

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1242BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF GOLDEN GATE MANOR, INC., DOING
BUSINESS AS GOLDEN GATE MANOR TRANSPORTATION, FOR AUTHORITY TO
EXTEND OPERATIONS UNDER CONTRACT CARRIER PERMIT NO. B-9904.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
AMENDING CAPTION OF PROCEEDING;
REQUIRING LINDA MCMILLAN, ESQUIRE,
TO ENTER APPEARANCE OR TO MAKE
FILING; REQUIRING CITY CAB CO. TO MAKE
FILINGS; REQUIRING APPLICANT TO MAKE
FILING; VACATING PROCEDURAL SCHEDULE;
NOTIFYING PARTIES THAT APPLICATION
HAS BEEN DEEMED COMPLETE; ORDERING
RECORDS CHANGED TO REFLECT THE AMENDED
CAPTION; AND CONTAINING ADVISEMENTS**

Mailed Date: January 13, 2014

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I. STATEMENT

1. On November 21, 2013, Golden Gate Manor, Inc., filed an Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On November 25, 2013, Golden Gate Manor, Inc., filed a supplement to the November 21, 2013 filing. In that filing, Golden Gate Manor, Inc., stated that the Applicant is Golden Gate Manor, Inc., doing business as Golden Gate Manor Transportation.

3. On November 25, 2013, Applicant filed an amendment to the authority requested in the November 21, 2013 filing.

4. Reference in this Interim Decision to the Application is to the November 21, 2013 filing as supplemented and amended on November 25, 2013.

5. On December 2, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4-5). The Notice established an intervention period and contained a procedural schedule. This Interim Decision will vacate that procedural schedule.

6. On January 8, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Amended Caption of this Proceeding.

7. As stated above, on November 25, 2013, Golden Gate Manor, Inc., informed the Commission that the correct name of the Applicant is Golden Gate Manor, Inc., doing business as Golden Gate Manor Transportation (Golden Gate or Applicant).

8. By this Interim Decision, the ALJ will order the caption of this Proceeding amended to reflect the correct name of the Applicant. The amended caption is used in this Interim Decision.

9. By this Interim Decision, the ALJ will order the administrative Staff of the Commission to change Commission records to reflect the Applicant's correct name and the amended caption of this Proceeding.

B. Application Deemed Complete and Time for Commission Decision.

10. On January 8, 2014, by Minute Order, the Commission deemed the Application to be complete as of that date. When it filed the Application, Applicant filed neither its direct testimony and exhibits in support of the Application nor a detailed summary of its direct testimony and complete copies of its exhibits in support of the Application.

11. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application on or before **August 6, 2014**.

C. Ms. McMillan, Identified as Legal Counsel for Applicant, to Enter Appearance or to Make Filing.

12. Based on a review of the Application, it appears that Golden Gate is a corporation. As a result, unless the Commission orders otherwise, Golden Gate must be represented by legal counsel in this Proceeding. *See generally* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201 (rule pertaining to legal representation).²

¹ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

13. In the Application at 1, Golden Gate identifies Linda McMillan, Esquire, of the law firm Buxman Kwikte & Ohlsen, P.C., as its legal counsel in this Proceeding. In addition, in the Application at 7, Applicant states that it does not wish to be represented in this Proceeding by an individual who is not an attorney.

14. Because Ms. McMillan did not sign the November 21, 2013 filing, did not sign the November 25, 2013 supplemental filing, did not sign the November 25, 2013 amendment, and has not entered her appearance, the ALJ is unsure whether, in fact, Ms. McMillan is counsel for the Applicant in this Proceeding. To clarify the representation situation, the ALJ will order Ms. McMillan to make, no later than **January 21, 2014**, one of the following filings: *either* enter her appearance as counsel for Golden Gate in this Proceeding *or* file a statement that she does not represent Golden Gate in this Proceeding.

15. Ms. McMillan did not sign Applicant's November 21, 2013 filing; did not sign the November 25, 2013 supplemental filing; and did not sign the November 25, 2013 amendment. If Ms. McMillan represents Applicant in this Proceeding, Ms. McMillan must sign all future filings made on behalf of Applicant. If Ms. McMillan represents Applicant in this Proceeding, future filings made by Applicant will not be accepted unless they are signed by Ms. McMillan.

