

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19A-0742CP

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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.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
GRANTING MOTION TO DISMISS  
APPLICATION AND CLOSING PROCEEDING**

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Mailed Date: August 18, 2020

**TABLE OF CONTENTS**

I. STATEMENT.....	1
A. Procedural History.....	1
B. Valley Taxi’s Motion to Dismiss. ....	7
II. DISCUSSION, FINDINGS, AND CONCLUSIONS .....	7
III. ORDER.....	9
A. The Commission Orders That: .....	9

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**I. STATEMENT**

**A. Procedural History**

1. On December 30, 2019, Arrowhead Taxi LLC (Arrowhead or Applicant) 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.<sup>1</sup> 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, sought a Commission decision within 210 days or no later than September 10, 2020.<sup>2</sup>

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. Subsequently, the undersigned ALJ was assigned to preside over this proceeding.

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.

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<sup>1</sup> See § 40-6-109.5(2), C.R.S. (2019). .

<sup>2</sup> See § 40-6-109.5(2), C.R.S.

5. Decision No. R20-0125-I (mailed on February 25, 2020) concluded that Valley Taxi was an intervenor by right.

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

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

8. Decision No. R20-0125-I found that Arrowhead is a Colorado limited liability company, that Ronald V. Carl, the Owner, signed the Application,<sup>3</sup> and that Arrowhead was not represented by counsel. After reviewing statements in the Application, the ALJ concluded that the Application satisfactorily established that Arrowhead was entitled to proceed without an attorney, pursuant to Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015),<sup>4</sup> and that Mr. Carl may represent Arrowhead in this proceeding.<sup>5</sup> The ALJ advised Arrowhead that it may retain legal counsel to represent its interests in this proceeding, and he strongly encouraged Arrowhead to do so.<sup>6</sup>

9. Decision No. R20-0125-I also established a process through which Mr. Carl, on behalf of Arrowhead, was required to confer with counsel for Valley Taxi regarding hearing dates when the Parties and their witnesses would be available during certain weeks in May of 2020.

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<sup>3</sup> See Application filed on December 30, 2019, at pages 2 and 7.

<sup>4</sup> Amended Rules of Practice and Procedure became effective on July 30, 2020. See Decision No. C20-0177 (mailed on March 30, 2020) in Proceeding No. 19R-0483ALL and § 24-4-103(5), C.R.S. New rules adopted by an administrative agency have a “future effect” (*i.e.*, adopted rules are prospective only). See § 24-4-102(15), C.R.S. Because this Complaint was filed on June 30, 2020, prior to the effective date of the amended rules, this Decision applies the 2015 version of the Rules of Practice and Procedure that were in effect on June 30, 2020. See Article 2, § 11, *Colo. Const.* Significantly, Proceeding No. 19R-0483ALL adopted no material amendments to the parts of the Rules of Practice and Procedure relied upon in this Decision.

<sup>5</sup> See Application filed on March 9, 2020, at page 7.

<sup>6</sup> Decision No. R20-0125-I, ¶¶ 11 – 17, at pages 4 through 6.

The Decision ordered the Parties to file a Joint Status Report, no later than March 6, 2020, informing the ALJ of the results of their conferral, including the agreed-upon hearing dates.<sup>7</sup>

10. On March 6, 2020, the Parties filed their Joint Status Report. Decision No. R20-0156-I (mailed on March 10, 2020) scheduled the evidentiary hearing for May 5, 2020 at 9:00 a.m. in Rifle, Colorado.

11. To facilitate the orderly and efficient litigation of this proceeding, in Decision No. R20-0156-I the ALJ adopted a procedural schedule for the filing of prehearing disclosures, so that each party would have an opportunity prior to the hearing to review a summary of the anticipated testimony of the other party's witnesses and to review copies of the exhibits the other party intended to present at the hearing. Arrowhead was ordered to file and to serve on counsel for Valley Taxi, on or before March 31, 2020: (a) a list that identifies the witnesses Arrowhead intended 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 intended to present at the hearing.<sup>8</sup>

12. Decision No. R20-0156-I warned the Parties that:

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.<sup>9</sup>

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<sup>7</sup> *Id.*, ¶¶ 18 – 24, at pages 6 through 8. If Applicant failed to confer with counsel for Valley Taxi before the deadline, Valley Taxi's counsel had the option of filing his own Status Report.

<sup>8</sup> Decision No. R20-0156-I, Ordering ¶ 2, at page 6. Valley Taxi was ordered to file and to serve on Arrowhead, on or before April 21, 2020: (a) a list that identifies the witnesses Valley Taxi intended 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 Valley Taxi intended to present at the hearing. *Id.*, Ordering Paragraph No. 3, at pages 6 and 7.

<sup>9</sup> *Id.*, ¶ 19, at page 5.

13. Arrowhead failed to file its prehearing disclosures by the March 31, 2020 deadline set by Decision No. R20-0156-I.

14. Decision No. R20-0245-I (mailed on April 10, 2020) scheduled a remote status conference for 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.<sup>10</sup>

15. 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.

16. 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 vacated and continued indefinitely, until there was 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.<sup>11</sup>

17. In addition, in Decision No. R20-0281-I, the ALJ found that extraordinary conditions existed, which warranted further extension of the September 10, 2020 statutory

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<sup>10</sup> 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.

<sup>11</sup> See Decision No. R20-0281-I, Ordering Paragraphs Nos. 1 and 2 at pages 4 and 5. Also in effect was a restriction on travel by state employees, and the date of its termination was unknown. As noted in Footnote 1 at page 1, Decision No. R20-0281-I extended the Commission's decision deadline until December 9, 2020.

deadline under § 40-6-109.5(6), C.R.S. (2019), by an additional 90 days, or until December 9, 2020.<sup>12</sup>

18. 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.<sup>13</sup>

19. Decision No. R20-0387-I (mailed on May 22, 2020) rescheduled the evidentiary hearing for September 1, 2020 in a Commission hearing room. The procedural schedule for the Parties to file prehearing disclosures was extended, as well. Arrowhead was ordered to file and to serve on counsel for Valley Taxi the same prehearing disclosures on or before July 13, 2020. Valley Taxi was ordered to file and to serve on Arrowhead the same prehearing disclosures on or before August 10, 2020.<sup>14</sup>

20. Decision No. R20-0387-I again warned the Parties that:

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.<sup>15</sup>

21. Arrowhead failed to file its prehearing disclosures by the July 13, 2020 deadline set by Decision No. R20-0387-I.

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<sup>12</sup> *Id.*, Ordering Paragraph No. 3 at page 5.

<sup>13</sup> *Id.*, ¶ 14 at page 4.

<sup>14</sup> Decision No. R20-0387-I, Ordering Paragraphs Nos. 1, 2, and 3 at pages 7 and 8.

<sup>15</sup> *Id.*, ¶ 24, at page 7. *See also id.*, at Ordering Paragraph No. 4, at page 8, “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.”

22. On August 10, 2020, Valley Taxi filed Intervenor's Prehearing Disclosures, including: (a) its list of witnesses Valley Taxi intended to call at the hearing; (b) a written summary of the anticipated testimony of each witness; and (c) copies of two exhibits Valley Taxi intended to present at the hearing.

**B. Valley Taxi's Motion to Dismiss.**

23. On July 31, 2020, Valley Taxi filed Intervenor's Motion to Dismiss (Motion to Dismiss). Valley Taxi served a copy of the Motion to Dismiss on Arrowhead by U.S. Mail and electronically through the Commission's E-filings System.<sup>16</sup>

24. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, Arrowhead's response to the Motion to Dismiss was due 14 calendar days after service, or no later than Friday, August 14, 2020.

25. A search of the Commission's E-filings System for this proceeding reveals that Arrowhead failed to file any response to the Motion to Dismiss by August 14, 2020, nor did Arrowhead file by that deadline a timely motion for an extension of time to file its response.

**II. DISCUSSION, FINDINGS, AND CONCLUSIONS**

26. The Motion to Dismiss argues that Arrowhead, even though represented by a non-attorney (Mr. Carl), would be held to the same procedural rules that all attorneys must follow in Commission proceedings.<sup>17</sup>

27. Indeed, Decision No. R20-0125-I cautioned the Parties that:

**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

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<sup>16</sup> Motion to Dismiss, Certificate of Service at page 2.

<sup>17</sup> Motion to Dismiss at page 1.

to a non-attorney who may represent a Party in this proceeding. The ALJ expects all Parties to comply with these rules.<sup>18</sup>

28. The Motion to Dismiss argues that the Application should be dismissed because Arrowhead has not filed its list of witnesses, summaries of testimony, and copies of exhibits, as required by Decision No. R20-0387-I. Valley Taxi argues that Arrowhead's failure to disclose its witnesses and exhibits makes it impossible for Valley Taxi to prepare adequately for the September 1, 2020 hearing.<sup>19</sup>

29. Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, states: "The Commission may deem a failure to file a response as a confession of the motion." During the pendency of this proceeding, Arrowhead failed twice to file its prehearing disclosures ordered by this ALJ – once on March 31, 2020, and again on July 13, 2020. Significantly, Arrowhead failed to file a response to the Motion to Dismiss. Therefore, the ALJ will deem Arrowhead's failure to file a response to the Motion to Dismiss as a confession of the merits.

30. The purpose of requiring the Parties to file their lists of witnesses, summaries of testimony, and copies of exhibits was to provide each Party with an opportunity to prepare for the evidentiary hearing. That is, prior to the hearing each Party would have an opportunity to review a summary of the anticipated testimony of the other Party's witnesses, to review copies of the exhibits the other party would offer into evidence, and to prepare cross-examination of the other Party's witnesses. Significantly, the filing of these prehearing disclosures enables the Intervenor to prepare its position, testimony, and exhibits opposing the Application. It is fundamentally unfair to the intervenor for an applicant in a Commission proceeding to fail to file its prehearing disclosures as ordered by the ALJ.

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<sup>18</sup> Decision No. R20-0125-I, ¶ 25 at page 8 (emphasis in the original).

<sup>19</sup> Motion to Dismiss at page 1.

31. The ALJ finds that the failure of Arrowhead to file its list of witnesses, summaries of testimony of each witness, and copies of the exhibits it intended to offer into evidence at the hearing violated the ALJ's prehearing disclosure filing order in Decision No. R20-0387-I.

32. The ALJ finds and concludes that the failure of Arrowhead to file its list of witnesses, summaries of testimony of each witness, and copies of exhibits it intended to offer into evidence at the hearing deprived Valley Taxi and its counsel of the opportunity to prepare for hearing and of a meaningful opportunity to be heard at the evidentiary hearing.

33. Therefore, the ALJ will grant the Motion to Dismiss.

34. The evidentiary hearing scheduled for September 1, 2020 will be vacated.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. Intervenor's Motion to Dismiss, filed by Jerry's Valley Taxi, LLC, doing business as Valley Taxi of Glenwood Springs, LLC, doing business as Valley Taxi, on July 31, 2020, is granted, consistent with the discussion, findings, and conclusions in this Decision.

2. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed on December 30, 2019 by Arrowhead Taxi LLC, is hereby dismissed.

3. The evidentiary hearing scheduled for September 1, 2020, is vacated.

4. Proceeding No. 20A-0742CP is closed.

5. 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.

6. 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 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.

7. 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

STEVEN H. DENMAN

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director