

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-469CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF ARROW EXPRESS, LLC, FOR AN
EXTENSION OF OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY NO. 55711.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING IN PART AND DENYING
IN PART MOTION FOR CORRECTED
ORDER; DENYING MOTION TO REOPEN
PROCEEDINGS; GRANTING MOTION TO
EXTEND DATE FOR FILING EXCEPTIONS;
AND WAIVING RESPONSE TIME**

Mailed Date: January 28, 2004

I. STATEMENT

1. On October 23, 2003, Applicant Arrow Express, LLC, filed the Application for an Extension of Certificate of Public Convenience and Necessity PUC Number 55711 (Application) which commenced this docket. On November 14, 2003, Golden West Commuter, LLC (Golden West), intervened in this proceeding. There are no other intervenors in this proceeding.

2. On December 1, 2003, the Commission deemed the Application complete. On that same date the Commission issued its Order Setting Hearing and Notice of Hearing. That Order set the hearing in this matter for January 5, 2004.

3. On December 29, 2003, the parties in this proceeding filed a Stipulation, Motion to Restrictively Amend Application and to Withdraw Intervention. On December 29, 2003, Golden West filed a Motion to Vacate Hearing, Handle the Application under Rule 24 and Grant

Application as Restrictively Amended. By Decision No. R03-1460-I, the undersigned Administrative Law Judge (ALJ) vacated the hearing.

4. On January 6, 2004, the ALJ issued Recommended Decision No. R04-0013. In that decision the ALJ accepted the Stipulation, deemed the Golden West intervention withdrawn, and granted the Application as amended by the Stipulation. Exceptions to this decision are due on or before January 26, 2004.

5. On January 16, 2004, the ALJ issued Recommended Decision No. R04-0013-E, for the purpose of correcting an inadvertent oversight which rendered the authority granted inconsistent with the Application as originally filed.

6. On January 26, 2004, Golden West filed a Motion for Corrected Order and Alternate Motion to Reopen Proceedings together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein. In that filing, Golden West states that the changes to Decision No. R04-0013 made in Decision No. R04-0013-E are inconsistent with the Application as filed and do not include the language agreed to by the parties. Golden West seeks a corrected order or, in the alternative, requests that the proceeding be reopened. Golden West also asks for an enlargement of time within which to file exceptions pending a ruling on the requested relief.

7. The Motion for Corrected Order will be granted in part and denied in part.

8. With respect to the assertion that Decision No. R04-0013-E is inconsistent with the Application as filed, the ALJ agrees. A second errata notice will be issued to correct the inadvertent failure to include Jefferson County in paragraph 11.

9. With respect to the request that Decision No. R04-0013-E be corrected because it does not include the language agreed to by the parties in the Stipulation, the Motion for Corrected Order will be denied. Sections 40-6-113(1) and 113(4), C.R.S., refer to the situation in which a party seeks “to amend, modify, annul, or reverse” a recommended decision. Those sections at least imply that, once a recommended decision is issued, the ALJ loses the ability to amend or to modify the recommended decision except through the issuance of an errata notice. This has been the consistent practice of the Commission. In addition, by Commission practice, errata notices are limited to correcting inadvertent errors. In this case, the ALJ sought to eliminate duplication which she perceived between the Application and the Stipulation. There was no inadvertent error of the type which traditionally has been corrected by an erratum. Insofar as Golden West seeks to amend or to modify Decision No. R04-0013 by including language agreed to by the parties in the Stipulation, that portion of the Motion will be denied. If it wishes to obtain the relief it seeks, Golden West must file exceptions.

10. Golden West filed an Alternate Motion to Reopen Proceedings. Based on the assumption that the Commission denies the Motion for Corrected Order, the alternative motion seeks to have the proceeding reopened and the Application set for hearing. There is no need to reopen this matter and to set it for hearing. The relief which Golden West seeks in the Motion for Corrected Order can be obtained from the Commission without the necessity of further proceedings before the ALJ.¹ The Alternate Motion to Reopen Proceedings will be denied.

¹ If it were within her authority, the ALJ would grant the Motion for Corrected Order *in toto*.

11. Finally, within the time for filing exceptions to Decision No. R04-0013, Golden West filed a Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein. The motion states good cause. Granting the motion will assist, not prejudice, the parties. The motion will be granted. The time for filing exceptions to Decision No. R04-0013 will be extended to and including February 13, 2004. This extension of time will apply to all parties.

12. Rule 4 *Code of Colorado Regulations* 723-1-22 provides a 14-day response time to a motion unless the Commission waives or shortens response time. The motions filed by Golden West and addressed in this Order seek a modification of Decision No. R04-0013 and Decision No. R04-0013-E and, failing that, seek to preserve the opportunity for the parties to file exceptions. Waiving response time here will not prejudice any party and will allow a quicker resolution of this matter. Response time to the Motion for Corrected Order and Alternate Motion to Reopen Proceedings together with Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein will be waived.

II. ORDER

A. It Is Ordered That:

1. The Motion for Corrected Order is granted in part and denied in part, consistent with the discussion above.
2. The Alternate Motion to Reopen Proceedings is denied.
3. The Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein is granted.

4. The time for a party to file exceptions to Decision No. R04-0013 is extended to, and including, February 13, 2004.

5. Response time to the Motion for Corrected Order and Alternate Motion to Reopen Proceedings together with the Motion to Extend Date for Filing Exceptions Pending Rulings on Relief Sought Herein is waived.

6. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge