

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0178CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF GREEN MOUNTAIN SKI BUS, INC., DOING BUSINESS AS FRONT RANGE SKI BUS, FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55822.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
APPROVING STIPULATION; DISMISSING
INTERVENTIONS; GRANTING APPLICATION, AS
AMENDED, UNDER MODIFIED PROCEDURE;
GRANTING EXTENSION OF CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY NO. 55822,
SUBJECT TO CONDITIONS; VACATING EVIDENTIARY
HEARING; VACATING PROCEDURAL SCHEDULE;
AND WAIVING RESPONSE TIME TO MOTION**

Mailed Date: June 27, 2014

TABLE OF CONTENTS

I. <u>STATEMENT</u>	1
II. FINDINGS, DISCUSSION, AND CONCLUSION.....	6
III. ORDER.....	8
A. The Commission Orders That:	8

I. STATEMENT

1. On February 26, 2014, Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus (Ski Bus or Applicant), filed an Application for Permanent Authority to Extend Current Operations under Certificate of Public Convenience and Necessity (CPCN) PUC No. 55822. That filing commenced this Proceeding.

2. On March 6, 2014, Applicant filed a clarification of the authority sought and supplemented the February 26, 2014 filing.

3. Reference in this Decision to the Application is to the February 26, 2014 filing as clarified and supplemented on March 6, 2014.

4. On March 10, 2014, the Commission issued its Notice of Application Filed (Notice). That Notice described the authority sought by Applicant (Notice at 2-3), established an intervention period (*id.* at 1), and contained a procedural schedule (*id.*). On April 25, 2014, Decision No. R14-0420-I vacated that procedural schedule.

5. On April 16, 2014, by Minute Order the Commission referred this matter to an Administrative Law Judge (ALJ).

6. On April 16, 2014, the Commission deemed the application to be complete within the meaning of § 40-6-109.5, C.R.S. Pursuant to § 40-6-109.5, C.R.S., absent other action, a Commission decision in this Proceeding should issue not later than November 12, 2014.

7. On March 31, 2014, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely filed (in one document) its Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternate Motion to Permissively Intervene.

8. On April 21, 2014, Applicant filed a Response in Opposition to Metro Taxi's March 31, 2014 filing. On April 22, 2014, Applicant filed a First Amended Response in Opposition to Metro Taxi's intervention.

9. On May 13, 2014, by Decision No. R14-0508-I, the ALJ granted Metro Taxi's Alternate Motion to Permissively Intervene. Metro Taxi opposed the Application.

10. On June 11, 2014, Metro Taxi withdrew its intervention in this Proceeding. As of June 11, 2014, Metro Taxi is not a party in this matter.

11. On April 9, 2014, Colorado Cab Company, LLC, doing business as Denver Yellow Cab (Colorado Cab), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

12. On April 23, 2014, Applicant filed a Response in Opposition to Colorado Cab's April 9, 2014 filing.

13. By Decision No. R14-0508-I, the ALJ granted Colorado Cab's Alternate Motion to Permissively Intervene. Colorado Cab opposed the Application.

14. On April 9, 2014, SuperShuttle International Denver, Inc. (SuperShuttle), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

15. On April 23, 2014, Applicant filed a Response in Opposition to SuperShuttle's April 9, 2014 filing.

16. By Decision No. R14-0508-I, the ALJ denied SuperShuttle's intervention and dismissed SuperShuttle from this Proceeding.

17. Ski Bus and Colorado Cab are the Parties. Each is represented by legal counsel.

18. On April 23, 2014, Applicant filed its Preliminary List of Witnesses.

19. By Decision No. R14-0508-I, the ALJ scheduled an August 6, 2014 evidentiary hearing and established the procedural schedule in this matter. The ALJ will vacate the evidentiary hearing and the procedural schedule.

20. On April 23, 2014, Ski Bus filed a Motion to Amend Application. The motion was unopposed. By Decision No. R14-0508-I, the ALJ granted the motion and amended the scope of the extended CPCN sought in the Application. In the amended Application, Ski Bus seeks the authority, pursuant to an extended CPCN PUC No. 55822, to operate as a common carrier by motor vehicle for hire to provide:

- I. Transportation of
passengers in call-and-demand shuttle and charter service
between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado, on the one hand, and all points in the Counties of Clear Creek, Eagle, Grand, and Summit, State of Colorado, on the other hand; and
- II. Transportation of
passengers in call-and-demand shuttle service
between all points in the Counties of Adams, Arapahoe, Denver, and Douglas, State of Colorado, on the one hand, and 18300 West Alameda Parkway, Red Rocks Park and Amphitheater, Morrison, Colorado, on the other hand.

RESTRICTIONS:

Item (I) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado;
- (B) Against originating or terminating transportation service at points within the area in downtown Denver defined as follows: beginning at the intersection of 15th Street and Blake Street, then northeast along Blake Street to 18th Street; then southeast along 18th Street to Broadway; then south along Broadway to Colfax Avenue; then west along Colfax Avenue to 15th Street; then northwest along 15th Street to the point of beginning;
- (C) Against originating or terminating transportation service at points within a [one] and one-half mile radius of the Denver West Marriott, 1717 Denver West Marriott Boulevard, Golden, Colorado; and
- (D) To the use of vehicles with a minimum seating capacity of twelve (12) passengers.

Item (II) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado; and
- (B) To the use of vehicles with a minimum seating capacity of no less than fifteen (15) passengers.

21. On June 26, 2014, the Parties filed a Stipulation [Stipulation] and Conditional Withdrawal of Interventions (June 26 Filing).¹ In that filing, the Parties acknowledge that the Application has been amended as set out above. Given that the Application has been amended, the Parties settle this case as follows: “Applicant agrees not to seek further extension of its authority under CPCN PUC No. 55822 for two years from the date of a decision approving [the Application] and in return [Colorado Cab] agrees to withdraw its intervention.” June 26 Filing at ¶ 4.

22. The ALJ finds that, if the quoted provision is adopted and if the amended Application is granted, Ski Bus will not be permitted, for a period of two years following the date of a final Commission decision in this Proceeding, to file an application to extend its CPCN PUC No. 55822 authority. The ALJ finds that this provision is a condition to be placed on the granting of the extended CPCN and is not a restriction on the authority granted. The ALJ finds that, as a condition on the granting of the extended CPCN, Applicant must comply with the provision as a condition precedent to CPCN PUC No. 55822 remaining in effect.

23. Based on the foregoing discussion, the ALJ finds that the Applicant has met its burden with respect to proposed language. In addition, the ALJ finds that approving the language will not prejudice any party. Finally, the ALJ finds that the proposed language is clear,

¹ Because Ski Bus and Colorado Cab are the only parties in this Proceeding and are the signatories to the June 26 Filing, the ALJ finds that that no party will be prejudiced if response time is waived. In addition, the ALJ finds good cause to waive response time to the June 26 Filing. For these reasons, the ALJ will waive response time to the June 26 Filing.

is administratively enforceable, and is a reasonable restriction. The ALJ will adopt, as a condition on the granting of the amended Application and as a condition on the granting of the extension of CPCN PUC No. 55822, the quoted provision.² Consequently, the ALJ will approve the language and will make the language a condition on the granting of the Application and on the granting of the extended CPCN.

24. Accepting the proposed language as a condition on granting the Application and as a condition on granting the extended CPCN has two effects. First, granting the amended Application and granting the extended CPCN will be conditioned as set out in the June 26 Filing at ¶ 4. Second, the condition precedent stated in the Conditional Withdrawal of Intervention is satisfied; and, at its request, the ALJ will dismiss the intervention of Colorado Cab.

25. Dismissal of the intervention leaves the amended Application uncontested and unopposed.

26. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,³ an uncontested and unopposed application may be considered under the Commission's modified procedure and without a formal hearing. The ALJ finds that the amended Application should be considered, and will be considered, under the modified procedure and without a formal hearing.

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

II. FINDINGS, DISCUSSION, AND CONCLUSION

28. Applicant is a Colorado corporation.

² The ALJ will modify the language of the June 26 Filing at ¶ 4 for clarity.

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

29. Applicant holds, and provides transportation service by motor vehicle in the State of Colorado pursuant to Commission-issued authority CPCN PUC No. 55822.

30. By the Application, as amended, Applicant seeks to extend PUC CPCN No. 55822 in order to operate as a motor vehicle for hire as follows:

I. Transportation of

passengers in call-and-demand shuttle and charter service

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado, on the one hand, and all points in the Counties of Clear Creek, Eagle, Grand, and Summit, State of Colorado, on the other hand; and

II. Transportation of

passengers in call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Denver, and Douglas, State of Colorado, on the one hand, and 18300 West Alameda Parkway, Red Rocks Park and Amphitheater, Morrison, Colorado, on the other hand.

RESTRICTIONS:

Item (I) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado;
- (B) Against originating or terminating transportation service at points within the area in downtown Denver defined as follows: beginning at the intersection of 15th Street and Blake Street, then northeast along Blake Street to 18th Street; then southeast along 18th Street to Broadway; then south along Broadway to Colfax Avenue; then west along Colfax Avenue to 15th Street; then northwest along 15th Street to the point of beginning;
- (C) Against originating or terminating transportation service at points within a [one] and one-half mile radius of the Denver West Marriott, 1717 Denver West Marriott Boulevard, Golden, Colorado; and
- (D) To the use of vehicles with a minimum seating capacity of twelve (12) passengers.

Item (II) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado; and

- (B) To the use of vehicles with a minimum seating capacity of no less than fifteen (15) passengers.

31. The record establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, found at Part 6 of 4 CCR 723, and agrees to be bound by, and to comply with, those Rules as applicable to it. The record establishes that Applicant has sufficient equipment with which to render the proposed transportation service, has the experience to conduct operations under the authority requested, and is financially fit to conduct operations under the authority requested. Review of the record indicates a need for the proposed transportation service. Because the Applicant is fit, financially and otherwise, to perform the proposed extended transportation service and because the other prerequisites have been met, the ALJ will grant the amended Application and will issue the extended PUC CPCN No. 55822 subject to conditions.

32. Having determined that the extended CPCN should issue, the ALJ finds that granting the amended Application, granting the extended PUC CPCN No. 55822, and the extended PUC CPCN No. 55822 should be subject to the conditions contained in the Ordering Paragraphs below. **Questions concerning the conditions should be directed to Ms. Vanessa Condra of the Commission Staff (telephone no.: 303.894.2850).**

33. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Application for Permanent Authority to Extend Current Operations under Certificate of Public Convenience and Necessity PUC No. 55822, which was filed on February 26, 2014 by Green Mountain Ski Bus, Inc., doing

business as Front Range Ski Bus, as supplemented on March 6, 2014 and as amended by Decision No. R14-0508-I, is subject to the conditions set out below.

2. Consistent with the discussion above, the withdrawal of intervention filed on June 11, 2014 by MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is granted.

3. Consistent with the discussion above, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is dismissed as a party in this Proceeding *nunc pro tunc* to June 11, 2014.

4. Consistent with the discussion above, the withdrawal of intervention filed by Colorado Cab Company LLC, doing business as Denver Yellow Cab, is granted.

5. Colorado Cab Company LLC, doing business as Denver Yellow Cab, is dismissed as a party in this Proceeding.

6. Subject to the conditions stated below, the verified Application for Permanent Authority to Extend Current Operations under Certificate of Public Convenience and Necessity PUC No. 55822, which was filed on February 26, 2014 by Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, as that filing has been supplemented and amended, is granted.

