

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1290BP

IN THE MATTER OF THE APPLICATION OF MOSS LLC FOR A PERMIT TO OPERATE
AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING STIPULATED MOTION; AMENDING
APPLICATION, SUBJECT TO CONDITIONS;
DISMISSING INTERVENORS; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE AND SUBJECT TO
CONDITIONS; AND GRANTING CONTRACT
CARRIER PERMIT, SUBJECT TO CONDITIONS**

Mailed Date: May 14, 2014

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I. STATEMENT

1. On December 10, 2013, Moss LLC (Moss or Applicant) filed a verified Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application). That filing commenced this Proceeding.

2. On December 16, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a

procedural schedule. On January 24, 2014, Decision No. R14-0101-I vacated the procedural schedule.

3. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Yellow Cab), timely intervened in this Proceeding. Yellow Cab is a party in this Proceeding and opposed the Application.

4. Colorado Springs Transportation, LLC (CST), timely intervened in this Proceeding. CST is a party in this Proceeding and opposed the Application.

5. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely intervened in this Proceeding. Metro Taxi is a party in this Proceeding and opposed the Application.

6. Shamrock Taxi of Ft. Collins, Inc. (Shamrock Taxi), timely intervened in this Proceeding. Shamrock Taxi is a party in this Proceeding and opposed the Application.

7. CST, Metro Taxi, Shamrock Taxi, and Yellow Cab, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Pursuant to Decision No. R14-0101-I, Applicant is represented by an individual who is not an attorney.¹ Each intervenor is represented by legal counsel.

8. On January 22, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

9. On January 22, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time

¹ In Decision No. R14-0101-I at ¶ 22, the ALJ advised Applicant and its representative of the standards to which Applicant's representative is held.

by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than August 20, 2014.

10. On February 6, 2014, by Decision No. R14-0140-I, the ALJ established the procedural schedule and scheduled an April 24 and 25, 2014 evidentiary hearing in this matter.

11. Pursuant to Decision No. R14-0140-I, Applicant was to file, not later than February 18, 2014, its list of witnesses and complete copies of the exhibits it would offer in its direct case. Applicant neither made this filing nor requested an enlargement of time within which to make this filing.

12. Pursuant to Decision No. R14-0140-I, each intervenor was to file, not later than March 1, 2014, its list of witnesses and complete copies of the exhibits it would offer at hearing. Intervenors filed their lists of witnesses and copies of their exhibits.

13. On April 21, 2014, Metro Taxi filed a Motion to Dismiss the Application of Moss, LLC. On April 23, 2014, Metro Taxi filed its Withdrawal of Motion to Dismiss the Application of Moss, LLC.

14. On April 24, 2014, the ALJ called the hearing as scheduled. Applicant, Shamrock Taxi, and Yellow Cab were present. As a preliminary matter, the parties present informed the ALJ that the Parties had reached a settlement that, if accepted by the Commission, would resolve all issues in this Proceeding. The parties present represented that the settlement agreement would be filed not later than April 25, 2014. On the basis of the representations, the ALJ vacated the scheduled evidentiary hearing.

15. On April 24, 2014, the Parties filed (in one document) a Stipulated Motion for Imposition of Restrictive Amendment [Motion] and Conditional Withdrawal of Interventions [Withdrawal of Interventions].

16. As noticed by the Commission, the Application sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Larimer, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to providing transportation services to recipients of Medicaid;
- (B) to providing non-emergency medical transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203; and
- (C) against providing transportation services to hotels, motels or airports.

Notice at 3.

17. In the Motion, Applicant seeks to amend the authority sought by the Application. If the Motion is granted, Applicant will seek authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to providing transportation services to recipients of Medicaid;
- (B) to providing non-emergency medical transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (C) against providing transportation services to hotels, motels or airports;
- (D) against the use of more than two vehicles at any one time; and

- (E) against providing transportation service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

Motion at ¶ 3.

18. Each intervenor states that, if the Commission approves the amendments contained in the Motion, the intervenor's "interests will be satisfied and [its] intervention[] shall be deemed withdrawn." Withdrawal of Interventions at ¶ 5.

19. To be acceptable, an amendment must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. Both the contract carrier permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract carrier permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the contract carrier's operations are within the scope of its Commission-granted authority.

20. The Motion and the resulting contract carrier permit, if the Application is granted, meet the standards stated above. The ALJ will approve the amendments contained in the Motion at ¶ 3, as set out above.

21. The ALJ finds that the Motion states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion.

22. Approving the restrictive amendments to the Application (*i.e.*, to the scope of the contract carrier permit that Applicant seeks) has these effects. First, the contract carrier authority

sought, as stated in the Application, will be amended to conform to the amendments contained in this Decision. Second, the Withdrawal of Interventions will be granted; and the interventions will be dismissed.

23. Dismissal of the interventions leaves the Application uncontested and unopposed.

24. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² the Commission may consider an uncontested and unopposed application pursuant to the Commission’s modified procedure and without a formal hearing. The ALJ finds that the Application should be considered, and will be considered, under the Commission’s modified procedure and without a formal hearing.

25. 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

26. Applicant is a Colorado limited liability company.

27. By the Application, as amended, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to providing transportation services to recipients of Medicaid;
- (B) to providing non-emergency medical transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;

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

- (C) against providing transportation services to hotels, motels or airports;
- (D) against the use of more than two vehicles at any one time; and
- (E) against providing transportation service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

28. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6, and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application and its supporting documentation establish 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. In addition, the Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application and will issue the contract carrier permit subject to conditions.

29. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below.

30. One of the conditions stated in the Ordering Paragraphs is: before commencing service as a contract carrier, Moss must file with the Commission its written contract with the Colorado Department of Health Care Policy and Financing to provide non-emergency medical

transportation. The basis for this condition is Rule 4 CCR 723-6-6209, which governs the contracts pursuant to which a contract carrier provides transportation service. That Rule reads:

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for compensation except *in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.*
- (c) *Contracts shall be written.*
- (d) *At a minimum, all contracts shall specify the following:*
 - (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date(s) and terms of the contract, including rates.
- (e) A contract carrier shall not operate in conflict with the contract carrier's permit.
- (f) A contract carrier shall not operate in conflict with the contract carrier's tariff.

(Emphasis supplied.) Moss may file this contract under seal if Moss believes that the contract constitutes or contains confidential information. *See* Rules 4 CCR 723-1-1100 and 723-1-1101.

31. Questions concerning completion of the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).

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

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion for Imposition of Restrictive Amendment, which motion was filed on April 24, 2014, is granted.

2. Consistent with the discussion above, the verified Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire filed on December 10, 2013 by Moss LLC is amended.

3. The Stipulated Motion for Conditional Withdrawal of Interventions, which motion was filed on April 24, 2014, is granted.

4. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, is dismissed from this Proceeding.

5. Colorado Springs Transportation, LLC, is dismissed from this Proceeding.

6. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is dismissed from this Proceeding.

7. Shamrock Taxi of Ft. Collins, Inc., is dismissed from this Proceeding.

8. Consistent with the discussion above and subject to the conditions stated below, the verified Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire filed on December 10, 2013 by Moss LLC, as amended, is granted.

9. Subject to the conditions stated in the Ordering Paragraphs below, Moss LLC is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to providing transportation services to recipients of Medicaid;
- (B) to providing non-emergency medical transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (C) against providing transportation services to hotels, motels or airports;
- (D) against the use of more than two vehicles at any one time; and
- (E) against providing transportation service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

10. All operations under the contract carrier permit granted by Ordering Paragraph No. 9 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

11. The authority granted in Ordering Paragraph No. 9 is conditioned on Moss LLC meeting the conditions contained in this Decision and is not effective until Moss LLC meets the stated conditions.

12. Moss LLC shall not begin operation under the contract carrier permit granted by this Decision until it has satisfied all of the following conditions:

(a) Moss LLC shall file with the Commission a copy of the written contract with the Colorado Department of Health Care Policy and Financing to provide non-emergency medical transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Moss LLC may file this contract under seal if Moss LLC believes that the contract constitutes or contains confidential information.

(b) Moss LLC 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. Moss LLC shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(c) Moss LLC 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.

(d) Moss LLC shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(e) For each vehicle to be operated under the contract carrier permit granted by this Decision, Moss LLC shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Moss LLC shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(f) Moss LLC has received from the Commission a written notice that Moss LLC has complied with conditions (a) through (e) in this Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

13. If Moss LLC does not comply with the requirements of Ordering Paragraph No. 12, above, within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 8 and No. 9, above, shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Moss LLC additional time within which to comply with the requirements of Ordering Paragraph No. 12, above.

14. The right of Moss LLC to operate pursuant to the contract carrier permit granted by this Decision shall depend on Moss LLC's compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

15. 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.

16. 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.

17. 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