

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15F-0383CP

238569
MCF 21062

COLORADO JITNEY LLC,

COMPLAINANT,

V.

CITY AND COUTNY OF DENVER, AND COLORADO TOUR LINE, LLC DOING BUSINESS AS GRAY LINE OF DENVER

RESPONDENTS..

ENTERED
Office of Proceedings
June 9, 2015
Part of
Public Record

ORDER TO SATISFY OR ANSWER

YOU ARE NOTIFIED THAT A FORMAL COMPLAINT HAS BEEN FILED AGAINST YOU IN THE ABOVE ENTITLED AND CAPTIONED CASE. YOU ARE ORDERED TO SATISFY THE MATTERS IN THE COMPLAINT OR TO ANSWER THE COMPLAINT IN WRITING WITHIN 20 DAYS FROM SERVICE UPON YOU OF THIS ORDER AND COPY OF THE ATTACHED COMPLAINT.

IF THE COMPLAINT IS SATISFIED AND ADEQUATE EVIDENCE OF SATISFACTION IS PRESENTED TO THE COMMISSION, THE COMPLAINT SHALL BE DISMISSED. IF THE COMPLAINT IS NOT SATISFIED, OR IF ADEQUATE EVIDENCE OF ITS SATISFACTION IS NOT PRESENTED TO THE COMMISSION, OR IF NO ANSWER IS FILED WITHIN THE TIME REQUIRED, THE ALLEGATIONS OF THE COMPLAINT MAY BE DEEMED ADMITTED, AND THE COMMISSION MAY GRANT SO MUCH OF THE RELEIF SOUGHT IN THE COMPLAINT AS IS WITHIN ITS POWER AND JURISDICTION OR MAY SET THE COMPLAINT FOR HEARING.

BY ORDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

WITNESS MY HAND AND THE SEAL OF THE PUBLIC UTILITIES COMMISSION of THE STATE OF COLORADO AT DENVER, COLORADO THIS <MAY 28, 2015>

(S E A L)



Doug Dean,
Director

ATTEST: A TRUE COPY

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

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V.

CITY AND COUTNY OF DENVER, AND COLORADO TOUR LINE, LLC DOING BUSINESS AS
GRAY LINE OF DENVER

RESPONDENTS.

ORDER SETTING HEARING AND NOTICE OF HEARING

TO THE PARTIES IN THIS MATTER:

The Colorado Public Utilities Commission orders that the hearing in this matter is set before an Administrative Law Judge on:

DATE: August 11, 2015

TIME: 9:00 AM

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOUG DEAN, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250, Denver, Colorado 80202

Dated at Denver, Colorado this
28th day of May, 2015

ATTEST: A TRUE COPY

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

DOUG DEAN, Director

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

Docket No.: 15F-0383CP

COLORADO JITNEY, LLC,
COMPLAINANT,

v.

CITY AND COUNTY OF DENVER, &
COLORADO TOUR LINE, LLC
D/B/A GRAY LINE OF DENVER
RESPONDENTS

COMPLAINT

Comes Now the Complainant, Colorado Jitney, LLC doing business as Colorado Jitney, (hereafter “Complainant” or “Jitney”) by and through its Principals, and files this its complaint pursuant to the provisions of Rule 1302 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of Colorado, 4 CCR 723-1 COMMON AND CONTRACT CARRIER RULES of the RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, makes the following Complaint of the Respondents.

I.

**PRELIMINARY STATEMENT AND DESCRIPTION OF THE NATURE OF
COLORADO JITNEY, LLC’S COMPLAINT**

This year, 2015, marks Denver’s eight consecutive year of disregard for Public Utilities Commission oversight of transportation in Red Rocks Park and the State of Colorado. First memorialized in 2007, contract 2007-0426 A-E (Exhibit A) formalized an agreement between Colorado Tour Lines d/b/a Gray Line of Denver and the City and

County of Denver in order to provide shuttle transportation in Red Rocks Park. At an April 22, 2015 Status Conference in Docket 14F-0806CP, currently before the Public Utilities Commission (“Commission”), Mr. Solomon, an assistant attorney in Denver’s City Attorney’s office, stated for the record;

“At the moment, the City has entered into a contract with Gray Line to provide service throughout the remainder of the summer. Gray Line does have operating authority from the PUC to operate in Red Rocks...In this particular case, the contract's gone. At least through the remainder of the summer it doesn't appear very likely that this same type of thing is going to happen since the contract we currently have is withdrawn that we have a company that has PUC authority to operate at Red Rocks ” (Exhibit B – 5/22/2015 Certified Court Reporter Transcript)

This arrangement continues Denver’s tyrannical management of Red Rocks Park, whereby Denver fails to recognize the Commission granted authorities of transportation carriers in the State of Colorado. This pleading is nearly identical to the issues before the Commission in Docket 14F-0806CP.

In 2012 Jitney underwent two Commission proceedings and received authority to provide the contested service at Red Rocks Park from the Commission. Jitney then approached Denver in August 2012 in order to coordinate operations with Denver and provide a “shuttle” service throughout Red Rocks Park and Jefferson County. Denver rejected the offer on the basis that the roads in Red Rocks Park are private. (Exhibit C – Jitney Letter - RRP Guest Services Manager)

Again, in March 2013 Jitney bid on a formal Request for Proposals (RFP – SHUTTLESRVROCK 0453A) to provide shuttle transportation in Red Rocks Park. In RFP 0453A Denver acknowledged Commission oversight and required all carriers to attach a copy of the carrier’s Commission authorities along the carrier’s bid. (Exhibit D –

SHUTTLESVRROCK0453A Pg. 11 ¶ B.3) Denver again rejected Jitney's formal proposal and contracted with a carrier that did not hold appropriate authority.

Gray Line possesses three common carrier certificates, CPCN 55716, CPCN L275 and CPCN L9909. Jitney believes Denver misrepresented Gray Line's authority at the April 22, 2015 Status Conference, and that Gray Line does not have the appropriate authority required to provide shuttle transportation from points within Red Rocks Park to the arena located at 18300 W. Alameda Parkway. (Exhibit H – Gray Line Authorities)

A careful review of Gray Line's authorities indicates that only Part IV of CPCN 55716 authorizes Gray Line to provide point-to-point service in Red Rocks Park. However, Part IV is characterized as "charter authority", and considering 4 CCR 723-6-6201(d) and 4 CCR 723-6-6201(e), the type of service being provided at Red Rocks Park does not qualify as "charter service". The service fails to qualify as "charter service" because the vehicle is not chartered by a group of persons sharing a "professional or personal" relationship. Rather, the vehicle is chartered by Denver - which would seem to be categorized as "other third party" in 4 CCR 723-6-6201(d) which states, in applicable part: 'Chartering Party' does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.

Denver's disregard for the Commission eviscerates the Commission's statutory authority granted to the Commission by the Legislature of the State of Colorado, and creates a skeletal transportation industry on the brink of systemic failure. The Commission's failure to provide a sound foundation for future investment shall only inhibit further economic development, harm the people of this state, and tacitly permit "transportation chaos" to prevail throughout this state.

Jitney requests a decision of the Commission determining that certain transportation operations, be it memorialized through a contractual arrangement or otherwise, and collusive and anticompetitive agreements entered into by The City and County of Denver, and its competitor in the Denver area, Colorado Tour Line, D/B/A Gray Line of Denver (Hereafter “Gray Line”) collusively and unlawfully prevent Jitney’s ability to operate.

Jitney believes such an agreement all by itself constitutes an unreasonable and unlawful practice in violation of the Public Utilities Law. A second, equally unlawful step in the agreement is the usurpation of Public Utilities Law and Colorado Revised Statutes through Denver’s park permitting process which prohibits the sale of any good, or services, or thing for sale within any park, parkway, mountain park or other recreational facility, or within 300’ feet – superseding the Commission’s authority.

This competitively deadly one-two punch thus implemented by Gray Line and the City and County of Denver has motivated the filing of Jitney’s present complaint. Jitney requests that Gray Line, which is a holder of certificates of public convenience and necessity issued by the Commission, and the City and County of Denver be required to cease and desist from operating, as well as, offering the assailed agreement’s terms and that the Commission find that Gray Line having so far operated under the terms of such agreements be unlawful.

II. **COMPLAINT**

A. Statement of Jurisdiction

1. Complainant is a common carrier of passengers operating pursuant to authority granted by the Colorado Public Utilities Commission (“PUC”). As here

pertinent, Complainant's PUC certificate authorizes it to provide transportation services in Jefferson County, Colorado, including Red Rocks Park, which is located wholly in Jefferson County, Colorado.

2. Gray Line is a common carrier of passengers operating pursuant to authority granted by the Colorado Public Utilities Commission ("PUC").

3. The City and County of Denver (Hereafter "Denver" or "CCD") is a home rule city incorporated under the laws of the State of Colorado and defined as a "Municipality" according to C.R.S. §31-1-101 (6)

"Municipality" means a city or town and, in addition, means a city or town incorporated prior to July 3, 1877, whether or not reorganized, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution".

4. Denver loosely operates a number of public parks, known as the "Denver Mountain Parks" located in other Colorado counties. At issue here is Red Rocks Park, a public park within the Denver Mountain Parks, located in Jefferson County, wholly outside the home rule boundaries of CCD.

