

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
APPROVING RESTRICTIVE AMENDMENTS,
DISMISSING INTERVENTION, AND
GRANTING APPLICATION, AS AMENDED**

Mailed Date: November 16, 2020

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I. STATEMENT**A. Summary**

1. This Recommended Decision grants the application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application), filed by Blue21 LLC, doing business as Blue Shuttle (Applicant or Blue Shuttle) on August 19, 2020, as amended and modified by the restrictive amendments filed on October 7 and 26, 2020.

B. Procedural History

2. On August 19, 2020, Blue Shuttle, a Colorado limited liability company, filed the Application. That filing commenced this proceeding.

3. 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.

The 30-day intervention deadline set by the Notice expired on September 23, 2020.

4. 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

¹ See § 40-6-109.5(2), C.R.S. (2019)

5. 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.

6. 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. Decision No. R20-0729-I (issued on October 12, 2020) acknowledged Estes Valley Transport's intervention by right.

7. No other interested parties filed an intervention by right or a motion for permissive intervention. Applicant and Estes Valley Transport are the Parties to this proceeding.

8. Decision No. R20-0729-I found that, under Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and § 13-1-127, C.R.S., Applicant had established that Alegnta Yimam, who is the Owner/Manager of Applicant but not an attorney licensed in Colorado, should be permitted to represent Blue Shuttle in this proceeding. Decision No. R20-0729-I advised that Applicant's representative, Alegnta Yimam, will be bound by the same procedural and evidentiary rules as an attorney.

9. 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 CCR 723-1 (2020).² The Notice required Applicant to file and to serve its list of witnesses and copies of its

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.

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

10. Applicant failed to file its list of witnesses and copies of its exhibits by the October 6, 2020 deadline.

11. On October 7, 2020, Applicant filed the following restrictive amendment to its Application; “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.”

12. In anticipation of scheduling an evidentiary hearing, in Decision No. R20-0729-I the ALJ scheduled a prehearing conference for October 27, 2020 at 9:30 a.m.⁴ Consistent with then-current public health orders and advisories to prevent the spread of coronavirus (COVID-19) in Colorado, the prehearing conference was scheduled remotely via a video platform.⁵

13. On October 26, 2020, Blue Shuttle filed an additional restriction, stating that the authority sought would be further restricted “against any transportation service that originates or terminates within a 4-mile radius of the intersection of 4th Avenue and Broadway Street in Lyons, Colorado.”

14. Charles J. Kimball, Esq., counsel for Estes Valley Transport, contacted the ALJ on October 26, 2020, with the permission of Applicant. Mr. Kimball advised that, if accepted, the additional restriction to the authority sought would satisfy his client’s interests in 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 Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

⁵ See Decision No. R20-0729-I, Paragraphs 22 – 25 at pages 6 and 7, and Attachment A.

and that, if the restrictive amendment were accepted by the ALJ, Estes Valley Transport would withdraw its intervention. The Parties requested that the prehearing conference be vacated. Under those circumstances, the ALJ advised Mr. Kimball and Applicant by email that the prehearing conference would be vacated.

15. During the afternoon of October 26, 2020, Mr. Kimball sent an email to the ALJ stating that: “Applicant's October 26, 2020 amendment is satisfactory for Estes Valley Transport, Inc. and it withdraws it's Intervention if the amendment is acceptable to you.”⁶

16. Decision No. R20-0752-I (issued on October 27, 2020) vacated the prehearing conference scheduled for October 27, 2020 at 9:30 a.m.

II. FINDINGS OF FACT AND CONCLUSIONS.

17. The Commission encourages the settlement of contested proceedings. Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1.

A. The Restrictive Amendments.

18. As modified by the two restrictive amendments, the Application’s request for authority was amended as follows:

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.

RESTRICTIONS:

- (1) restricted to providing transportation service to or from Denver International Airport, Denver, Colorado;

⁶ Due to a transmission error, the ALJ did not receive Mr. Kimball’s email until the morning of October 27, 2020.

- (2) 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;
- (3) restricted against providing any transportation service that originates or terminates within a 4-mile radius of the intersection of 4th Avenue and Broadway Street in Lyons, Colorado.

19. In its counsel's October 26, 2020 email, Estes Valley Transport stated that, if accepted, the additional restriction would satisfy its interests in this proceeding, and that, if the restrictive amendment were accepted by the ALJ, Estes Valley Transport would withdraw its intervention.

20. The ALJ has a duty to ensure that restrictive amendments are restrictive in nature, clear and understandable, and administratively enforceable.

21. Based upon the forgoing procedural history and findings, the ALJ finds that the two restrictive amendments proposed by Blue Shuttle are restrictive in nature, clear and understandable, and administratively enforceable. The restrictions on the authority sought by Applicant are unambiguous and will be contained wholly within the authority granted. Accordingly, the proposed restrictive amendments will be approved.

22. Pursuant to its request, Estes Valley Transport's withdrawal of its intervention and of its objection to the Application is approved. Estes Valley Transport will be dismissed as a Party to this proceeding.

23. As a result of the withdrawal of Estes Valley Transport's intervention, the Application, as amended and modified by the restrictive amendments, is not contested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the Application, as amended, and the supporting attachments will be determined under the Commission's modified procedure.

B. Burden of Proof and Legal Standards.

24. As the Applicant and the proponent of an order, Blue Shuttle bears the burden of proof by a preponderance of the evidence.⁷ The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. That is, the trier of fact (here the ALJ) must determine whether the existence of a contested fact is more probable than its non-existence. A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.⁸

25. When the preponderance standard applies, the evidence in the record must be substantial. Substantial evidence “is more than a scintilla[;] ... it must do more than create a suspicion of the fact to be established. It means such relevant evidence as a reasonable [person’s] mind might accept as adequate to support a conclusion [;] ... it must be enough to justify, if a trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”⁹

26. Even though the Application, as amended, is now uncontested, Blue Shuttle still bears the burden to prove by a preponderance of the evidence that the Application should be granted. That is, Blue Shuttle’s filings must demonstrate by a preponderance of the evidence all of the essential elements required to grant the authority sought.

27. In *Durango Transportation, Inc. v. Colorado Public Utilities Comm’n.*, 122 P.3d 244 (Colo. 2005), the Colorado Supreme Court (Court) held that the Commission’s purpose in granting transportation authority is to ensure that adequate transportation is available to the

⁷ See §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

⁸ See *Mile High Cab, Inc. v. Colorado Public Utilities Commission*, 302 P.3d 241, 246 (Colo. 2013); *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

⁹ *City of Boulder v. Public Utilities Comm’n.*, 996 P.2d 1270, 1278 (Colo. 2000) (internal citation omitted).

public.¹⁰ The Court succinctly explained the essential elements of proof for an application for authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers:

The doctrine of regulated monopoly governs motor-vehicle passenger carriers. ... Under this doctrine, an applicant for authority to operate a passenger service must demonstrate that the public convenience and necessity require the service. ... When an existing carrier holds authority in the territory the applicant seeks to serve, this requires a showing both that the existing carrier's service is substantially inadequate and that the public convenience and necessity require the service proposed by the applicant. ... An applicant must also demonstrate its [financial, operational, and managerial] fitness to hold the requested authority. ...¹¹

28. In determining whether the Applicant has demonstrated by a preponderance of the evidence that the Application, as amended, and the requested authority should be granted, the ALJ will apply the legal and evidentiary standards explained by the Court in the *Durango Transportation* decision and the cases cited therein.

