

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0003CP

IN THE MATTER OF THE APPLICATION OF JONAS TRANSPORT LLC 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
G. HARRIS ADAMS
GRANTING MOTION TO DISMISS
APPLICATION; DISMISSING APPLICATION
WITHOUT PREJUDICE; VACATING EVIDENTIARY
HEARING; AND CLOSING PROCEEDING**

Mailed Date: April 14, 2020

I. STATEMENT

1. On January 2, 2020, Jonas Transport LLC (Applicant) filed its Application for a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire. The matter was referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held February 26, 2020.

2. The Commission gave notice of the application on January 21, 2020. As originally noticed, the application sought the following authority:

A Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand charter service:

- (I) between points within the Cities of Boulder, Colorado Springs, Ft. Collins, Loveland, and Windsor, State of Colorado, on the one hand, and Denver International Airport, on the other hand;
- (II) between points within a 4-mile radius of the intersection of Broadway and Colfax Avenue, Denver, Colorado, on the one hand, and Denver International Airport, on the other hand; and

(III) between the ski resorts at Arapahoe Basin, Beaver Creek, Breckenridge, Copper Mountain, Keystone, Loveland, Ski Cooper, Vail, and Winter Park, State of Colorado, on the one hand, and Denver International Airport, on the other hand.

3. On January 23, 2020, Home James Transportation Services, LTD (Home James) timely intervened of right.

4. Despite the fact that Applicant's deadline for filing lists of witnesses and copies of exhibits passed and no such information was filed, the undersigned adopted a new procedural schedule to govern this proceeding. By Decision No. R20-0132-I, issued February 28, 2020, a procedural schedule was adopted and a hearing was scheduled in this matter to be held on April 20, 2020. Among other things, Applicant was ordered to file its list of witnesses and copies of its exhibits that it will present at hearing no later than March 17, 2020. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1205(a) of the Commission's Rules of Practice and Procedure, requires that all documents filed in a case also be served on all other parties or their attorneys if they are represented by counsel, that includes Home James as Intervenor in this case. Paragraph 5 of Decision No. R20-0132-I contains the following advisement:

Parties are advised that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. **Parties are advised further** that no exhibit will be received in evidence, except in rebuttal, unless filed and served in accordance with the procedural schedule.

(Bolding in original)

Paragraph 8 contains the following advisement:

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

5. Applicant failed to file and serve the required disclosures regarding the list of witnesses and copies of exhibits by the March 17, 2020 deadline.

6. On March 30, 2020, Home James filed its Motion in Limine and Motion to Dismiss. Home James requests dismissal of the application for Applicant's failure to file and serve disclosures as ordered. Based thereupon, and the advisement above, the Applicant will be unable to meet its burden of proof.

7. No response was filed to the Motion in Limine and Motion to Dismiss.

8. A review of the Commission's file reveals that Applicant has yet to file the ordered disclosures. Home James' counsel represents that the same information was not served as required by Commission rule. Further, Applicant filed no response to Home James's motion.

9. The Motion in Limine and Motion to Dismiss is unopposed; and, pursuant to Rule 1400 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and Decision No. R20-0132-I, the ALJ deems the Applicant to have confessed the Motion in Limine and Motion to Dismiss.

10. Applicant's failure to comply with the procedural order prejudices Home James by significantly hindering Home James's ability to adequately prepare for the upcoming evidentiary hearing and to ensure compliance of its own disclosures.

11. Without the presentation of witnesses and exhibits, Applicant's Application, standing alone, does not meet Applicant's burden of proof.

12. Because Applicant has failed to comply with the procedural schedule and, therefore, cannot meet its burden of proof in this matter, the Application should be dismissed.

13. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Motion in Limine and Motion to Dismiss filed by Home James Transport, Inc. on March 30, 2020, is granted.

2. Applicant Jonas Transport LLC is precluded from offering witnesses or exhibits at the scheduled evidentiary hearing in this matter.

3. The application of Jonas Transport LLC for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire is dismissed without prejudice.¹

4. The evidentiary hearing scheduled in this matter for April 20, 2020 is vacated.

5. This Proceeding is now closed.

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 § 40-6-106, 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 recommended 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 a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may

¹ Dismissal without prejudice means that the Applicant may file another application at any time.

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 Recommended 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director