

Decision No. R14-1315-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0928CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF BOULDER LIFT (THE)* FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55778.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADDRESSING INTERVENTION; REQUIRING
APPLICANT TO RETAIN LEGAL COUNSEL IN
THIS MATTER; REQUIRING APPLICANT TO
MAKE FILING; NOTIFYING PARTIES THAT
APPLICATION HAS BEEN DEEMED COMPLETE;
VACATING PROCEDURAL SCHEDULE;
AND CONTAINING ADVISEMENTS**

Mailed Date: October 30, 2014

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I. STATEMENT

1. On September 11, 2014, The Boulder Lift, LLC (Boulder Lift or Applicant), filed a verified Application for Permanent Authority to Extend Current Operations Under Certificate of Public Convenience and Necessity (CPCN) PUC No. 55778. That filing commenced this Proceeding.

2. On September 19, 2014, Applicant filed a supplement to the September 11, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the September 11, 2014 filing as supplemented on September 19, 2014.

3. On September 22, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On October 29, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Parties.

5. On October 22, 2014, Colorado Cab Company LLC, doing business as Boulder SuperShuttle (SuperShuttle), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Opposition to Application. By that filing, SuperShuttle establishes that it is an intervenor by right; thus, it is a party in this Proceeding. SuperShuttle is the Intervenor, opposes the Application, and is represented by legal counsel.

6. The intervention period has expired. No other person has filed an intervention of right or a motion for leave to intervene. As of the date of this Interim Decision, there is one

pending motion for leave to intervene out-of-time; the ALJ will address that motion in a separate Interim Decision.

7. Applicant and Intervenor, collectively, are the Parties.

B. Application Deemed Complete and Time for Commission Decision.

8. On October 29, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Applicant provided neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

9. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application not later than **May 27, 2015**.

C. Applicant to Retain Counsel.

10. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent the interests of a closely-held entity provided the requirements in § 13-1-127, C.R.S., are met.

¹ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

11. The Commission has held that, if the exception in Rule 4 CCR 723-1-1201(b)(II) does not apply, an entity (such as a limited liability company) must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

12. This is an adjudication before the Commission.

13. Boulder Lift is a limited liability company and is a party in this matter.

14. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply in this Proceeding because, as demonstrated by the 2013 Motor Carrier Annual Report filed by Applicant in this Proceeding, Boulder Lift's calendar year 2013 revenues under its existing CPCN exceeded \$ 15,000 and, presumably, operations under an extended CPCN are likely to result in higher *per annum* revenues in the future. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that Boulder Lift must be represented by an attorney in this case.

15. The ALJ will order Boulder Lift to obtain legal counsel in this Proceeding. Applicant Boulder Lift's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

16. Boulder Lift's attorney must enter an appearance in this Proceeding not later than **November 14, 2014**.

17. **Boulder Lift is advised and is on notice that it will not be permitted to participate in this Proceeding without an attorney.**

18. **Boulder Lift is advised and is on notice that the ALJ will dismiss (without prejudice) the Application *unless* Boulder Lift's attorney enters an appearance in accordance with this Interim Decision.**

D. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

19. The Intervenor opposes the Application. Thus, it is necessary to establish a procedural schedule and to schedule an evidentiary hearing date in this matter. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order Applicant -- *through its counsel only* -- to consult with Intervenor and then to make, not later than **November 21, 2014**, a filing that: (a) contains a procedural schedule, including hearing date(s), that is satisfactory to the Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenor to cooperate with Applicant with respect to this filing.

20. The procedural schedule filing must contain at least the following: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which Intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), a corrected list of witnesses and complete copies of corrected exhibits; (d) the date by which each party will file prehearing motions, including dispositive motions;³ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁴ (f) *three* proposed evidentiary

³ This date can be no later than ten calendar days before the first day of hearing.

⁴ This date can be no later than three business days before the first day of hearing.

hearing dates;⁵ and (g) the date by which each party will file its post-hearing statement of position, to which no response will be permitted.

21. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue not later than May 27, 2015. To allow time for a recommended decision, exceptions, response to exceptions, and a Commission decision on exceptions, the **hearing in this matter must be concluded no later than February 16, 2015.**

22. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. The November 14, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the ALJ to order with respect to discovery; and (b) an explanation of the need for the proposed modifications or special provisions.

23. Unless modified, Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the November 14, 2014 filing must contain: (a) any special provisions that the Parties wish the ALJ to order with respect to treatment of information claimed to be confidential; and (b) an explanation of the need for the proposed special provisions.

24. When the November 14, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

⁵ If possible, the ALJ will choose one of the proposed hearing dates.

If the Parties are of the opinion that more than one hearing day will be necessary, Applicant must propose three “sets” of hearing dates. Within each proposed “set,” the hearing days must be consecutive within the same week (*i.e.*, no intervening weekends and no intervening State holidays).

25. **The Parties are advised and are on notice that**, if Applicant fails to make the November 14, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

26. **The Parties are advised and are on notice that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information will be contained in the list of witnesses to be filed in accordance with the procedural schedule. No person will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

27. **The Parties are advised and are on notice that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document -- including the Application -- will be admitted as an exhibit (except in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

E. Additional Advisements.

28. **The Parties are advised and are on notice that** they must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at dora.colorado.gov/puc.

29. **The Parties are advised and are on notice that** a document is filed with the Commission on the date that the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* timely filed.

30. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

31. The ALJ calls counsel's attention to Rule 4 CCR 723-1-1202(d), which requires that

[e]very pleading of a party represented by an attorney shall be signed by the attorney, and *shall state* the attorney's address, telephone number, *e-mail address*, and attorney registration number.

(Emphasis supplied.) **The Parties are advised and are on notice that** filings must comply with this requirement.⁶

II. **ORDER**

A. **It Is Ordered That:**

1. Colorado Cab Company LLC, doing business as Boulder SuperShuttle, is a party in this Proceeding.

2. Consistent with the discussion above, The Boulder Lift, LLC, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

⁶ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks for the appropriate e-mail addresses. Thus, if no e-mail address is provided, counsel may not receive notice of rulings.

3. Not later than November 14, 2014, legal counsel for The Boulder Lift, LLC, shall enter an appearance in this Proceeding.

4. Failure of The Boulder Lift, LLC's legal counsel to enter an appearance as required by Ordering Paragraph No. 3 shall result in dismissal of this Proceeding without prejudice.

5. The procedural schedule established in the Notice of Application Filed dated September 22, 2014 is vacated.

6. Not later than November 21, 2014, The Boulder Lift, LLC, shall make a filing that complies with ¶¶ 19-23, above.

7. Intervenor Colorado Cab Company LLC, doing business as Boulder SuperShuttle, shall cooperate with Applicant in the preparation of the filing required by Ordering Paragraph No. 6.

8. Consistent with the discussion above, if Applicant fails to make the filing required by Ordering Paragraph No. 6, the Administrative Law Judge, without input from the parties, shall schedule the evidentiary hearing and shall establish the procedural schedule.

9. The Parties are held to the advisements in this Interim Decision.

10. This Interim Decision is effective immediately.

(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