5. The Denver Mountain Parks (hereafter "DMP") is an independent entity listed on the National Register of Historic Places with property lying in several Colorado counties comprising of land ceded to it by the Federal Government by Congressional action for the purpose of creating and operating a series of public parks, and loosely maintained by CCD. As here pertinent, one of those parks, Red Rocks Park, is located wholly within Jefferson County, Colorado.

6. Rather than contracting with Complainant to provide transportation services in Red Rocks Park, Respondent Denver contracted with Respondent Colorado Tour Line d/b/a Gray Line to provide transportation services in Red Rocks Park. Neither CCD nor Gray Line have appropriate authority from the PUC to provide such transportation services at Red Rocks Park.

7. The contested transportation service is performed in intrastate commerce over Public Highways as defined by C.R.S. § 40-10.1-101 (16) ““Public Highway” means every street, road, or highway in this state over which the public generally has a right to travel”.

8. Under C.R.S. § 31-1-101(12) "Street" means any street, avenue, boulevard, road, land, alley, viaduct, right- of-way, courtway, or other public thoroughfare or place of any nature open to the use of the municipality or of the public, whether the same was acquired in fee or by grant of dedication or easement or by adverse use.

9. Under C.R.S. § 43-1-201(1)(c) “public highways include all roads over private land that have been adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years.

10. In Board of County Comm’rs v. Flickinger, 687 P.2d 975 (Colo. 1984) the Colorado Supreme Court held that a road over private land that was gated was nonetheless a public highway because the evidence showed that for over 20 years, the public “continuously entered the Flickinger property through the gate a the foot of the road and used the road for recreational purposes and as a means of

access to other adjacent lands” and that the owners had the actual knowledge of the public use of the road and “generally acquiesced in it”.

11. Attached to this complaint are affidavits from the public. Dow Markin states that he has used the roads in Red Rocks Park since 1961 and still uses them now. He has used them for recreational purposes within the park and also through the park to access other adjacent lands. Since 1961 to the present he has never had any problems driving in or through the park whether in a private vehicle or in a PUC licensed carrier’s vehicle. (Exhibit E – Markin Affidavit) Jim Keelan is a Denver resident who has used the roads in Red Rocks Park since 1966 and has never been denied access to Red Rocks Park and does not know anyone who has. (Exhibit F – Keelan Affidavit) Peter C. Gray has used the roads in Red Rocks Park since 1994 and continues to do so. The roads in Red Rocks Park have always been open and he has never been challenged on his use of the roads or any of the activities he enjoyed there. He is able to drive freely within the park as well as to and from the park with entering at one end and leaving on the other. (Exhibit G – Gray Affidavits)

12. In reliance on City and County of Denver v. Public Utilities Commission, 507 P.2d 871 (Colo. 1973) which stands for the proposition that, outside its home rule boundaries, Denver needs to obtain Commission approval for any transportation service it wants to provide, or suspend, and City of Durango v. Durango Transportation, Inc 807 P.2d 1152 (Colo. 1991); accord Union Rural Electric Ass’n, Inc v. Town of Frederick, 670 P.2d 4 (Colo. 1983) which stand for

the proposition that any private company contracted by CCD to provide the service on CCD's behalf, such as Gray Line, would be subject to PUC jurisdiction, and in further reliance on the fact that Red Rocks Park is a taxpayer maintained public park and that the road in the park, also maintained by taxpayer funds, and built for the purpose of giving the public access to this public park, are accordingly "Public Highways" within the meaning of C.R.S. § 40-10.1-101 (16).

13. Jitney and Gray Line are both owners and operators of certificates of public convenience and necessity issued to them by the Commission to operate as motor vehicle common carriers between points in the Denver metropolitan area. As common carriers within the meaning of §40-1-102(3)(a)(I),

"every person directly or indirectly affording a means of transportation or any service or facility in connection therewith, within this state by motor vehicle...by indiscriminately accepting and carrying for compensation passengers between fixed points or over established routes or otherwise and includes lessees, trustees, or receivers thereof, whether appointed by a court or otherwise."

Jitney and Gray Line are therefore each public utilities within the meaning of §40-1-103(1)(a)(1), C.R.S. as "every common carrier...operating for the purpose of supplying the public for...public uses and every corporation, or person declared by law to be affected with a public interest...is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title,"¹

14. The Commission's statutory jurisdiction over the subject matter of Jitney's complaint arises from the provisions of:

¹ See Decision No. R10-0497

(a) §40-6-108(a), C.R.S., whereby the Commission is obliged to entertain complaints by any “person” or “corporation” involving “any act or thing done or omitted to be done by any public utility, in violation, or claimed to be in violation, o any provision of law or any order or rule of the commission.”

and

(b) §40-10.1-103(1), All common carriers and contract carriers are declared to be public utilities within the meaning of articles 1 to 7 of this title and are declared to be affected with a public interest and subject to this article and articles 1 to 7 of this title, including the regulation of all rates and charges pertaining to public utilities, so far as applicable, and other laws of this state not in conflict therewith.

15. The Commission accordingly possesses the necessary statutory and continuing jurisdiction to hear and consider the present Complaint, to monitor and correct abuses by means of necessary Commission orders and directives to Gray Line and the City and County of Denver.

B. Jitney’s Claims Against Gray Line and the City and County of Denver

1. At the April 22, 2015 Status Conference in Docket 14F-0806CP Mr. Solomon stated, “At the moment, the City has entered into a contract with Gray Line to provide service throughout the remainder of the summer. Gray Line does have operating authority from the PUC to operate in Red Rocks.” (Exhibit B - Certified Court Reporter Transcript)

2. Contrary to, and in violation of, C.R. S. § 40-10-104, and/or C.R.S. 40-11-103, and City and County of Denver vs. Public Utilities Commission, 507 P.2d 871 (Colo. 1973) Respondent Denver at all relevant times, has provided and continues to provide, either directly, or through contract with other carriers, transportation service by motor vehicle, for hire, on the public highways of Colorado outside its home rule boundaries without any authorization from the Public Utilities Commission (PUC) to do so, to wit, as here pertinent, that portion of Jefferson County formally known as “Red

Rocks Park”.

3. Contrary to, and in violation of C.R. S. § 40-10-104 and/or C.R. S. § 40-11-103, Respondent Colorado Tour Line, LLC d/b/a Gray Line of Denver, (Gray Line) has at all relevant times provided and continues to provide transportation, by motor vehicle, for hire, on the public highways of Colorado, as pertinent herein, in Red Rocks Park located wholly in Jefferson County, Colorado without appropriate authority to do so from the Public Utilities Commission.

4. Contrary to, and in violation of C.R. S. § 40-3-403, neither Respondent Denver nor Respondent Gray Line has filed rate schedules with the PUC to cover the transportation services provided in Jefferson County at Red Rocks Park.

5. C.R. S. § 40-3-101 requires a carrier subject to the PUC’s jurisdiction, to provide adequate service in its PUC authorized operations. As here pertinent, Complainant Jitney holds appropriate authority to provide service to and from points in Red Rocks Park, and to and from Pepsi Center, and subject to C.R. S. § 40-3-101, is required to provide such service in an adequate manner. Contrary to, and in violation of C.R. S. § 40-1-101, Denver has usurped the authority of the PUC and has prevented Jitney from providing its authorized services at Red Rocks Park and Pepsi Center. (Affidavits)

6. Contrary to, and in violation of, C.R. S. § 40-3-102, Denver and Horizon have provided transportation services in Red Rocks Park, Jefferson County Colorado, under a rate schedule not approved by the PUC, which is predatory to existing carriers.

7. Said acts of Respondents have and continue to cause damage to Complainant and the public.

WHEREFORE, pursuant to Article XXV of the Colorado Constitution and C.R.S. §40-6-108, C.R.S. §40-3-102, C.R.S. §40-3-111, C.R.S. §40-7-101 through C.R.S. §40-7-111, C.R.S. §40-10-108, C.R.S. §40-10-104, and/or C.R.S. §40-11-103, and C.R.S. §40-10-112, and any other Section that may be appropriate under the circumstances, Complainants ask that the Commission enter an order granting the following relief:

1. That the Commission find that Respondents have unlawfully conducted, and are unlawfully conducting transportation operation for hire without appropriate authority from the Public Utilities Commission to conduct said operations;

2. That the Commission find that Respondent, City and County of Denver, has illegally usurped the powers of the PUC and illegally interfered with Complainant's PUC authorized operations;

3. That the Commission issue a Cease and Desist Order against each and every Respondent ordering them to refrain from providing the complained of operations until such time as the (1) receive appropriate authority from the Public Utilities Commission to conduct such operations, and (2) file appropriate tariffs with the PUC and receive tariff clearance from the PUC to operate under the PUC authority granted;

4. That the Commission issue a Cease and Desist Order against Respondent City and County of Denver ordering them to refrain from illegally impeding Complainant in conducting its PUC authorized operations;

5. That the Commission afford Complainant any other relief that the PUC may deem appropriate under the circumstances including, but not limited to, temporary cease and desist orders pending disposition of this complaint proceeding, permanent cease and desist orders against all Respondents, findings of unfitness against each and

every Respondent, and any other relief deemed appropriate under the circumstances.

Dated at Denver, Colorado this 27th day of May, 2015.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bradley J. Doran", is written over a solid horizontal line.

Bradley J. Doran
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