29. Several definitions in the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (2020), are applicable to this Application:

- a) 6001(g) – Call-and-demand or call-and-demand service “means the transportation of Passengers by a Common Carrier, but not on a Schedule.”
- b) 6001(l) – Charter service “is transportation by a Common Carrier on a Call-and-Demand basis. The Passengers are individuals or groups of individuals who share a personal or professional relationship whereby all such individuals are members of the same affiliated group, including a family, business, religious group, social organization, or professional organization. This does not include groups of unrelated individuals brought together by a carrier, Transportation Broker, or other third party.”
- c) 6001(p) – “Common Carrier” is a public utility as defined in § 40-1-102, C.R.S., and includes the obligation to indiscriminately accept and carry Passengers for Compensation. Common Carrier includes every Person directly or indirectly affording a means of transportation, or any service or facility in

¹⁰ *Id.*, 122 P.3d at 250 [citations omitted].

¹¹ *Durango Transportation, Inc. v. Colorado Public Utilities Comm'n.*, 122 P.3d 244, 247 (Colo. 2005) [citations omitted].

connection therewith, within this state, by Motor Vehicle; except that the term does not include a Contract Carrier as defined by § 40-10.1-101(6), C.R.S.; a Motor Carrier that provides transportation not subject to regulation pursuant to § 40-10.1-105, C.R.S.; a Limited Regulation Carrier defined by § 40-10.1-301, C.R.S.; a Large Market Taxicab Service defined by § 40-10.1-101(9.5) C.R.S.; and a Transportation Network Company defined under § 40-10.1-602, C.R.S.¹²

- d) 6001(sss) – Shuttle Service “means the transportation of Passengers by a Common Carrier on a Call-and-Demand basis charged at a per-Person rate and use of the Motor Vehicle is not exclusive to any individual or group.”

C. The Application and the Facts.

30. **Public Need.** The public need for a new common carrier authority is broader than the individual needs and preferences of an applicant’s customers; the question turns upon the needs of the public as a whole,¹³ and whether there is a public need for the service proposed by Applicant in the proposed service area.¹⁴

31. The Application, as amended, requests authority to operate as a common carrier by motor vehicle for hire to provide 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 (DIA), on the other hand, subject to the stated restrictions in and around Estes Park and Lyons, Colorado.

32. In the Application, Blue Shuttle stated that, “The airport shuttle service is very essential to Colorado, most of the counties we proposed are 25–110 miles from the DIA, for any person traveling would cost up to \$300 to get to the airport using [a] regular taxi cab. Shuttle

¹² None of these statutory exceptions applies to the new authority sought in the Application in this proceeding.

¹³ *Trans-Western Express Ltd., v. Public Utilities Comm’n.*, 877 P.2d 350, 354 (Colo. 1994).

¹⁴ *Durango Transportation, Inc. v. Colorado Public Utilities Comm’n.*, 122 P.3d at 247.

service is very convenient for people who have more time to save [a] significant amount of money on their travel expenses.”¹⁵

33. **Financial Fitness.** The Application stated that Blue Shuttle’s sister company, Fresh Tracks Transportation, would allocate \$250,000 in initial capital to Blue Shuttle.¹⁶

34. **Operational Fitness.** Regarding the operational fitness of Blue Shuttle to own and to operate the requested authority, Blue Shuttle filed its Colorado Certificate of Fact of Good Standing along with the Application.¹⁷ For vehicles to be used in the operations, the Application listed ten 15-passenger Ford Transit vans ranging in age from 2017 through 2020.¹⁸

35. The Application stated that Blue Shuttle would be based at 14261 E. 4th Avenue, Aurora, Colorado, which would have ample parking. This location also would be in close proximity to DIA for faster service. The Application asserted that Blue Shuttle would have “the best custom-made dispatching software to eliminate mistakes, redundancy and work load on both dispatchers and drivers.”¹⁹

36. **Managerial Fitness.** The Application stated that Blue Shuttle’s Owner/Manager, Alegnta Yimam, has been in the transportation business from 1998 to 2005 in Ethiopia and the United Kingdom, as both a driver and dispatcher for passenger transportation for heavy and bulk loads. In Colorado, he owned and managed Haile LLC, a trucking company, from 2006 to 2014. He was currently managing Delta Transport (since 2015) and Fresh Tracks Transportation (since 2019).²⁰

¹⁵ Application, Section 11 at page 4.

¹⁶ Application, Section 13 at page 5.

¹⁷ Application Attachment.

¹⁸ Application, Section 10(d) at page 4.

¹⁹ Application, Section 12 at page 4.

²⁰ Application, Section 14 at page 5.

37. Alegnta H. Yimam attested that Blue Shuttle would operate in accordance with the Commission's Rules Regulating Transportation by Motor Vehicle, that the vehicles which it plans to use are compliant with those rules, and that, if the Application were to be granted, Applicant would abide by the Commission's Decision, including but not limited to, causing proof of insurance coverage to be filed with the Commission in the amounts required by Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.²¹

D. Conclusions.

38. The Application, as modified by the two restrictive amendments, establishes that Applicant has sufficient equipment with which to render the proposed passenger transportation service under the requested authority.

39. The Application, as modified by the restrictive amendments, establishes that Applicant is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application, as modified by the restrictive amendments, as well as the lack of opposition to the Application, indicates a public need for the proposed call-and-demand charter service and call-and-demand shuttle service.

40. The Application, as modified by the restrictive amendments, demonstrates that Applicant is familiar with the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those Rules.

41. The proposed transportation of passengers in call-and-demand charter service and in call-and-demand shuttle service, as requested in the Application as modified by the restrictive amendments, is reasonable and not contrary to the public interest.

²¹ Application, Section 22 at page 8.

42. Based upon the foregoing findings and conclusions, the Application, as modified by the restrictive amendments, will be granted.

43. Therefore, in accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with a written recommended decision, and the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The two restrictive amendments filed by Blue21 LLC, doing business as Blue Shuttle (Blue Shuttle) on October 7 and 26, 2020, are approved.

2. The application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed by Blue Shuttle on August 19, 2020, as modified by the two restrictive amendments filed on October 7 and 26, 2020, shall be granted consistent with the findings and conclusions discussed in this Decision.

3. The withdrawal of the intervention by right of Estes Valley Transport, Inc. is approved. Therefore, Estes Valley Transport, Inc. is dismissed as a Party to this proceeding.

4. Blue Shuttle is granted authority to operate as a common carrier by motor vehicle for hire as follows:

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.

RESTRICTIONS:

- (1) restricted to providing transportation service to or from Denver International Airport, Denver, Colorado;
 - (2) 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; and
 - (3) restricted against providing any transportation service that originates or terminates within a 4-mile radius of the intersection of 4th Avenue and Broadway Street in Lyons, Colorado.
5. Blue Shuttle shall operate in accordance with all applicable Colorado laws and Commission rules.
6. Blue Shuttle shall not commence operations under the authority granted by this Decision until it has complied with the requirements of Colorado law and Commission rules, including without limitation:
- a. causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
 - b. paying to the Commission, the motor vehicle fee (\$50) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
 - c. having an effective tariff on file with the Commission. Blue Shuttle shall file an advice letter and tariff on not less than ten days' notice. The Advice Letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable Commission rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at <https://www.colorado.gov/dora/puc> and by following the transportation common and contract carrier links to tariffs); and
 - d. paying the applicable issuance fee.
7. If Blue Shuttle does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance

fee within 60 days of the effective date of this Decision, then the grant of the authority shall be void. For good cause shown, the Commission may grant additional time for compliance if Blue Shuttle files the request for additional time within 60 days of the effective date of this Decision.

8. The Commission will notify Blue Shuttle in writing when the Commission's records demonstrate compliance with Ordering Paragraph II.A.6.

9. Proceeding No. 20A-0341CP is closed.

10. 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.

11. As provided by § 40-6-109, 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 decision is stayed by the Commission upon its own motion within 20 days after service, 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 basic findings 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.

12. If exceptions to this 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

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director