

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0261CP

IN THE MATTER OF THE APPLICATION OF TRANSPORTIA INC. DOING BUSINESS AS
FLY AWAY SHUTTLE TRANSPORTATION INC. 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
REQUIRING FILING OF PREHEARING
DISCLOSURES; SETTING REMOTE HEARING;
AND ESTABLISHING PROCEDURES**

Mailed Date: September 2, 2020

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I. STATEMENT**A. Procedural History**

1. On June 16, 2020, Transportia Inc., doing business as Fly Away Shuttle Transportation Inc. (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application).¹ That filing commenced this proceeding.

2. On June 29, 2020, the Commission issued its Notice of Application Filed (Notice). As 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 shuttle service

between all points in the Counties of Larimer and Weld, State of Colorado, on the one hand, and Denver International Airport, on the other hand.

The 30-day intervention deadline set by the Notice expired on July 29, 2020.

3. Applicant did not file testimony and exhibits with its Application and, therefore, seeks a Commission decision within 210 days after the Application was deemed complete, or no later than March 3, 2021.²

4. During the Commission's weekly meeting held on August 5, 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.

¹ On June 24, 2020, Applicant filed an Amended Application to correct the name of the company and the state of its incorporation, as well as the type of service proposed.

² See § 40-6-109.5(2), C.R.S. (2019)

5. On August 7, 2020, Applicant filed a second amendment to its Application to modify the geographic area it seeks to serve, as follows:

Fly Away Shuttle Transportation (FAST) would like to further define our area of service, which in the original application stated "Larimer and Weld Counties". We would like to exclude anywhere west of what is commonly known in Colorado as "the Foothills", specifically the Town of Estes Park, CO.

B. Intervention.

6. On July 17, 2020, Estes Valley Transport, Inc. (Estes Valley Transport), through counsel, filed its Entry of Appearance and Intervention. On the same date, Estes Valley Transport also filed an Exhibit and Witness Summary.

7. Estes Valley Transport argues that it owns and operates Certificate of Public Convenience and Necessity (Certificate) No. 54696 that authorizes the transportation of passengers within the scope of the Application and that the operating rights sought by Applicant would overlap the rights contained in its authority. Estes Valley Transport concludes that it has legally protected rights in the subject matter of the Application which would be affected by granting the Application.³

8. After a review of Certificate PUC No. 54696 and the authority granted therein, the ALJ agrees that the authority sought in the Application would overlap portions of the authority granted to Estes Valley Transport (*i.e.*, under Sections I and II). The ALJ finds that Estes Valley Transport is an intervenor by right.

9. No other interested party filed an intervention by right or a motion for permissive intervention.

³ Estes Valley Transport Intervention, ¶¶ 2 and 3 at page 1.

10. Applicant and Estes Valley Transport are the Parties to this proceeding.

11. 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 *Code of Colorado Regulations* (CCR) 723-1 (2015).⁴ The Notice required Applicant to file and to serve its list of witnesses and copies of its exhibits not later than ten days after July 29, 2020 (the expiration of the notice period), or in this case not later than Monday August 10, 2020.

12. A review of the Commission's file in this proceeding reveals that Applicant failed to file its list of witnesses and copies of its exhibits by the August 10, 2020 deadline.

13. On August 31, 2020, Ms. Samantha Gonzalez of Prestige International Insurance Group, Inc., filed on behalf of Applicant a Certificate of Liability Insurance (Form F) dated August 31, 2020, and a cover letter sending the Form F to Applicant.

C. Legal Counsel/Self Representation.

14. The Application, as amended on June 24, 2020, states that Applicant is a Wyoming corporation. The Application was signed by CJ Johnson, as Vice President.⁵ Applicant is a Party and is not represented by counsel.

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

16. Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1 (2015), requires a party in an adjudicatory proceeding before the Commission to be represented by an

⁴ 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.*, newly adopted rules are prospective). § 24-4-102(15), C.R.S. Because Applicant filed this Application on June 16, 2020, prior to the effective date of the new rules, this Decision applies the 2015 version of the Rules of Practice and Procedure that were in effect during June, 2020. Article 2, § 11, *Colo. Const.*

⁵ *See* Amended Application filed on June 24, 2020, at pages 2 and 7.

attorney authorized to practice law in the State of Colorado, except that, pursuant to Rule 1201(b), 4 CCR 723-1, an individual may appear without an attorney: (a) to represent her/his own interests; or (b) to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. This requirement is mandatory and a non-attorney may not represent a party in Commission adjudicative proceedings. If a party does not meet the criteria of this Rule, a filing made by non-attorneys on behalf of that party is void and of no legal effect.

17. In order to proceed in this matter without an attorney, Applicant has the burden to prove that it is entitled to proceed in this case without an attorney. To meet that burden of proof, a party must do the following: **First**, a party must establish that it is a closely-held entity. This means that a party must establish that it has “no more than three owners.” Section 13-1-127(1)(a), C.R.S. **Second**, a party must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁶ 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.⁷

18. In the Amended Application filed on June 24, 2020, Applicant states that: (a) it is a corporation, and it does not have more than three owners; (b); the amount in controversy in this

⁶ 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.

⁷ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation “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[.]”

proceeding does not exceed \$15,000; (c) Mr. Johnson is the Vice President of Applicant; and (d) Mr. Johnson wishes to represent Applicant in this proceeding.⁸

19. Based on the foregoing, the ALJ finds and concludes that, under Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1, and § 13-1-127, C.R.S., Applicant has established that Mr. Johnson, who is not an attorney licensed in Colorado, should be permitted to represent Applicant in this proceeding.

II. SCHEDULING A HEARING AND ADOPTING A PROCEDURAL SCHEDULE.

A. Scheduling the Hearing.

20. It is necessary to schedule an evidentiary hearing in this proceeding. The evidentiary hearing will be scheduled for Tuesday, September 29, 2020 at 9:30 a.m.

21. The ALJ finds that, given the uncertainty that the novel coronavirus (COVID-19) pandemic creates for future public gatherings, it is in the best interests of the parties and Commission personnel to hold the evidentiary hearing remotely and that doing so is consistent with emergency declarations and public health advisories to prevent the spread of COVID-19. Therefore, the ALJ will order that the evidentiary hearing be held remotely by video conference.

22. The remote hearing will be held using the web-hosted video conferencing service, GoToMeeting. Remote participation in the hearing by videoconference allows for testimony and arguments to be presented in a manner most similar to that, which occurs during in-person hearings.

23. This Decision and Attachment A explain the procedures, requirements, and instructions to participate in the videoconference hearing using GoToMeeting, and are intended

⁸ Application, Paragraph No. 21 at page 7.

to ensure that the videoconference hearing proceeds efficiently without technical problems. Therefore, the Parties, their representatives, and their witnesses must carefully review and follow all requirements in this Decision and Attachment A. The ALJ strongly encourages the Parties and their representatives to test their ability to use GoToMeeting prior to the hearing.

24. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the GoToMeeting link and access code to participate in the hearing will be provided to the Parties and counsel by email a few days before the hearing. For the same reason, the Parties and their witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

25. The paragraphs below set forth general instructions and requirements for how to participate in the remote hearing by telephone or by computer. However, the Commission and the ALJ strongly encourage the Parties, counsel, and witnesses to participate in the remote hearing by computer access.

26. **To Participate by Computer.** A Party or their counsel or representative who wishes to participate in the hearing by computer must use a computer that is connected to the internet and has a microphone and a speaker. At the time of the hearing, please go to the link to GoToMeeting provided by the Commission's email sent a few days before the hearing. When you are not speaking, please mute your microphone. Attachment A contains detailed instructions for participating in the hearing using GoToMeeting.

27. **To Participate by Telephone.** A Party or their counsel or representative who wishes to participate in the hearing by telephone during the remote hearing must call the telephone number provided by the Commission's email sent a few days before the hearing. Please call in a few minutes before the hearing starts. When prompted, input the pin provided in

the Commission's email. You will then be placed into the hearing. Please note that the ALJ and an Administrative Section Legal Specialist will control your session and participation. When you are not speaking, please mute your telephone.

28. The ALJ anticipates that the hearing will be webcast, consistent with long-standing Commission practice. This means that those persons wishing to observe the hearing may do so without needing to join the hearing online or by telephone. Please use the audio or video connection for Hearing Room B found at <https://puc.colorado.gov/webcasts>. More detailed instructions can be found in Attachment A.

29. Because the hearing will be held remotely by video-conference, all evidence must be presented electronically. The Commission uses the software box.com to upload and to display all exhibits offered into evidence during the hearing, including those used solely for impeachment, to refresh recollection, or for rebuttal.

30. Attachment B to this Decision establishes procedures for the presentation of exhibits submitted electronically during the evidentiary hearing. The Parties must follow the procedures for exhibits contained in Attachment B to this Decision.

B. Procedural Schedule for Filing Prehearing Disclosures.

31. To facilitate the orderly and efficient litigation of this proceeding, the ALJ finds that a procedural schedule should be adopted, 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 at the hearing, 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 if they have one), 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.

32. Applicant will be ordered to file and to serve on counsel for Estes Valley Transport **on or before September 9, 2020**, the following prehearing disclosures: (a) a list that identifies the witnesses Applicant 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 Applicant intends to present at the hearing.

33. The ALJ is aware that Applicant failed to file its list of witnesses and copies of its exhibits by the August 10, 2020 deadline set by the Commission's Notice, or any time since that date. This Decision will give Applicant a second chance to correct its failure with a new date for filing and serving its prehearing disclosures.

