

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-252CP

IN THE MATTER OF THE APPLICATION OF MOBILITY EXPRESS TRANSPORTATION SYSTEM, INC., 7908 E. MEXICO AVENUE, DENVER, COLORADO 80231, FOR AUTHORITY TO EXTEND COMMON CARRIER OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PUC NO. 55732.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DENYING APPLICANT'S MOTION
TO DISMISS INTERVENTIONS;
ACCEPTING RESTRICTIVE AMENDMENT;
GRANTING APPLICANT'S MOTION
TO CONTINUE HEARING AND
SCHEDULING PREHEARING
CONFERENCE FOR AUGUST 9, 2004**

Mailed Date: August 4, 2004

I. STATEMENT

1. On July 21, 2004, Mobility Express Transportation System, Inc. (Applicant), filed a request/motion to dismiss the interventions of Metro Taxi, Inc. (Metro), and Denver Taxi, LLC (Denver Taxi). Applicant states that it did not timely receive copies of the notices of intervention until after the expiration of the thirty-day notice period. Applicant also states that since it did not timely receive copies of the two interventions, it had insufficient time to prepare witness and exhibit lists. Applicant requests a postponement of the August 9, 2004 hearing.

2. On July 30, 2004, Metro Taxi filed a response to Applicant's request/motion to dismiss its intervention and to vacate the hearing. Metro Taxi states that it timely filed its Notice of Intervention with the Commission and mailed a copy of the intervention to Applicant on

June 29, 2004 as indicated by its certificate of service. Metro Taxi also states if the hearing is vacated, the hearing should be converted to a prehearing conference. Due to the present posture of this case, *i.e.*, Applicant has not filed its list of witnesses and exhibits, has not responded to Metro Taxi's discovery, and lacks an attorney at the present time as required for corporations under Rule 4 *Code of Colorado Regulations* 723-21, and case law, a prehearing conference should be scheduled to address procedural matters, any pending motions and a new hearing date.

3. Applicant's Motion to Dismiss is without merit. Under the provisions of the Commission's Rules of Practice and Procedure, and the Notice of Applications Filed, interventions must be filed with the Commission within 30 days of the date of the notice. The official file of the Commission indicates that Metro Taxi and Denver Taxi timely filed their interventions. Whether Applicant actually received copies of the interventions within the 30-day notice period is irrelevant. The certificates of service attached to the motions to intervene indicate that both notices of intervention were timely mailed to Applicant, and complies with the Commission's Rules of Practice and Procedure. The Motion to Dismiss the Interventions will be denied. The request of Applicant to postpone the hearing will be granted. The motion of Metro to convert the August 9, 2004 hearing date to a prehearing conference will be granted.

4. On July 29, 2004, Applicant and Intervenor Golden West Commuter, LLC (Golden West) filed a Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention. Applicant moves to restrictively amend its application to eliminate Jefferson County from its request for extension of authority as published in the Commission's Notice of Applications Filed dated June 1, 2004. Applicant also requests that the following restrictions be added:

- (1) This authority is restricted against any transportation services to or from Denver International Airport, Denver, Colorado; and

- (2) This authority is restricted against any transportation services to or from points in Jefferson County, Colorado.

The complete authority requested by Applicant, if the restrictive amendment is approved by the Commission, would read as follows:

For an order of the Commission authorizing an extension of operations under Certificate of Public Convenience and Necessity PUC No. 55732 to include the transportation of

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

between all points in the Counties of Adams, Arapahoe, Denver, and Douglas, State of Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS:

- (1) This authority is restricted to providing transportation services for passengers who are clients of Denver Health, 777 Bannock Street, Denver, Colorado 80204;
- (2) This authority is restricted against any transportation services to or from Denver International Airport, Denver, Colorado and
- (3) This authority is restricted against any transportation services to or from points in Jefferson County Colorado.

5. Golden West states that if the Commission accepts the restrictive amendment, its interests in the proceeding will be satisfied and it will withdraw its intervention.

6. It is found that the proposed restrictive amendment is acceptable, and will be accepted.

7. On August 2, 2004, Metro Taxi filed a Motion to Dismiss the Application since the Applicant has failed to respond to Metro's discovery requests and that Applicant, a corporation, cannot proceed with prosecuting its application without an attorney, unless it establishes that it falls within one of the exceptions such as being a closely held corporation and that a non-attorney officer of the corporation is authorized to appear on behalf of the closely held corporation. Metro Taxi in its alternative Motion *In Limine* requests that if the Commission

denies its Motion to Dismiss, that Applicant be precluded from presenting any testimony or evidence on the issue of public need for the proposed service or alleged inadequacy of existing services since Applicant has failed to respond to Metro Taxi's discovery. Ruling on the motion will be deferred until the prehearing conference which will be established by this Order for August 9, 2004 in order to allow Applicant to respond to Metro Taxi's motion.

II. ORDER

A. It Is Ordered That:

1. The motion of Mobility Express Transportation System, Inc., to dismiss the interventions of Metro Taxi, Inc., and Denver Taxi, LLC is denied.

2. The request of Mobility Express Transportation System, Inc., to vacate the hearing currently scheduled for August 9, 2004 is granted. The August 9, 2004 hearing date will be converted to a prehearing conference at which time a new hearing date will be selected and any pending motions addressed.

3. This application is scheduled for a prehearing conference as follows:

DATE: August 9, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

4. The motion of Mobility Express Transportation System, Inc., to restrictively amend its application is accepted.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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