

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-197BP-WAIVER

IN THE MATTER OF THE APPLICATION OF MOBILITY TRANSPORTATION & SERVICES, INC., FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 2.3 (DISCRETIONARY VEHICLE) OF THE RULES AND REGULATIONS GOVERNING MOTOR VEHICLE CARRIERS EXEMPT FROM REGULATION AS PUBLIC UTILITIES AND ESTABLISHING CIVIL PENALTIES; 4 CCR-723-33.

COMMISSION ORDER GRANTING WAIVER

Mailed Date: June 5, 2003
Adopted Date: June 4, 2003

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. By application filed May 12, 2003, Mobility Transportation & Services, Inc. (Mobility Transportation), requested a waiver of Rule 2.3 (Discretionary vehicle), *4 Code of Colorado Regulations* (CCR) 723-33, as it pertains to a 2000 Dodge Ram 3500, it proposes to qualify and use as a luxury limousine under Article 16 of Title 40 *Colorado Revised Statutes* (C.R.S.).

2. The Commission noticed this application to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on March 10, 2003. The Commission set this matter for hearing on June 19, 2003.

3. No petition to intervene or otherwise participate in this proceeding has been filed. This proceeding is therefore non-contested. Under Rules 24 and 59(g), *Rules of Practice and Procedure*, 4 CCR 723-1, this matter may be determined without a hearing.

4. Rule 10, 4 CCR 723-33, allows the Commission to grant a waiver from Rule 2.3, 4 CCR 723-33, to the extent authorized by applicable law, for good cause, and if it finds compliance to be impossible, impractical or unreasonable.

5. A luxury limousine is defined in Section §40-16-101(3)(a) C.R.S. as “a chauffer-driven, luxury motor vehicle with a rear seating capacity of three or more, for hire on a chartered basis to transport passengers in luxury limousine service.” A vehicle may qualify for inclusion as a luxury limousine in one of five different categories. The category relevant to the vehicle named in this waiver request is the executive van. Section §40-16-101 (3)(a)(IV)(C) C.R.S., defines an executive van as “a van with a rear seating capacity of seven or more that may be of manufacturer’s specifications, but may have been altered from the manufacturer’s original specifications, and that meets applicable standards of the federal department of transportation.” The Dodge van for which Mobility Transportation requested this waiver does not have a rear seating capacity of seven and therefore does not qualify for inclusion as a luxury limousine in the executive van category.

6. In support of this application Mobility Transportation states “This vehicle will be used to transport wheel chair bound passengers. This is an area that is under served outside of the metro area, especially in the limousine market. This would add to the freedom of these passengers to be able to go to social events and participate in functions geared toward the handicapped community or functions that are attended by the general public through available public transportation, i.e. Special Olympic functions in Winter Park, Breckenridge, Vail, Aspen, school functions, wheel chair games, etc.” Mobility Transportation states it makes the following changes to each van to make it accessible to individuals who require the use of a wheel chair: a) remove the rear seat; b) remove the top and add an expanded roof and extend the rear doors for

easier access; c) add a large rear ramp that elevates wheel chairs into the vehicle; d) equip the vehicle with tie downs for multiple wheel chairs; and e) equip the rear of the van with sufficient seats for any passengers who may be accompanying the passenger who requires the use of the wheel chair. Mobility Transportation states that after these additions, the van does not have the required number of rear seats to qualify as an executive van. Mobility Transportation also states “Having to meet the current dollar exemption for a discretionary vehicle would create a hardship to me for my fleet of existing vehicles, which already have an additional investment of \$16,000, after all the conversions are completed”.

7. Section §40-16-101(3)(a)(IV)(E), C.R.S., allows the Commission to determine what qualifies as a “discretionary vehicle”. Rule 2.3, 4 CCR 723-33 states “A vehicle may be qualified as a discretionary vehicle if the vehicle would have qualified as a luxury vehicle at the time the vehicle was new and if the vehicle is in exceptional physical condition at the time of registration.” The vehicle named in this waiver application would not have qualified as a luxury limousine under any of the definitions contained in §40-16-101(3)(a)(IV)(A)(B)(C) or (D), C.R.S, at the time it was new. Therefore, Mobility Transportation & Services, Inc. must be granted a waiver of Rule 2.3, 4 CCR 723-33 to allow the vehicle named in the application to be considered for registration as a luxury limousine.

8. The Commission finds that the information submitted with this application warrants the granting of a waiver of Rule 2.3, 4 CCR 723-33.

9. However, Mobility Transportation & Services, Inc. is advised that the granting of the waiver of Rule 2.3, 4 CCR 723-33 for the vehicle named in this application does not ensure that this vehicle will pass the inspection by staff of the Commission as required by Rule 8.1, 4 CCR 723-33.

II. ORDER**A. The Commission Orders That:**

1. Mobility Transportation & Services, Inc., is granted a waiver of Rule 2.3, 4 *Code of Colorado Regulations* 723-33; *Rules, Regulations, and Civil Penalties Governing Motor Vehicle Carriers Exempt From Regulation as Public Utilities*.

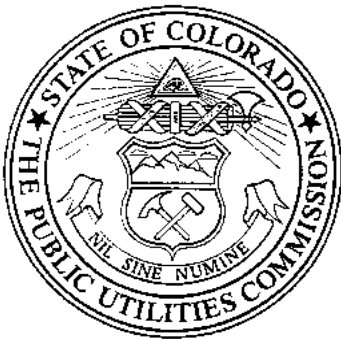
2. The hearing set for June 19, 2003, is vacated.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, re-argument, or reconsideration shall begin on the first day after the Commission mails this Order.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
June 4, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 03A-197BP-WAIVER
Decision No. C03-0601
(Page 1 of 1 Page)

I, Bruce N. Smith, Director of the Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination to the following:

APPLICANT:

Mobility Transportation & Services, Inc.
10700 East Dartmouth Avenue. No. D-202
Aurora, CO 80014

ROUTE:

6, 60, and all other PUC staff including staff that may be listed as parties, received this decision electronically.

SEAL



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A handwritten signature in cursive script that reads "Bruce N. Smith".

BRUCE N. SMITH
Director

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BRUCE N. SMITH
Director