

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-547CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF NEMARDA CORPORATION, DOING BUSINESS AS AIRPORT BOULEVARD CO. AND/OR ABC SHUTTLE, FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 25810.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING STIPULATION; DEEMING
INTERVENTION WITHDRAWN; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE; VACATING
HEARING AND PROCEDURAL
SCHEDULE; AND CLOSING DOCKET**

Mailed Date: February 3, 2004

I. STATEMENT

1. By an Application for Permanent Authority (Application), Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, (Applicant), seeks Commission authority to extend its operations under Certificate of Public Convenience and Necessity PUC No. 25810 as more specifically described in the Notice of Application Filed (Notice). The Application, filed on December 18, 2003, commenced this docket.

2. On December 29, 2003, the Commission gave public notice of the Application. See Notice, dated December 29, 2003, at 2.

3. On January 15, 2004, Metro Taxi, Inc. (Metro or Intervenor), intervened of right. This is the only intervention in this proceeding.

4. On January 21, 2004, Applicant and Intervenor (collectively, the Parties) filed a Stipulated Motion to Restrictively Amend Application and for Conditional Withdrawal of Intervenor's Intervention (Motion). In this filing Applicant amends the Application to transportation provided in "vehicles with a seating capacity of not less than ten (10) passengers, excluding the driver" (*id.* at ¶ 4); Intervenor states that, if the Commission accepts the amendment, Intervenor will withdraw its intervention; and the Parties ask the Commission to accept the amendment.

5. On January 29, 2004, the Commission issued an Order Setting Hearing and Notice of Hearing. The Order sets the hearing in this matter for March 5, 2004. On the same date, the Commission deemed the Application to be complete.

6. The proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable. The Motion states good grounds, and granting the Motion will not prejudice any party. The Motion will be granted. The amendment to the Application will be accepted.

7. Accepting the amendment has two impacts. First, the Application will be amended to conform with the restrictive amendment. Second, the intervention of Metro will be deemed withdrawn.

8. In view of the absence of an intervention, the hearing in this docket scheduled for March 5, 2004, will be vacated.

9. In view of the absence of an intervention, the procedural schedule established for this docket in the Notice will be vacated.

10. The Application, as amended, is now uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-24, the Application will be decided without hearing under the Commission's modified procedure.

11. In accordance with § 40-6-109, C.R.S., the undersigned Administrative Law Judge (ALJ) now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

12. By the Application, as amended, Applicant seeks Commission approval of an extension of Certificate of Public Convenience and Necessity PUC No. 25810 (the CPCN). The amended and extended portion of the CPCN is Item I. Applicant seeks authority to provide:

Transportation of

passengers and their baggage in scheduled and call-and-demand limousine service

between Denver International Airport, Denver, Colorado, on the one hand, and, on the other hand, points located in the following area: beginning at the intersection of Colorado Boulevard and I-70, Denver, Colorado; thence east on I-70 to its intersection with Chambers Road; thence south on Chambers Road to its intersection with Hampden Avenue; thence west on Hampden Avenue to its intersection with Parker Road; thence northwest on Parker Road to its intersection with I-225; then southwest on I-225 to its intersection with I-25; thence northwest on I-25 to its intersection with Evans Avenue; thence west on Evans Avenue to its intersection with University Boulevard; thence north on University Boulevard to its intersection with First Avenue; thence east on First Avenue to its intersection with Colorado Boulevard; thence north on Colorado Boulevard to the point of beginning.

RESTRICTIONS: This authority is restricted as follows:

Restricted to the use of vehicles with a seating capacity of not less than ten (10) passengers, excluding the driver.

13. The requested expansion of authority leaves unchanged the following language of Applicant's existing CPCN: "Transportation of passenger and their baggage in scheduled service

between Stapleton International Airport and Denver International Airport in Denver, Colorado, on the one hand, and Centennial Airport, Hampden Inn South, Days Inn South, the Landing Hotel, and the Courtyard by Marriott Hotels, all located in Arapahoe County.” This is Item II of the CPCN.

14. The verified Application establishes that Applicant is familiar with the Rules, Regulations, and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicle for Hire, 4 CCR 723-31, and agrees to be bound by, and to comply with, those Rules. The verified Application and its supporting documentation also establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Therefore, Applicant is fit, financially and otherwise, to provide the proposed service.

15. Review of the verified Application and its supporting documentation indicates a need for the proposed service.

16. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion to Restrictively Amend Application and for Conditional Withdrawal of Intervenor’s Intervention is granted.

2. The restrictive amendment to the Application for Permanent Authority filed by Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, is accepted.

3. The Application for Permanent Authority filed by Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, is amended.

4. The intervention filed by Metro Taxi, Inc., is deemed withdrawn.

5. The Application for Permanent Authority filed by Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, as that Application has been amended, is granted.

6. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, is granted an extension of Item I of Certificate of Public Convenience and Necessity PUC No. 25810 as follows:

Transportation of

passengers and their baggage in scheduled and call-and-demand limousine service

between Denver International Airport, Denver, Colorado, on the one hand, and, on the other hand, points located in the following area: beginning at the intersection of Colorado Boulevard and I-70, Denver, Colorado; thence east on I-70 to its intersection with Chambers Road; thence south on Chambers Road to its intersection with Hampden Avenue; thence west on Hampden Avenue to its intersection with Parker Road; thence northwest on Parker Road to its intersection with I-225; then southwest on I-225 to its intersection with I-25; thence northwest on I-25 to its intersection with Evans Avenue; thence west on Evans Avenue to its intersection with University Boulevard; thence north on University Boulevard to its intersection with First Avenue; thence east on First Avenue to its intersection with Colorado Boulevard; thence north on Colorado Boulevard to the point of beginning.

RESTRICTIONS: This authority is restricted as follows:

Restricted to the use of vehicles with a seating capacity of not less than ten (10) passengers, excluding the driver.

7. Certificate of Public Convenience and Necessity PUC No. 25810, as amended, is set out in full in Attachment A to this Decision, which is incorporated here as if fully set forth.

8. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, shall file an appropriate tariff with the Commission.

9. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, shall cause to be filed with the Commission certificates of insurance as required by Commission rules.

10. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, shall pay the issuance fee and annual vehicle identification fees.

11. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, may not begin operations under its extended authority until it has met the requirements set out in Ordering Paragraphs 8 through and including 10, above.

12. If Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle, does not comply with the requirements of Ordering Paragraphs 9 through and including 10, above, within 60 days of the effective date of this Order, then Ordering Paragraphs 5 and 6, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.

13. The hearing scheduled for March 5, 2004, is vacated.

14. The procedural schedule established in the Notice is vacated.

15. Docket No. 03A-547CP-Extension is closed.

16. 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.

17. As provided by § 40-6-106, 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.

18. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge