

Decision No. R04-0470

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-432CP

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWDER, INC.,
4950 SOUTH YOSEMITE, F-2, #118, GREENWOOD VILLAGE, COLORADO 80111 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
DALE E. ISLEY
GRANTING MOTION TO
DISMISS INTERVENTIONS;
VACATING HEARING DATES; AND
GRANTING APPLICATION UNDER
MODIFIED PROCEDURE**

Mailed Date: May 6, 2004

I. STATEMENT

1. The captioned application of Rocky Mountain Powder, Inc. (RMPI), was filed with the Colorado Public Utilities Commission (Commission) on September 29, 2003. It was originally published in the Commission's "Notice of Applications Filed" on October 6, 2003, and then "re-noticed" on December 1, 2003. *See*, Decision No. R03-1339-I.

2. This matter was originally scheduled for hearing on December 9, 2003. However, several hearing continuances were granted at RMPI's request. *See*, Decision Nos. R03-1343-I, R04-0036-I, and R04-0208-I. On February 26, 2004, RMPI waived the requirement imposed by § 40-6-109.5, C.R.S., that the Commission issue a final decision in this matter within 210 days of its being deemed complete. *See*, Decision No. R04-0208-I. The application is currently scheduled for hearing on May 11 and 12, 2004. *See*, Decision No. R04-0247-I.

3. There are currently two intervenors in this proceeding, Denver Mountain Express, Inc. (DME), and David Carrel, doing business as Lift Ticket Limo (Lift Ticket).¹

4. On April 16, 2004, RMPI filed a pleading entitled “Motion to Dismiss Interventions and Proceed to Consider Application Without Hearing, as Non-Contested” (Motion to Dismiss). Neither DME nor Lift Ticket filed responses to the Motion to Dismiss within the 14-day time period allowed by Rule 22(b) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-22.²

5. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

A. Motion to Dismiss Interventions

6. The Motion to Dismiss requests that the interventions of DME and Lift Ticket be dismissed and that the application be considered pursuant to the Commission’s modified, no-hearing procedure. In support of the Motion to Dismiss, RMPI contends that neither DME nor Lift Ticket are currently conducting operations under their respective authorities and, as a result, have no operations that will be harmed if this application is granted. It states that DME is currently seeking to transfer its operating authorities to third parties and that Lift Ticket’s authority is in suspension.

¹ The DME and Lift Ticket interventions were filed in response to the re-notice of this application on December 1, 2003. Interventions filed by three other parties in response to the original notice were resolved by the re-notice and, as a result, have effectively been withdrawn. *See*, Decision No. R03-1455-I.

² During the time the Motion to Dismiss was pending, DME’s counsel of record requested permission to withdraw pursuant to 4 CCR 723-1-21(c). However, such permission has yet to be granted. *See*, Decision No. R04-0420-I.

7. As indicated above, since neither DME nor Lift Ticket submitted a response to the Motion to Dismiss it is uncontested and may be deemed confessed.

8. In addition, a review of the records of the Commission reveals that Certificate No. 55715 held by Lift Ticket, has been in continuous suspension since June 30, 2003. *See*, Decision Nos. C03-0875 and C04-0069. *See also*, Decision No. C04-0127 wherein the Commission observes that Lift Ticket has not operated its authority since June 30, 2003.³ Rule 65 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-65, governs interventions of right in transportation application proceedings. It specifically provides that a carrier whose authority is in suspension "...shall have no standing to intervene as a matter of right, and may not file an intervention in opposition to the issuance of a certificate of public convenience and necessity ... for the transportation of persons...." *See*, 4 CCR 723-1-65(c).

9. DME intervened in this matter pursuant to Certificate Nos. 55519 and L22485. The Commission's records generally confirm RMPI's contention that DME has discontinued service under these authorities. *See*, Decision No. C04-0322 (adopted April 7, 2004) wherein the Commission states "...Amerishuttle (one of DME's trade names) has ceased all operations and is not currently providing any transportation service under CPCN PUC Nos. 50790, 52940, 55363, and 55519."⁴ The Commission's records also confirm RMPI's statement that Certificate

³ In addition, the Commission's records reflect that Lift Ticket does not have the proper liability insurance in place, a necessary prerequisite for conducting operations under its authority.

⁴ On March 12, 2004, DME filed an application to suspend operations under Certificate Nos. 55519 and L22485 from March 11, 2004 through June 11, 2004. *See*, Docket No. 04A-116CP-Suspension. However, that application was withdrawn on March 24, 2004. *See*, Decision No. C04-0351.

No. 55519 is currently in the process of being transferred to and/or leased by other parties.⁵ No effort has been made by those parties to substitute themselves for DME as intervenors in this matter. Indeed, their ability to do so would be problematic in light of the provisions of 4 CCR 723-1-65(d) (carrier whose only authority in conflict is a temporary authority shall have no standing to intervene as a matter of right and may not file an intervention in opposition to the issuance of a certificate of public convenience and necessity for the transportation of persons).

