

Decision No. C20-0651-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0323EC

IN THE MATTER OF THE PETITION FOR DECLARATORY ORDER FILED BY
ALTERNATIVE SUPPORT, INC. PURSUANT TO THE COMMISSION'S RULE OF
PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(1).

**INTERIM DECISION ACCEPTING
PETITION FOR DECLARATORY ORDER,
ISSUING NOTICE, AND REQUIRING FILING**

Mailed Date: September 4, 2020
Adopted Date: August 26, 2020

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR
CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission accepts and issues notice of the Petition for Declaratory Order (Petition) filed by Alternative Support, Inc. (Alternative Support), on July 30, 2020. The Petition seeks an order stating that Alternative Support's nonmedical transportation services for "[i]ndividuals with Intellectual and Developmental Disabilities receiving Residential, Specialized Habilitation, [and] Supported Community Connection and Job Training or Supported Employment Services"¹ are exempt from regulation by the Commission under § 40-10.1-105(g), C.R.S., and therefore fall outside the regulatory purview of the Commission and need no certificate of public convenience and necessity.

¹ Petition at p. 1.

2. This Decision establishes a 30-day period for notice, interventions, and any responsive briefs. Interventions and any responsive briefs, including from Commission Staff, must be filed by 5:00 p.m. on October 5, 2020.

3. Additionally, this Decision sets forth two questions regarding how Alternative Support meets the requested exemption and identifies related documentation that we direct Alternative Support to answer or provide no later than 14 days after the mailed date of this Decision.

B. Background

4. On July 30, 2020, Alternative Support filed its Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i) of the Commission’s Rules of Practice and Procedure.

5. In its Petition, Alternative Support states that it provides non-medical transportation services to and from its day habilitation, job training, and employment program locations to individuals with developmental disabilities and challenging behaviors, and that it operates as a corporation. Alternative Support asserts it is a “people service agency” as defined in § 40-1.1-102(3), C.R.S., and that it would normally assume its transportation services are exempt under § 40-10.1-105(g), C.R.S. Alternative Support requests that the Commission issue an order declaring its transportation services are exempt from regulation under § 40-10.1-105, C.R.S.

C. Findings and Conclusions

6. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule,

regulation, or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, we then exercise our discretion to accept or dismiss the petition.

7. We find that evaluating the question presented in the Petition will remove uncertainty as to whether Alternative Support's transportation services are exempt under § 40-10.1-105(g), C.R.S.

8. The Commission accepts Alternative Support's Petition and issues notice of the Petition to interested persons, firms, and corporations by service of this Decision.

9. Additionally, we note that under § 40-10.1-105(g), C.R.S., people service transportation pursuant to article 1.1 of title 40 is not subject to regulation under Article 10.1 of Title 40, which governs motor carriers. "People service transportation" is defined in article 1.1 of title 40 as "motor vehicle transportation provided on a nonprofit basis by a [people service agency or charitable organization] generally for the purpose of transporting clients or program beneficiaries in connection with people service programs . . ." § 40-1.1-102(5), C.R.S. In turn, a "people service agency" is defined as "any people service unit primarily supported by public funds and not for profit, such as clinics, day care centers, job programs, congregate meal centers, senior citizen programs, and other government funded bodies." § 40-1.1-102(3), C.R.S.

10. Alternative Support states that it operates as a corporation and does not explain how it meets the definition of a people service agency. Therefore, we direct Alternative Support to answer the following questions and provide the following documentation.

11. First, describe how Alternative Support is primarily supported by public funds.

12. Second, explain whether Alternative Support is not for profit and if so, provide documentation of its non-profit status. This documentation could show federal non-profit status, such as Alternative Support's most recent IRS Form 990, or state non-profit status.

13. Third, submit an affidavit attesting that the information in the Petition and Alternative Support's response to the above questions is true and accurate.

14. Alternative Support shall file its responses to the above questions and provide the specified documentation and affidavit no later than 14 days after the mailed date of this Decision.

15. The Petition is available for public inspection at the Commission office located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m., excluding weekends and state holidays, or by accessing the Commission's E-Filing system under the above proceeding number at Colorado.gov/dora/puc. **This Decision is the notice that Alternative Support's Petition seeking a declaratory order related to an exemption from Commission regulation under § 40-10.1-105, C.R.S., has been filed.**

16. The Commission notice period for the Petition shall extend for 30 days from the mailed date of this Decision and, therefore, shall extend through and include **5:00 p.m. on October 5, 2020**. The intervention and response period will run concurrent with the notice period. Interventions and responses, including those filed by Commission Staff, shall be due by **5:00 p.m. on October 5, 2020**.

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order (Petition) filed by Alternative Support, Inc., (Alternative Support) on July 30, 2020, is accepted.

2. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

3. The notice period for the Petition shall extend through and include **5:00 p.m. on October 5, 2020**.

4. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on October 5, 2020**.

5. Responsive briefs shall be due from all parties by **5:00 p.m. on October 5, 2020**.

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or by accessing the Commission's E-Filing system under the above proceeding number at Colorado.gov/dora/puc.

7. Consistent with the discussion above, Alternative Support shall file responses to the questions regarding how it meets the definition of a "people service agency" under § 40-1.1-102(3), C.R.S., along with the documentation and affidavit specified above, no later than 14 days after the mailed date of this Decision.

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 26, 2020.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners