

Decision No. R20-0387-I

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
RESCHEDULING THE HEARING AND
ADOPTING A NEW PROCEDURAL SCHEDULE
FOR FILING PREHEARING DISCLOSURES**

Mailed Date: May 22, 2020

I. STATEMENT

A. Procedural History

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

¹ See § 40-6-109.5(2), C.R.S. (2019). In Decision No. R20-0281-I (mailed on April 22, 2020), the ALJ found that extraordinary conditions existed, which warranted further extension of the September 10, 2020 statutory deadline under § 40-6-109.5(6), C.R.S. (2019), by an additional 90 days, or until December 9, 2020.

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.

3. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision into context.

4. After the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) on February 13, 2020, the undersigned ALJ was assigned to preside over this proceeding.

5. 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), which holds Certificate PUC No. L55723, filed its Entry of Appearance and Petition for Intervention. Decision No. R20-0125-I (mailed on February 25, 2020) acknowledged Valley Taxi's intervention by right.

6. Arrowhead and Valley Taxi are the Parties to this proceeding. Decision No. R20-0125-I allowed Arrowhead to be represented by Ronald V. Carl, who is not an attorney and is the Owner.² Valley Taxi is represented by counsel.

² Decision No. R20-0125-I, ¶ 15 at page 5. See Rule 1201(b)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2015). Mr. Carl was given the option of retaining counsel, but he did not.

7. By Decision No. R20-0156-I (mailed on March 10, 2020), the ALJ set an evidentiary hearing for May 5, 2020 at 9:00 a.m. in the City Council Chambers in Rifle, Colorado.

8. Decision No. R20-0156-I ordered Arrowhead to file and serve on counsel for Valley Taxi, on or before March 31, 2020, the following prehearing disclosures: (a) a list that identifies the witnesses Arrowhead intends to call at the hearing, including the last known address and telephone number of each witness; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits Arrowhead intends to present at the hearing.

9. A review of the Commission's file in this Proceeding reveals that Arrowhead failed to file and serve its prehearing disclosure filing by March 31, 2020 as ordered.

10. Decision No. R20-0156-I also ordered Valley Taxi to file and serve on Arrowhead, on or before April 21, 2020 the following prehearing disclosures: (a) a list that identifies the witnesses Valley Taxi intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits Valley Taxi intends to present at the hearing.

11. Decision No. R20-0245-I (mailed on April 10, 2020) scheduled a remote status conference to be held on April 17, 2020, in light of Colorado Governor Jared Polis' declaration of a disaster emergency and extension of the declaration to May 8, 2020, in response to the presence of the novel coronavirus disease (COVID-19) in Colorado.³

³ Executive Order D-2020 003, issued March 11, 2020. Executive Order D-2020 058, issued May 7, 2020, extended the disaster emergency declaration through June 6, 2020.

12. The remote status conference was held as scheduled. Mr. Carl failed to appear on behalf of Arrowhead. Mr. Hess appeared on behalf of Valley Taxi.

13. At the remote status conference, the ALJ *inter alia* made the following rulings, which were memorialized by Decision No. R20-0281-I (mailed on April 22, 2020):

- a) The May 5, 2020 hearing; in Rifle, Colorado was continued indefinitely, until there is more certainty regarding the Governor's and the Commission's responses to the COVID-19 pandemic and travel restrictions for state employees; and
- b) The April 21, 2020 due date was continued indefinitely for Valley Taxi to file and serve on Arrowhead: (i) a list that identifies the witnesses Valley Taxi intends to call at the hearing, including the last known address and telephone number of each witness; (ii) a written summary of the anticipated testimony of each witness; and (iii) copies of the exhibits Valley Taxi intends to present at the hearing.⁴

14. Since Mr. Carl had failed to appear at the remote status conference, even though he had ample notice about the date, time, and how to participate, the ALJ found that Mr. Carl would be bound by the rulings made at the remote status conference.⁵

B. Rescheduling the Hearing and Adopting a New Procedural Schedule.

15. The ALJ has determined that the evidentiary hearing can now be rescheduled. The stay-at-home orders issued by Governor Polis expired on April 26, 2020, while the stay-at-home order issued by Denver Mayor Michael Hancock expired on May 8, 2020. As far as the ALJ is aware, the restriction on travel by state employees is still in effect and the date of its

⁴ See Decision No. R20-0281-I, Ordering Paragraphs Nos. 1 and 2 at pages 4 and 5. As noted in Footnote 1 at page 1, Decision No. R20-0281-I extended the Commission's decision deadline until December 9, 2020.