10. The Commission approved the lease of Certificate No. L22485 from Vail Valley Transportation, Inc. (Vail Valley), to DME for the period of July 19, 2001 through November 7, 2007, on September 19, 2001. *See*, Decision No. C01-0981. As indicated above, DME requested that operations under this authority be suspended on March 12, 2004. Although that request was withdrawn, the Commission's records indicate that DME currently has no public liability insurance on file in connection with this authority. This supports a finding that DME has also discontinued operations under Certificate No. L22485. There is no indication that Vail Valley has requested that its lease with DME be terminated or that it be substituted for DME as an intervenor in this proceeding.

11. For all the above reasons, the Motion to Dismiss will be granted.

B. Grant of Application Under Modified Procedure

⁵ On April 7, 2004, the Commission granted Shafer-Schonewill & Associates, Inc., doing business as Englewood Express &/or Wolf Express Shuttle (Wolf), authority to assume temporary control of Certificate No. 55519. *See*, Decision Nos. C04-0322 and C04-0434. One week later, on April 13, 2004, the Commission granted Wolf's application to temporarily lease this certificate to Owner/Driver United Corporation, doing business as Blue Sky. *See*, Decision Nos. C04-0378 and C04-0435.

12. By this re-noticed application, RMPI seeks authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers and their baggage, in charter service,

between all points located within a 15-mile radius of the intersection of Colfax and Broadway, Denver, Colorado, on the one hand, and (1) all points within a 5-mile radius of the intersection of Colorado Highway 9 and Washington Avenue, Breckenridge, Colorado; (2) all points within a 5-mile radius of the intersection of I-70 and Colorado Highway 9, Silverthorne, Colorado; (3) all points within a 5-mile radius of the intersection of I-70 and Colorado Highway 91, Copper Mountain, Colorado; (4) all points within a 5-mile radius of the intersection of Saint Johns Road and U.S. Highway 6, Keystone, Colorado; and (5) all points within a 5-mile radius of the Lionshead Parking Structure at 395 South Frontage Road, Vail, Colorado, on the other hand.

13. Dismissal of the DME and Lift Ticket interventions renders the application uncontested. Therefore, it is eligible for processing under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 24 of the Commission's **Rules of Practice and Procedure**, 4 CCR 723-1-24, without a formal hearing.

14. The verified application submitted by RMPI indicates that it is familiar with the Commission's Rules, Regulations and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicle for Hire and that it agrees to be bound by the same. The application and the attachments thereto also indicate that RMPI has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Therefore, it appears to be fit, financially and otherwise, to provide the proposed service.

15. The letters of support appended to the application establish that the service proposed by RMPI is required by the public convenience and necessity and will not result in

“destructive competition” to other common carriers serving the same geographic area encompassed by the application.

III. ORDER

A. The Commission Orders That:

1. The Motion to Dismiss Interventions and Proceed to Consider Application Without Hearing, as Non-Contested filed in this proceeding by Rocky Mountain Powder, Inc., is granted.

2. The interventions previously filed in this proceeding by Denver Mountain Express, Inc., and David Carrel, doing business as Lift Ticket Limo, are dismissed.

3. Docket No. 03A-432CP, being an application of Rocky Mountain Powder, Inc., to operate as a common carrier by motor vehicle for hire, is granted.

4. The hearing of this matter, currently scheduled for May 11 and 12, 2004, is vacated.

5. Rocky Mountain Powder, Inc., is hereby granted a certificate of public convenience and necessity to read as follows:

Transportation of

passengers and their baggage, in charter service,

between all points located within a 15-mile radius of the intersection of Colfax and Broadway, Denver, Colorado, on the one hand, and (1) all points within a 5-mile radius of the intersection of Colorado Highway 9 and Washington Avenue, Breckenridge, Colorado; (2) all points within a 5-mile radius of the intersection of I-70 and Colorado Highway 9, Silverthorne, Colorado; (3) all points within a 5-mile radius of the intersection of I-70 and Colorado Highway 91, Copper Mountain, Colorado; (4) all points within a 5-mile radius of the intersection of Saint Johns Road and U.S. Highway 6, Keystone, Colorado; and (5) all points

within a 5-mile radius of the Lionshead Parking Structure at 395 South Frontage Road, Vail, Colorado, on the other hand.

6. Applicant shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Applicant shall also file an appropriate tariff and pay the issuance fee and annual vehicle identification fee. Operations may not begin until these requirements have been met. If the Applicant does not comply with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then the ordering paragraph granting authority to the Applicant shall be void. On good cause shown, the Commission may grant additional time for compliance.

7. 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.

8. 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, 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.

9. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge