

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0925BP-EXTENSION

IN THE MATTER OF EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY B-09991.

**COMMISSION DECISION DEEMING
APPLICATION INCOMPLETE AND DISMISSING
APPLICATION WITHOUT PREJUDICE**

Mailed Date: October 31, 2014

Adopted Date: October 29, 2014

I. BY THE COMMISSION

A. Statement, Findings, and Conclusion

1. On September 9, 2014, BMH Corp., LLC (Applicant) filed an application for permanent authority to extend operations under Contract Carrier Permit No. B-09991.

2. On September 17, 2014, Staff of the Commission issued a Deficiency Letter pursuant to Rule 1303(c)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The Deficiency Letter advised Applicant of several deficiencies with the application, including the following:

Rule 6203(a)(III) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, requires the name and address of the applicant's Colorado designated agent for service of process (Item #8 of the application). Please supplement your application with this information.

Rule 6203(a)(IX) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, requires a complete description of the authority sought. Your response to Item #10(c) of the application makes it unclear as to which restrictions you want to eliminate. Please amend your application with a complete description of the authority sought. Please note that the application will not be noticed to the public until an adequate amendment has been submitted.

Rule 6203(a)(XVIII) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, requires a statement of the facts upon which the applicant relies to establish that the application should be granted. Please supplement your application with statements that establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customer's needs.

Rule 6203(a)(XVIII) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, requires the application for contract carrier authority to include a letter signed by each proposed customer. Please supplement the application with a customer support letter from each customer. ...

3. Rule 1303(c)(II), 4 CCR 723-1, states that upon receipt of a deficiency letter, "the applicant may file a response either curing all the deficiencies noted by Commission staff or explaining why it believes no further action is required." This response "shall be filed no later than ten days after Commission staff's written notification was sent." *Id.* "If the applicant does not respond in the time allotted, the Commission may, after the application's notice period has expired, deem the application incomplete, dismiss the application without prejudice, and close the proceeding." *Id.*

4. The Deficiency Letter was mailed to Applicant on September 17, 2014. Therefore, the ten-day period allotted for curing the deficiencies expired on September 29, 2014 (as the tenth day, September 27, 2014, was a Saturday).

5. Applicant has not filed a response to the Deficiency Letter or the requested information.

6. Pursuant to Rule 1206(c)(I), 4 CCR 723-1, the Commission did not provide notice of this application because of the above mentioned deficiencies.

7. Due to the foregoing, we deem the application incomplete and dismiss the application without prejudice.

II. ORDER

A. The Commission Orders That:

1. The application of BMH Corp., LLC is deemed incomplete, within the meaning of § 40-6-109.5, C.R.S., and Rule 1303(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and is dismissed without prejudice.

2. This proceeding is closed.

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

4. This Decision is effective on its Mailed Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 29, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners