

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0341CP

IN THE MATTER OF THE APPLICATION OF BLUE21 LLC DOING BUSINESS AS BLUE SHUTTLE 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
ON REPRESENTATION, ACKNOWLEDGING
INTERVENTION, AND SETTING
REMOTE PREHEARING CONFERENCE**

Mailed Date: October 12, 2020

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I. STATEMENT

A. Procedural History

1. On August 19, 2020, Blue21 LLC, doing business as Blue Shuttle (Applicant), 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 August 24, 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 charter service and call-and-demand shuttle service

between points in the Counties of Boulder, Douglas, El Paso, Elbert, Fremont, Larimer, Park, Pueblo, Teller, and Weld, on the one hand, and Denver International Airport, on the other hand.

RESTRICTION:

This application is restricted to providing transportation service to or from Denver International Airport, Denver, Colorado.

The 30-day intervention deadline set by the Notice expired on September 23, 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 April 28, 2021.¹

4. During the Commission's weekly meeting held on September 30, 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.

5. 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*

¹ See § 40-6-109.5(2), C.R.S. (2019)

Colorado Regulations (CCR) 723-1 (2020).² The Notice required Applicant to file and to serve its list of witnesses and copies of its exhibits not later than ten days after September 23, 2020 (the expiration of the notice period), or in this case not later than Tuesday, October 6, 2020.³

6. 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 October 6, 2020 deadline.

7. On October 7, 2020, Applicant filed a restrictive amendment to its Application, as follows: "Restricted against any transportation service that originates or terminates within a 12-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado."

B. Intervention.

8. On September 8, 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.

9. 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 if the Application were to be granted.⁴

² 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 are prospective. § 24-4-102(15), C.R.S. Because Applicant filed this Application on August 19, 2020, the amended Rules of Practice and Procedure will apply to this proceeding.

³ Rule 1405(k)(I), 4 CCR 723-1. Since the ten-day deadline under Rule 1405(k)(I) fell on Saturday, October 3, 2020, and because Monday, October 5, 2020 was a State Holiday, this due date was extended by operation of law until the next business day, or until Tuesday, October 6, 2020. Section 40-6-121, C.R.S.

⁴ Estes Valley Transport Intervention, ¶¶ 2 and 3 at page 1.

10. 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. The ALJ finds that Estes Valley Transport is an intervenor by right.

11. Applicant filed the restrictive amendment, described in Paragraph No. 7 above, 30 days after Estes Valley Transport filed its Intervention on September 8, 2020. As of the mailed date of this Decision, Estes Valley Transport has made no filing regarding what, if any, impact the restrictive amendment has on its Intervention.

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

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

C. Legal Counsel/Self Representation.

14. The Application, filed on August 19, 2020, states that Applicant is a Colorado limited liability company (LLC). The Application was signed by Alegnta Yimam, as Owner/Manager. The Application indicates that Alegnta Yimam is not an attorney.⁵

15. Applicant is a Party and is not represented by counsel.

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

17. Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1 (2020), 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, except that, pursuant to Rule 1201(b), 4 CCR 723-1, an individual may appear without an attorney: (a) to represent

⁵ See Application, at pages 2 and 8.

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.

18. 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

19. In the Application filed on August 19, 2020, Applicant states that: (a) it is an LLC, and it does not have more than three owners; (b) the amount in controversy in this proceeding does not exceed \$15,000; (c) Alegnta Yimam is an Owner/Manager of Applicant; and (d) Alegnta Yimam wishes to represent Applicant in this proceeding.⁸

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 a person in whom 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[.]”

⁸ Application, Paragraph No. 21 at page 8.

20. 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 Alegnta Yimam, who is not an attorney at law in good standing before the Supreme Court of the State of Colorado, should be permitted to represent Applicant in this proceeding.

21. Applicant is advised, and is on notice, that its representative, Alegnta Yimam, will be bound by the same procedural and evidentiary rules as an attorney.

II. PREHEARING CONFERENCE

A. Scheduling the Prehearing Conference.

22. In anticipation of scheduling an evidentiary hearing, the ALJ will schedule a prehearing conference, in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. A prehearing conference, via video platform, will be scheduled for October 27, 2020 at 9:30 a.m.

23. Holding the prehearing conference remotely is consistent with current public health orders and advisories to prevent the spread of coronavirus (COVID-19) in Colorado. The Parties shall **not** appear at the Commission in person to attend the prehearing conference. Instead, Parties and their counsel shall appear at the prehearing conference from remote locations, either by video conference, or by telephone, using the link and instructions provided in this Decision. The ALJ encourages the Parties and their counsel to attend by video conference.

24. Attachment A to this Decision provides the requirements and information addressing how to use the GoToMeeting platform for participating in the prehearing conference.

25. The Parties are advised, and are on notice, that the ALJ will deem a Party's failure to appear or to participate in the prehearing conference to be a waiver of that Party's objections

to the rulings made, the procedural schedule established, and the hearing dates scheduled during the prehearing conference. Failure to appear by Applicant may constitute just cause to dismiss the Application for failure to prosecute. Failure to appear by Estes Valley Transport may also lead to it being excused from the proceeding.

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

26. **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. 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 current version of the Rules of Practice and Procedure are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

27. **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>.

28. **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, the 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.

29. **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.

30. **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, unless response time is shortened by the ALJ.

31. **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 April 28, 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 prehearing conference in this proceeding is scheduled as follows:

DATE: October 27, 2020

TIME: 9:30 a.m.

WEBCASTS: Commission Hearing Room B

METHOD: By video conference using GoToMeetings at the link provided to parties by email prior to the prehearing conference

2. Blue21 LLC, doing business as Blue Shuttle (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). Alegnta Yimam, who is not an attorney at law in good standing before the Supreme Court of the State of Colorado, and is an Owner/Manager of Applicant, may represent Applicant in this proceeding.

3. The intervention by right of Estes Valley Transport, Inc., filed on September 8, 2020, is acknowledged.

4. Attachment A is incorporated by reference into this Decision.

5. The Parties shall be held to and shall comply with the advisements in this Decision.

6. Additional procedural requirements and matters may be addressed in future Decisions.

7. 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