16. If Ms. McMillan files a statement that she is not counsel for Golden Gate in this Proceeding, the ALJ will issue a subsequent Interim Decision on the issue of Golden Gate and its legal counsel.

D. City Cab Co. to Make Filings Regarding Intervention and Certificate of Service.

17. On December 10, 2013, City Cab Co. (CCC) filed its Entry of Appearance and Notice of Intervention and Initial List of Witnesses & Exhibits (CCC Notice of Intervention). In

that filing at ¶ 2, CCC represents that it holds PUC Certificate of Public Convenience and Necessity (CPCN) PUC No. 2282&I and that the referenced CPCN is attached to the CCC Notice of Intervention; however, CPCN PUC No. 2282&I is not attached to the filing.

18. Based on the CCC Notice of Intervention, it appears that CCC is a common carrier and that it seeks to intervene as of right in this Proceeding.

19. Rule 4 CCR 723-1-1401(e) governs intervention in transportation proceedings, such as this Proceeding. With respect to intervention as of right, Rule 4 CCR 723-1-1401(e)(I) states that the intervention “must include a copy of the common carrier’s letter of authority” (*i.e.*, the CPCN). Absent a copy of CPCN PUC No. 2282&I, the CCC Notice of Intervention does not comply with Rule 4 CCR 723-1-1401(e)(I).

20. By this Interim Decision, the ALJ will grant CCC time, to and including **January 16, 2014**, within which to supplement the CCC Notice of Intervention by filing a copy of CPCN PUC No. 2282&I. If the supplemental filing is not made, the ALJ will rule on the CCC Notice of Intervention as filed.

21. As pertinent here, the certificate of service appended to the CCC Notice of Intervention states that, on December 9, 2013, the CCC Notice of Intervention “was *efiled with the Colorado Public Utilities Commission* via: their online filing system, *which will send service to: ... Linda McMillan, Buxman Kwitck & Ohlsen, P.C., 601 N. Main Street, Suite 200, Pueblo, CO 81003[.]*” (Emphasis supplied.)

22. Review of the Commission’s E-Filings System certificate of service as it existed on December 9 and 10, 2013 reveals that Ms. McMillan is *not* listed on that certificate of service. Thus, use of the E-Filings System certificate of service could not -- and did not -- result in service of the CCC Notice of Intervention on Ms. McMillan.

23. In addition, unless Ms. McMillan is registered with the Commission E-Filing System (and there is no evidence that she is registered), use of the Commission E-Filing System cannot -- and does not -- result in service on her. If a person is not registered with the E-Filings System, Rule 4 CCR 723-1-1205(a) requires that service be

made by hand or through mailing on the same day the document is filed .. [or] may alternatively be made by e-mail, unless the [person] to be served previously files a notice in such proceeding that service will not be accepted through e-mail.

Thus, based on the certificate of service appended to the CCC Notice of Intervention, CCC has not served the CCC Notice of Intervention on Ms. McMillan.

24. By this Interim Decision, the ALJ will order CCC to serve, by first-class mail or by hand-delivery or by electronic mail and not later than **January 16, 2014**, the CCC Notice of Intervention (including any supplement to the CCC Notice of Intervention) on Ms. McMillan and to file, not later than **January 16, 2014**, an appropriate certificate of service reflecting service on Ms. McMillan.

E. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

25. City Cab Co. opposes the Application. Assuming that CCC makes the supplemental filing and appropriately serves the CCC Notice of Intervention and any supplemental filing, it is necessary to establish a procedural schedule and to schedule an evidentiary hearing in this matter. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order the Applicant (through counsel) to consult with CCC (through counsel) and then to make, on or before **January 31, 2014**, a filing that: (a) contains a procedural schedule, including hearing date(s) satisfactory to both parties; and (b) addresses the

issues discussed below. The ALJ will order CCC to cooperate with Applicant with respect to this filing.

26. The procedural schedule proposed in the January 31, 2014 filing must contain at least the following: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which CCC will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, if necessary, its updated and corrected list of witnesses and complete copies of its updated or corrected exhibits; (d) the date by which each party will file its prehearing motions, including motions *in limine* and dispositive motions;³ (e) the date by which the Applicant and CCC will file any stipulation or settlement agreement reached;⁴ (f) *three* proposed evidentiary hearing dates;⁵ and (g) the date by which each party will file its post-hearing statement of position,⁶ to which no response will be filed.

27. In considering proposed hearing dates, Applicant and CCC are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue no later than August 6, 2014. To allow time for statements of position, recommended decision, exceptions, response to exceptions, and Commission decision on exceptions, the **hearing in this matter must be concluded no later than May 2, 2014.**

28. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. If the procedures and timeframes contained in that Rule are not adequate, the January 31, 2014 filing must contain

³ This date can be no later than ten calendar days before the first day of hearing.

⁴ This date can be no later than three business days before the first day of hearing.

⁵ If possible, the ALJ will choose one of the proposed hearing dates. The ALJ notes that the evidentiary hearing may take more than one day. If Applicant and CCC believe that more than one hearing day will be necessary, Applicant must propose three “sets” of hearing dates. Within each proposed “set,” the hearing days must be consecutive within the same work week (*i.e.*, no intervening weekend or state holiday).

⁶ This date can be no later than seven calendar days following the conclusion of the evidentiary hearing.

any modifications to that Rule, and any special provisions, that the Parties wish the ALJ to order with respect to discovery and an explanation of the reason for each proposed modification or special provision.

29. Unless modified, Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in those Rules are not adequate, the January 31, 2014 filing must contain modifications to those Rules, and any special provisions, that the Parties wish the ALJ to order with respect to treatment of information claimed to be confidential and an explanation of the reason for each proposed modification or special provision.

30. When the January 31, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

31. **The Parties are advised, and are on notice, that** if the Applicant fails to make the January 31, 2014 filing regarding the proposed hearing date and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

32. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed summary of the testimony that the witness is expected to provide. This information will be provided on the list of witnesses to be filed in accordance with the procedural schedule. No person, *including any person identified in the Application or its*

supporting documents (or both), will be permitted to testify (except in rebuttal) unless that person is identified as required on the list of witnesses.

33. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document, *including the Application and its supporting documents*, will be admitted as an exhibit (except in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing in accordance with the procedural schedule.

F. Additional Advisements.

34. **The Parties are advised, and are on notice, that** the ALJ requires them to be familiar with, and to abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. The Rules are available on-line at dora.colorado.gov/puc.

35. **The Parties are advised, and are on notice, that** a document is filed with the Commission on the date that the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is due to be filed, the document is *not* timely filed with the Commission.

36. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. The name of the Applicant in this Proceeding is Golden Gate Manor, Inc., doing business as Golden Gate Manor Transportation (Golden Gate).

2. The caption of this Proceeding is amended to read as follows: In the Matter of the Application of Golden Gate Manor, Inc., Doing Business as Golden Gate Manor Transportation, for Authority to Extend Operations Under Contract Carrier Permit No. B-9904.

3. Administrative Staff of the Commission immediately shall change the Commission records of this Proceeding to reflect the correct name of the Applicant in this Proceeding and to conform to the amended caption.

4. Not later than January 21, 2014, Linda McMillan, Esquire, *either* shall enter her appearance in this Proceeding as counsel for Golden Gate *or* shall file a statement that she does not represent Golden Gate in this Proceeding.

5. Not later than January 16, 2014, City Cab Co. shall make a filing that complies with ¶ 20, above.

6. Not later than January 16, 2014, City Cab Co. shall serve, by first-class mail or by hand-delivery or by electronic mail, the City Cab Co. Entry of Appearance and Notice of Intervention and Initial List of Witnesses & Exhibits, and any supplement to that filing, on Linda McMillan, Esquire.

7. Not later than January 16, 2014, City Cab Co. shall file an appropriate certificate of service showing service of the City Cab Co. Entry of Appearance and Notice of Intervention and Initial List of Witnesses & Exhibits, and any supplement, on Linda McMillan, Esquire.

8. The procedural schedule established in the Notice of Application Filed dated December 2, 2013 is vacated.

9. No later than January 31, 2014, Golden Gate Manor shall make a filing that complies with the requirements of ¶¶ 25-29, above.

10. City Cab Co. shall cooperate with Golden Gate in the preparation of the filing required by Ordering Paragraph No. 9.

11. Consistent with the discussion above, if Golden Gate fails to make the filing required by Ordering Paragraph No. 9, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and will establish the procedural schedule for this Proceeding.

12. The Parties are held to the advisements in this Interim Decision.

13. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

Doug Dean,
Director