pitkin County Airport, or the Denver International Airport, on the other hand.

The 30-day intervention deadline set by the Notice expired on February 5, 2020. Applicant did not file testimony and exhibits with its Application and, therefore, seeks a Commission decision within 210 days, or no later than September 10, 2020.¹

3. During the Commission's weekly meeting held February 13, 2020, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition.

4. On January 31, 2020, Jerry's Valley Taxi, LLC, doing business as Valley Taxi of Glenwood Springs, LLC, doing business as Valley Taxi (Valley Taxi), by and through counsel, filed its Entry of Appearance and Petition for Intervention (Intervention). Valley Taxi's Certificate PUC No. L55723 was attached to the Intervention as Exhibit 2.

5. Certificate PUC No. L55723 authorizes Valley Taxi to provide transportation of passengers in taxi service, (l) Between all points within a 10-mile radius of the intersection of Colorado Highway 82 and Interstate 70 in Glenwood Springs, Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand, subject to the following restrictions: (1) Against providing any service between points in Mesa County,

¹ See § 40-6-109.5(2), C.R.S.

Colorado; (2) Against providing any service from points in Mesa County, Colorado; and (3) Service to Mesa County, Colorado, is restricted to transportation only to Walker Field Airport, the Greyhound Bus Stations, or the Amtrak Rail Station in Grand Junction, Colorado.²

6. Certificate PUC No. L55723 also authorizes Valley Taxi to provide transportation of passengers in taxi service, (II) Between all points within a 20-mile radius of Exit 90 on Interstate 70, and between said points, on the one hand, and all points in the State of Colorado, on the other hand, subject to the following restrictions: (1) Against providing service from points in Mesa County, Colorado; and (2) Service to Mesa County, Colorado, is restricted to transportation only to Walker Field Airport, the Greyhound Bus Station, or the Amtrak Rail Station in Grand Junction, Colorado.³

7. Valley Taxi asserts that, under its Certificate PUC No. L55723, it serves “in the same territories and to and from the same locations proposed in the application.” Valley Taxi argues that it has legally protected rights in the subject matter of the Application, that its rights would be affected if the Application were to be granted, and that it is entitled to intervene by right. Valley Taxi requests a hearing and argues that the Application should be denied for five substantive reasons.⁴

8. After a review of Certificate PUC No. L55723 and the service territory granted to Valley Taxi, the ALJ disagrees with Valley Taxi’s argument that it serves “in the same territories and to and from the same locations proposed in the application.” However, the authority sought

² See Intervention, Exhibit 2. Walker Field is the former name of the airport in Grand Junction. Opened in 1930 as the Grand Junction Municipal Airport, the airport was renamed Walker Field in 1942. On May 15, 2007, the airport was renamed the Grand Junction Regional Airport. The Grand Junction Regional Airport Authority owns the airport. See https://en.wikipedia.org/wiki/Grand_Junction_Regional_Airport, visited on February 24, 2020.

³ See Intervention, Exhibit 2.

⁴ Intervention, ¶¶ 3 and 5 at pages 2, 3, and 4.

in the Application does overlap a part of the service territory and authority granted to Valley Taxi; that is, within the two radii stated in Certificate PUC No. L55723 in Garfield County, Colorado, as well as for transportation between points within those radii and the Grand Junction Regional Airport in Mesa County. The ALJ finds that Valley Taxi is an intervenor by right.⁵

9. No other interested parties filed intervention pleadings by the February 5, 2020 intervention deadline.

10. Arrowhead and Valley Taxi are the Parties to this proceeding.

B. Legal Counsel/Self Representation.

11. The Application states that Applicant is a Colorado limited liability company (LLC). The Application was signed by Ronald V. Carl, as “Owner.” Arrowhead is a Party and is not represented by counsel in this proceeding.

12. This Application is an adjudicatory proceeding before the Commission.

13. Rule 1201(a) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015), requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, unless certain exceptions are satisfied. To prove in a Commission adjudicatory proceeding that a non-attorney managing member⁶ of an LLC can represent its interests, under the criteria of Rule 1201(b)(II), 4 CCR 723-1, the LLC must show the Commission that: (1) it is a closely-held entity, (that is, an entity with no more than three owners);⁷ (2) no more than

⁵ Since Valley Taxi is an intervenor by right, it is not necessary to discuss its alternative request for permissive intervention.

⁶ As pertinent here, § 13-1-127(2.3)(c), C.R.S., states that a “person in whom the management of a limited liability company is vested or reserved” shall be “presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status[.]”

⁷ Section 13-1-127(1)(a), C.R.S.

\$15,000 is in controversy in the proceeding; and (3) the managing member has the authority to represent the interests of the LLC.⁸ This requirement is mandatory. If a party does not meet the criteria of this Rule, any filing made by a non-attorney on behalf of that party is void and of no legal effect, and a non-attorney may not represent the party in Commission adjudicatory proceedings.⁹

14. Applicant has the burden to prove that Arrowhead meets the criteria of Rule 1201(b)(II), 4 CCR 723-1, and is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant must do the following: First, Applicant must establish that it is a closely-held entity. This means that Applicant must establish that it has “no more than three owners.” Section 13-1-127(1)(a), C.R.S. Second, Applicant must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer¹⁰ may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.¹¹

15. The Application satisfactorily establishes that Arrowhead is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1, and that Ronald V. Carl, the Owner, may represent Arrowhead in this proceeding.¹²

⁸ Section 13-1-127(2.3)(c), C.R.S.

⁹ *See, e.g.*, Decisions No. C05-1018 (issued August 30, 2005) in Proceeding No. 04A-524W; No. C04-1119 (issued September 28, 2004) in Proceeding No. 04G-101CP; and No. C04-0884 (issued August 2, 2004) in Proceeding No. 04G-101CP.

¹⁰ Section 13-1-127(1)(i), C.R.S., defines “Officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

¹¹ *See* § 13-1-127(2.3)(c), C.R.S.

¹² *See* Application filed on December 30, 2019, page 7 of 7.

16. Legal counsel represents Valley Taxi. Arrowhead may retain legal counsel to represent its interests in this proceeding, and is strongly encouraged to do so. If Arrowhead retains counsel, its counsel shall file an entry of appearance and serve the same on counsel for Valley Taxi no later than **March 6, 2020**.

17. **If Arrowhead does not retain counsel, Arrowhead and Mr. Carl are advised and on notice that** they will be bound by, and held to, the same procedural and evidentiary rules that all attorneys must follow in Commission proceedings. Mr. Carl and Arrowhead will not be held to a lesser standard because Arrowhead has chosen not to be represented by an attorney in this proceeding.

C. Process for Setting a Procedural Schedule and Scheduling the Hearing.

18. It is necessary to schedule an evidentiary hearing in this proceeding. To schedule the hearing date and location, the ALJ will order Arrowhead to confer with counsel for Valley Taxi regarding two sets of consecutive hearing dates when the Parties and their witnesses will be available **during the weeks of May 4, 2020; May 11, 2020; or May 18, 2020.**¹³

19. Arrowhead and counsel for Valley Taxi shall file a Joint Status Report, **no later than March 6, 2020**, informing the undersigned ALJ of the results of their conferral. If the Parties agree to the proposed hearing dates within the date ranges noted above, the Joint Status Report shall identify the agreed-upon dates. The Joint Status Report should also state the preferred location of the hearing and the estimated number of days needed for the hearing. The ALJ will choose, if possible, one of the dates proposed in the Joint Status Report.

¹³ Arrowhead requested that the hearing be held in Garfield County. To assist the Parties in choosing hearing dates and a location please note that, if the hearing location is in Garfield County, the ALJ and court reporter cannot travel on weekends. In other words, the hearing dates must be scheduled for Tuesday, Wednesday, or Thursday.

20. If counsel for Valley Taxi fails to confer with Arrowhead, Arrowhead shall file an individual Status Report, **no later than March 6, 2020**, stating: (a) the reasonable, good faith efforts made to confer with counsel for Valley Taxi; and (b) Arrowhead's available dates for the hearing within the date ranges noted above and its preferred hearing location. If Arrowhead fails to confer with counsel for Valley Taxi, counsel for Valley Taxi shall file an individual Status Report, **no later than March 6, 2020**, stating that Arrowhead did not confer with it and identifying Valley Taxi's available dates for the hearing within the date ranges noted above and its preferred hearing location. The ALJ will choose, if possible, one of the dates proposed in the filed Status Report.

21. **The Parties are advised and are on notice that** failure to file the Joint Status Report, or individual Status Report, or failure to agree on proposed hearing dates by the deadline ordered in this Decision will result in the ALJ selecting a hearing date without further input from the Parties. In that event, after scheduling the hearing, the ALJ will not consider future requests to reschedule the hearing, unless upon filing a motion with a showing of good cause.

22. After selecting the date for the hearing, the ALJ will issue an Interim Decision that schedules the date(s) and location of the evidentiary hearing and establishes a procedural schedule for each Party to file its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing.

23. The Notice established a schedule for filing lists of witnesses and copies of exhibits, consistent with Rule 1405(k) of the Rules of Practice and Procedure, 4 CCR 723-1. The Notice required Applicant to file and to serve its list of witnesses and copies of its exhibits not later than ten days after the conclusion of the notice period, or in this case by February 17,

2020.¹⁴ The Notice required intervenors to file and to serve their list of witnesses and copies of its exhibits not later than 20 days after the notice period expires, or in this case by February 25, 2020.

24. Given the process adopted by the ALJ in this proceeding for scheduling the evidentiary hearing and establishing the procedural schedule, the ALJ will vacate the schedule for filing lists of witnesses and copies of exhibits set forth for this proceeding in the Notice dated January 6, 2020.

D. Additional Advisements. (Please read and understand these Advisements.)

25. **The Parties are advised and on notice** that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, Part 1. Even though Applicant will be represented by a non-attorney, these rules apply equally to a non-attorney who may represent a Party in this proceeding. The ALJ expects all Parties to comply with these rules. The Rules of Practice and Procedure are available on the Commission's website (<http://www.dora.colorado.gov/puc>), as well as in hard copy from the Commission upon request.

26. **The Parties are advised and are on notice** that they are each responsible for filing pleadings and other documents with the Commission. Pursuant to Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, a filing is made when the Commission receives the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is not filed with the Commission in a timely manner. Pleadings and other documents are filed with the Commission either by using the E-filings System or by filing a paper document, including the original and three copies. Emailing pleadings and other

¹⁴ Since the ten-day deadline under Rule 1405(k) fell on Saturday, February 15, 2020, the filing deadline was extended by operation of law until the next business day, or until Monday, February 17, 2020. Section 40-6-121, C.R.S.

documents to the Commissioners, the Director of the Commission, an ALJ, or other employees of the Commission **does not** constitute proper filing under Rule 1204, 4 CCR 723-1.

27. **Each Party is specifically advised** that all filings with the Commission must also be served upon the other Party and counsel, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

28. **Each Party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, in this proceeding the responding Party (*i.e.*, the Party that did not file a motion) has the procedural right to file a written response to the motion no later than 14 days after service of the motion.

29. **The Parties are advised and are on notice** that the Commission has an E-Filings System available. One may learn about -- and if one wishes to do so, may register to use -- that system at <http://www.dora.colorado.gov/puc>.

30. **The Parties are advised and on notice** that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the final Commission decision in this matter must be issued on or before September 10, 2020. This date will be considered by the ALJ in the event any party seeks an extension of time to make any filings or seeks a continuance of the hearing. The Parties are reminded that there must be sufficient time after the hearing for the issuance of a recommended decision, for filing of exceptions if needed, for filing of responses to any exceptions filed, and for the Commission to issue a decision on exceptions, if exceptions are filed.

II. ORDER

A. It Is Ordered That:

1. Arrowhead Taxi, LLC (Arrowhead) is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. Ronald V. Carl, a non-attorney and the Owner of Arrowhead may represent Arrowhead in this proceeding.

2. The schedule for filing documents by the Parties, established in the January 6, 2020 Notice of Applications Filed, is vacated. That schedule required Arrowhead to file and to serve its list of witnesses and copies of its exhibits no later than 10 days after the conclusion of the notice period and for Jerry's Valley Taxi, LLC, doing business as Valley Taxi of Glenwood Springs, LLC, doing business as Valley Taxi (Valley Taxi) to file and to serve its list of witnesses and copies of its exhibits no later than 20 days after the notice period expired.

3. As described in Paragraph Nos. I.C. 18 through 24 above, Arrowhead shall confer with counsel for Valley Taxi about suitable hearing dates and the hearing location. Arrowhead and counsel for Valley Taxi shall file a Joint Status Report no later than March 6, 2020, identifying the Parties' preferred hearing dates and hearing location. The Parties shall confer about, and the Joint Status Report shall also state the estimated number of days needed for the hearing. If the Parties agree to the proposed hearing dates within the date ranges noted in this Decision, the Joint Status Report shall identify the dates and location agreed-upon.

4. If counsel for Valley Taxi fails to confer with Arrowhead, Arrowhead shall file an individual Status Report, no later than March 6, 2020, stating: (a) the reasonable, good faith efforts made to confer with counsel for Valley Taxi; and (b) Arrowhead's available dates for the hearing within the date ranges noted herein and its preferred hearing location.

5. If Arrowhead fails to confer with counsel for Valley Taxi, counsel for Valley Taxi shall file an individual Status Report, no later than March 6, 2020, stating: (1) that Arrowhead did not confer with him; and (2) identifying Valley Taxi's available dates for the hearing within the date ranges noted herein and its preferred hearing location.

6. The Parties shall comply with the requirements established in this Interim Decision and shall make the filings as required by this Decision.

7. Additional procedural requirements may be issued in future Interim Decisions.

8. This Interim Decision is effective immediately.

(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