⁵ *Id.*, ¶ 14 at page 4.

termination is unknown. Therefore, **the evidentiary hearing will be scheduled for Tuesday, September 1, 2020, commencing at 9:00 a.m., in a Commission hearing room.**⁶

16. To facilitate the orderly and efficient litigation of this proceeding, the ALJ will adopt a new procedural schedule, so that each Party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call and to review copies of the exhibits the other party will present at the hearing. Therefore, this Decision will order the Parties to file, and to serve on each other (and counsel), as prehearing disclosures, a list of their witnesses, a written summary of the testimony of each witness, and copies of the exhibits the filing Party intends to present at the hearing.

17. Arrowhead will be ordered to file and to serve on counsel for Valley Taxi, **on or before July 13, 2020**, the following prehearing disclosures: (a) a list that identifies the witnesses Arrowhead intends to call at the hearing, including the last known address and telephone number of each witness; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits Arrowhead intends to present at the hearing.

18. The ALJ is aware that Arrowhead failed to file its initial prehearing disclosures by the March 31, 2020 deadline set by Decision No. R20-0156-I. **Arrowhead and Mr. Carl are advised and on notice that Arrowhead's failure to file its prehearing disclosures by the July 13, 2020 deadline set by this Decision shall be just cause for dismissal of this Application for failure to comply with valid Commission decisions.**

⁶ Holding the hearing remotely by video conference may be necessary, depending on the substance of public health orders and advisories to prevent the spread of COVID-19 in Colorado that may be in effect during August and September of 2020. If it is necessary to hold the hearing remotely, a separate decision will be issued sufficiently in advance of the hearing providing links and instructions for the Parties and their counsel about how to participate in the hearing remotely.

19. Valley Taxi will be ordered to file and serve on Arrowhead (and its counsel if one has been retained), **on or before August 10, 2020**, the following prehearing disclosures: (a) a list that identifies the witnesses Valley Taxi intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits Valley Taxi intends to present at the hearing.

C. Procedural Advisements.

20. The procedural advisements provided to the Parties in Decision No. R20-0125-I continue to be in force. The following advisements relate to the hearing.

21. At the hearing, exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3); starting with Arrowhead's direct case exhibits, followed by Valley Taxi's exhibits. Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. Before the hearing commences, the Parties shall work with the Court Reporter to mark their exhibits for identification.

22. Each Party shall bring to the hearing an original and three hard copies of each exhibit it intends to introduce at the hearing. The filing of an exhibit with the Commission does not result in the exhibit being admitted into the evidentiary record of the hearing.⁷

23. If any exhibit is two pages in length or longer, the Party offering the exhibit shall sequentially number each page of the exhibit.

⁷ If the evidentiary hearing will be held remotely by video conference, there will be different procedures for marking, identifying, and admitting exhibits electronically, which will be set forth in the separate decision referenced in Footnote 6 at page 5.

24. The Parties are on notice of the following: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required by this Decision; (b) any failure to provide an accurate summary of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying beyond the scope of the summary; and (c) any exhibit may not be received in evidence, except in rebuttal, unless the exhibit was filed and served as required by this Decision.

25. Any Party wishing to make an oral closing argument may do so immediately following the close of the evidence (*i.e.*, after presentation of evidence near the end of the hearing).

II. ORDER

A. It Is Ordered That:

1. A hearing in this matter shall be conducted at the following date, time, and place:

DATE: September 1, 2020

TIME: 9:00 a.m.

PLACE: Hearing Room B
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. On or before July 13, 2020, Arrowhead Taxi LLC (Arrowhead) shall file with the Commission and serve on counsel for Jerry's Valley Taxi, LLC, doing business as Valley Taxi of Glenwood Springs, LLC, doing business as Valley Taxi (Valley Taxi), the following prehearing disclosures: (a) a list that identifies the witnesses Arrowhead intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary

of the anticipated testimony of each witness; and (c) copies of the exhibits Arrowhead intends to present at the hearing.

3. On or before August 10, 2020, Valley Taxi shall file with the Commission and serve on Arrowhead (and its counsel if one has been retained), the following prehearing disclosures: (a) a list that identifies the witnesses Valley Taxi intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits Valley Taxi intends to present at the hearing.

4. The Parties shall comply with the requirements established in this Decision, and they shall make the filings as required by the procedural schedule established by this Decision.

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

6. This Decision shall be 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