34. **Applicant and Mr. Johnson are advised and on notice that Applicant's failure to file its prehearing disclosures by the September 9, 2020 deadline set by this Decision shall be just cause for dismissal of this Application for failure to prosecute and for failure comply with a valid Commission Decision.**

35. Estes Valley Transport will be ordered to file and serve on Applicant **on or before September 22, 2020** the following prehearing disclosures: (a) a list that identifies the witnesses Estes Valley Transport 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 Estes Valley Transport intends to present at the hearing.

36. The ALJ is aware that Estes Valley Transport filed on July 17, 2020, with its Intervention pleading, an "Exhibit and Witness List." The ALJ finds that this pleading should be supplemented as part of prehearing disclosures to provide more details of the contents of witness

Greg Rounds' testimony and exhibits. Also this pleading listed as an exhibit Estes Valley Transport's Certificate PUC No. 54696, but it is missing from the Commission's E-Filings page for this proceeding. The ALJ directs counsel for Estes Valley Transport to file, as part of prehearing disclosures, a copy of Certificate PUC No. 54696, as well as any other witnesses or exhibits it intends to offer into evidence at the hearing.

C. Procedural Advisements.

37. The following procedural advisements relate to the hearing.

38. The Parties are advised and are on notice that failing to appear at the hearing may result in a decision adverse to their interests, including dismissing the Application if Applicant fails to appear or granting the relief requested by Applicant if the Intervenor fails to appear.

39. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their positions. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this proceeding.

40. **Evidence Presentation at the Hearing.** Because the hearing will be held remotely by videoconference, all evidence must be presented electronically. Administrative notice will be taken of Hearing Exhibits filed as prehearing disclosures with the Commission, as long as a Hearing Exhibit is otherwise admissible. Timely objections may be made to admissibility of Hearing Exhibits. The Parties are responsible for ensuring they and their respective witnesses have access to all exhibits prior to the hearing, and will be asked to verify the same during the hearing.

41. **Exhibit Number Assignments.** Applicant is assigned hearing exhibit numbers 1 through 99, and Estes Valley Transport is assigned hearing exhibit numbers 100 through 199.

For example, Applicant should mark its first hearing exhibit as “Hearing Exhibit 1” and Estes Valley Transport should mark its first hearing exhibit as “Hearing Exhibit 100.”

42. **Exhibit Requirements.** Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block *before* prefiling the exhibits with the Commission as prehearing disclosures; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page 1, regardless of content *before* prefiling the exhibits with the Commission; and (c) upload all pre-marked exhibits into each party’s respective designated box.com folder prior to presenting them during the hearing.

43. If any exhibit is longer than two pages, the Party offering the exhibit shall number each page of the exhibit sequentially.

44. 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 a bench 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.

45. 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).

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

46. **The Parties are advised and on notice** that the Rules of Practice and Procedure, found at 4 CCR 723-1, Part 1, govern this proceeding. Applicant will be represented by a non-attorney, Mr. Johnson. Estes Valley Transport is represented by counsel. These rules apply

equally to a non-attorney, who has been given permission by the Commission to 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.

47. **The Parties are advised and are on notice** that the Commission has an E-Filing 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>.

48. **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-Filing System or by filing a paper document, including the original and three copies. Emailing pleadings and other documents to the ALJ, Commissioners, the Director of the Commission, or other employees of the Commission **does not** constitute proper filing under Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

49. **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.

50. **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.

51. **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 March 3, 2021. 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, and for the Commission to issue a decision on exceptions, if exceptions are filed.

III. **ORDER**

A. **It Is Ordered That:**

1. A remote evidentiary hearing is scheduled in this proceeding, as follows:

DATE: September 29, 2020

TIME: 9:30 a.m.

FOR WEBCASTS: Hearing Room A

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge, **OR**

Join by telephone: Dial the telephone number provided in the email, and when prompted, enter the PIN (or Meeting ID) in the email.

2. Transportia Inc., doing business as Fly Away Shuttle Transportation Inc. (Applicant), 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 (2015). CJ Johnson, a non-attorney and the Vice President of Applicant, may represent Applicant in this proceeding.

3. The intervention by right of Estes Valley Transport, Inc. (Estes Valley Transport), filed on July 17, 2020, is acknowledged.

4. Applicant shall file and serve on counsel for Estes Valley Transport, on or before September 9, 2020, the following prehearing disclosures: (a) a list that identifies the witnesses Applicant 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 Applicant intends to present at the hearing.

5. Estes Valley Transport shall file and serve on Applicant, on or before September 22, 2020, the following prehearing disclosures: (a) a list that identifies the witnesses Estes Valley Transport 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 Estes Valley Transport intends to present at the hearing.

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

7. Additional procedural requirements and matters may be issued in future Decisions.

8. This 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