

Decision No. R04-0926

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-255BP

IN THE MATTER OF THE APPLICATION OF IDOX SYSTEM, LLC, FOR AUTHORITY TO
OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
GRANTING CONTRACT CARRIER PERMIT**

Mailed Date: August 9, 2004

I. STATEMENT

1. This application was filed on May 19, 2004 by Applicant IDOX System, LLC (IDOX). The Commission gave notice of the application on June 1, 2004 as follows:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers and their baggage

between all points in the counties of Arapahoe, Denver, Douglas, Elbert, and Jefferson, State of Colorado.

RESTRICTION:

This application is restricted to providing transportation services for passengers who are clients of the Amberwood Court Care Center, 4686 E. Asbury Circle, Denver, Colorado 80222.

On June 16, 2004, Golden West Commuter LLC (Golden West) timely filed its intervention by right. By Order and Notice dated July 2, 2004, the matter was set for a hearing to be held on August 10, 2004 at 9:00 a.m. in a Commission hearing room in Denver, Colorado.

2. On August 3, 2004, Golden West filed its Motion to Dismiss and Alternate Motion *In Limine*, Motion for Shortened Response Time, and Postponement of the Hearing, and Motion

for Attorney's Fees. Generally, the motion sought relief from this Commission for the alleged failure of IDOX to respond to discovery. IDOX filed a Response to the Motions on August 6, 2004.

3. On August 5, 2004, IDOX filed a Request to Amend its Application. By this request IDOX seeks to modify the application to:

- “1. Exclude Jefferson County;
2. Exclude hotels, motels, and Denver International Airport (DIA); and
3. Service wheelchair clients only.”

On August 6, 2004, Golden West filed its Motion for Permission to Supplement its Motion to Dismiss *et al.* and Supplement to Motion to Dismiss *et al.* By these motions Golden West responds to the proposed restrictive amendment.

4. The first two proposed restrictive amendments, namely, excluding Jefferson County from the territorial description and excluding service to hotels, motels, and DIA, are restrictive in nature, administratively enforceable, and acceptable.

5. The third restriction to service wheelchair clients only is unenforceable and therefore unacceptable and will be stricken.¹

6. In its responses to the Motion to Amend the Application, Golden West has indicated that even if only the first two restrictions are accepted, the interests of Golden West may be deemed satisfied and its intervention withdrawn. However, Golden West does seek attorney's fees.

¹ The Commission has in the past accepted vehicle restrictions which limit service to be provided in vehicles which are capable of transporting wheelchairs, but this restriction purports to limit service to the individuals only and is unenforceable.

7. The request for attorney's fees is based upon the notion that proposed restrictive amendments 1 and 2 were indicated in Golden West's intervention as amendments that would cause Golden West to withdraw its intervention. Golden West notes that it could have withdrawn its intervention before experiencing additional legal costs, such as those associated with filing its Motion to Dismiss. Further, Golden West suggests that the failure to provide discovery responses is also a factor to be considered in the request for attorney's fees. In response to the motion concerning discovery, IDOX notes that the requests for discovery sanctions were filed close to hearing and with normal mail service which precluded timely responses from the Applicant.

8. The Administrative Law Judge (ALJ) does recognize that the restrictions eventually accepted by this Order were set out in the intervention filed by Golden West. Nonetheless, the ALJ notes that this application was filed *pro se*. It does not appear that the intent of the Applicant was to prolong the hearing but rather that the Applicant was simply having difficulty dealing with the Commission's legal processes. Therefore the request for attorney's fees is denied.

9. A review of the file indicates that the Applicant proposes to offer a specialized and tailored service to meet the distinct needs of the clients of Amberwood Court Care Center. Therefore the request for a contract carriage permit should be granted.

10. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

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

1. Docket No. 04A-255BP, being an application of IDOX System, LLC, Aurora, Colorado, is granted in amended form.

2. IDOX System, LLC, Aurora, Colorado, is granted a contract carrier permit as follows:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers and their baggage

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

RESTRICTION:

Restricted to providing transportation service for passengers who are clients of the Amberwood Court Care Center, 4686 E. Asbury Circle, Denver, Colorado 80222. Restricted against providing any service to or from hotels, motels, or Denver International Airport.

3. Applicant shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Applicant shall also file an appropriate tariff and pay the issuance fee and annual vehicle identification fee. Operations may not begin until these requirements have been met. If the Applicant does not comply with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then the ordering paragraph granting authority to the Applicant shall be void. On good cause shown, the Commission may grant additional time for compliance.

4. 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.

5. 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 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 basic findings 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.

6. If exceptions to this 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

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