

Decision No. R14-0816-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1186CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF HIGH COUNTRY SHUTTLE, INC., TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55806.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING**

Mailed Date: July 14, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On November 1, 2013, High Country Shuttle Inc. (Applicant), filed the above-captioned application.

3. The Commission provided public notice of the Application on November 4, 2013.

4. On December 4, 2013, Colorado Coach Transportation LLC and MT Acquisitions LLC, doing business as Mountains Taxi (collectively, interveners), timely intervened of right (by separate filings).

5. During the Commission's weekly meeting held December 11, 2013, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

6. On March 20, 2014, by Decision No. R14-0305-I, the ALJ scheduled a two-day hearing to take place in Georgetown, Colorado on June 24 and 25, 2014.

7. At the designated date, time and place, the ALJ convened the hearing. Mr. Imre Zelizi appeared on behalf of Applicant. Mr. Charles Kimball appeared on behalf of interveners. On the record, the parties indicated they had reached a settlement in principal of their disputes. The ALJ asked that the parties put their agreement in writing and submit it in this proceeding as soon as possible. Based upon the parties' representation that they have resolved the matter, the ALJ vacated the hearing.

8. On June 25, 2014, the ALJ ordered the parties to file their final agreement by July 9, 2014, or if they were unable to finalize their agreement, to make an appropriate filing by that same deadline, which indicates the status of their agreement and what action, if any, may be necessary for this matter to be concluded. Decision No. R14-0703-I.

9. On July 10, 2014, counsel for interveners emailed the undersigned ALJ, which he copied to Applicant.¹ The ALJ had the email placed in the record. The email indicates that counsel has "not received any proposal from Applicant since the proposal submitted on or about June 26, 2014, which substantially expanded the agreement reached by the parties on the record at the hearing in Georgetown." Counsel requests that Applicant be held to honor the agreement that was placed in the record at the June 24, 2014 hearing. Intervenors have not filed a motion requesting such relief.²

10. On July 14, 2014, Applicant filed a letter with the Commission stating that Applicant requests a new hearing be scheduled on the Application. Applicant states that an agreement could not be reached with interveners, and that Applicant seeks to defend the Application as originally written "without compromise."

¹ Decision No. R14-0703-I directed counsel to make a filing this proceeding, not to informally email the ALJ.

² The ALJ will not construe counsel's informal email request as a motion.

11. During the June 24, 2014 hearing, counsel for interveners provided a description of the terms of the parties' agreement, which primarily related to several geographical changes in the authority sought by Applicant. Given the nature of the parties' agreement, in order to fully understand them, the ALJ required the parties to submit a written agreement. During the hearing, the ALJ further informed the parties that she was not approving the terms of the parties' verbal agreement. The ALJ was clear that the parties would be able to modify their agreement in the written submission.³

12. The parties have both indicated that an agreement has not been finalized. No written agreement between the parties has ever been filed.

13. The ALJ understands Applicant's desire to move forward with a hearing on the original Application. The ALJ will schedule a new hearing date, as set forth below.

14. Applicant is again reminded that it carries the burden of proof in this proceeding, and that its non-attorney representative will be held to the same standards as an attorney.

15. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (CCR) 723-1, Part 1, the Rules Regulating Transportation by Motor Vehicle found at 4 CCR 723-6, Part 6, relevant case law, and the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts. The Rules of Practice and Procedure and the Rules Regulating Transportation by Motor Vehicle are available on the Commission's website at www.dora.colorado.gov/puc and in hard copy from the Commission. The Colorado Rules of Evidence are available at the following link:

<http://www.lexisnexis.com/hottopics/Colorado/> (go to "Colorado Court Rules").

³ In other words, that the parties would be able to make necessary changes to the verbal terms presented at the hearing, as they finalized their written agreement.

16. The ALJ is scheduling the hearing to take place in Denver, Colorado. The ALJ is aware that Applicant prefers the hearing to be held in Georgetown, Colorado. The last hearing was held in Georgetown, Colorado. During that hearing, Applicant stated he had reached an agreement. The hearing was vacated based on this representation. Whatever the reasons may be for the parties' inability to finalize an agreement, the ALJ cannot justify the expenditure of additional resources to travel to Georgetown for the second time. As a result, the hearing will be held in Denver.

17. The ALJ is cognizant of Applicant's prior statements that a hearing should be held in Georgetown because its witnesses cannot appear in person for a hearing in Denver. If Applicant has difficulties getting his witnesses to appear in Denver for the hearing, Applicant is encouraged to submit a written motion as soon as possible under Rule 1405(a)(I) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. That Rule incorporates by reference, Colorado Rule of Civil Procedure (C.R.C.P.) 43(i)(1). Under C.R.C.P. 43(i)(1), a party may request that testimony be presented at hearing by a person absent from the hearing room by means of telephone or other medium of communication. Under the Rule, such a motion is to include the reason for allowing such testimony, and a description of all testimony which is proposed to be taken by telephone, as well as copies of all documents or reports which will be used or referred to in such testimony.

18. Any such a motion should be filed as soon as possible, to allow time for responses and for the ALJ to issue a decision before the hearing date.⁴

⁴ Under Rule 1400(b), 4CCR 723-1, a party has 14 days from the date of service of a motion to file a response to a motion.

II. ORDER

A. It Is Ordered That:

1. A hearing on the merits of High Country Shuttle Inc.'s (Applicant) Application to Extend Operations Under Certificate of Public Convenience and Necessity No. 55806 is scheduled as follows:

DATES: August 21 and 22, 2014
TIME: 9:30 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. At the above date, time, and place you will be given the opportunity to be heard if you so desire.

3. At the hearing, the parties shall bring an original and three copies of each pre-marked exhibit they intend to introduce, along with a completed exhibit list in the format set forth in Appendix A to this Decision.

4. All exhibits shall be identified by sequential numbers (e.g., Exhibit 1, Exhibit 2, Exhibit 3).

5. Exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director