7. Subject to the conditions stated below, Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, is granted an extended Certificate of Public Convenience and Necessity PUC No. 55822 to operate as a common carrier by motor vehicle for hire as follows:

I. Transportation of

passengers in call-and-demand shuttle and charter service

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado, on the one hand, and all points in the Counties of Clear Creek, Eagle, Grand, and Summit, State of Colorado, on the other hand; and

II. Transportation of passengers in call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Denver, and Douglas, State of Colorado, on the one hand, and 18300 West Alameda Parkway, Red Rocks Park and Amphitheater, Morrison, Colorado, on the other hand.

RESTRICTIONS:

Item (I) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado;
- (B) Against originating or terminating transportation service at points within the area in downtown Denver defined as follows: beginning at the intersection of 15th Street and Blake Street, then northeast along Blake Street to 18th Street; then southeast along 18th Street to Broadway; then south along Broadway to Colfax Avenue; then west along Colfax Avenue to 15th Street; then northwest along 15th Street to the point of beginning;
- (C) Against originating or terminating transportation service at points within a [one] and one-half mile radius of the Denver West Marriott, 1717 Denver West Marriott Boulevard, Golden, Colorado; and
- (D) To the use of vehicles with a minimum seating capacity of twelve (12) passengers.

Item (II) is restricted:

- (A) Against providing transportation service to or from Denver International Airport, Denver, Colorado; and
- (B) To the use of vehicles with a minimum seating capacity of no less than fifteen (15) passengers.

8. The grant of the Application by Ordering Paragraph No. 6 and the right of Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, to operate under the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by Ordering Paragraph No. 7 shall depend on, and are conditioned by, the following: For a period of two years commencing on the date of the final Commission decision in this Proceeding, Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall not file with the Commission an

application to extend further the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision. Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, is permitted to make any filings required by Commission rules or orders (or both) and is permitted to file an application to discontinue or to suspend its operation under Certificate of Public Convenience and Necessity PUC No. 55822, as extended by this Decision.

9. If Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, fails to comply with the requirements of Ordering Paragraph No. 8, then Ordering Paragraphs No. 6 and No. 7, are void.

10. The authority granted in Ordering Paragraph No. 7 is conditioned on Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus's meeting the conditions contained in this Decision and is not effective until Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, has met the conditions set out in Ordering Paragraph No. 11.

11. Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall not begin operation under the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision until it has satisfied all of the following conditions:

(a) Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period and the entire ten-day notice period must expire prior to the proposed effective date. Green Mountain Ski Bus, Inc., doing business

as Front Range Ski Bus, shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(b) Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(c) Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall pay to the Commission the \$5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(d) For each vehicle to be operated under the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision, Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall pay to the Commission the vehicle identification fee required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of that fee and if applicable, Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, shall pay to the Commission, for each vehicle to be operated under the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision, the fee for those vehicles pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(e) Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, has received from the Commission a written notice that Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, has complied with conditions (a) through (d) in this Ordering Paragraph and may begin providing transportation service pursuant to the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision.

12. If Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, does not comply with the requirements of Ordering Paragraph No. 11 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 6 and No. 7 are void. On timely motion and for good cause shown, the Commission may grant Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, additional time for compliance.

13. The right of Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus, to operate under the extended Certificate of Public Convenience and Necessity PUC No. 55822 granted by this Decision shall depend upon Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus's compliance with: (a) all present and future laws applicable to Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus; (b) all present and future Commission regulations applicable to Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus; and (c) all present and future Commission orders applicable to Green Mountain Ski Bus, Inc., doing business as Front Range Ski Bus.

14. The August 6, 2014 evidentiary hearing is vacated.

15. The procedural schedule established in Decision No. R14-0508-I is vacated.

16. 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.

17. 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 recommended 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 a basic finding 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.

18. If exceptions to this Recommended 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

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director