

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1129BP

IN THE MATTER OF THE APPLICATION OF KM TRANSPORTATION FOR A
PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING APPLICATION
UNDER MODIFIED PROCEDURE**

Mailed Date: January 14, 2014

I. STATEMENT

1. On October 24, 2013, KM Transportation (Applicant) filed the above-captioned Application (Application). Applicant filed several supplements to the Application on November 7, 2013. Applicant also filed five exhibits in support of the Application.

2. The Commission noticed the Application to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on November 4, 2013. As originally noticed, the Application sought authority to operate as a contract carrier by motor vehicle for hire for the transportation of passengers:

Between all points in the Counties of Adams, Arapahoe, Denver, and Douglas, State of Colorado.

RESTRICTIONS: This application is restricted.

- (A) to providing non-medical transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (B) to the transportation of passengers who are recipients of Medicaid;
- (C) against making pickups from Denver International Airport; and

(D) against making pickups from hotels and motels.

3. MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi, Colorado Cab Company, doing business as Denver Yellow Cab, and Colorado Springs Transportation LLC (collectively, interveners), timely intervened of right.

4. On December 11, 2013, during its weekly meeting, the Commission deemed the Application complete and referred this matter to an administrative law judge (ALJ) for disposition.

5. On December 18, 2013, Applicant filed a “Stipulated Combined Motion to Amend Application and Contingently Dismiss Interventions” (Stipulation). The Stipulation is signed by all parties. It proposes to amend the Application. If the amendments are accepted, interveners withdraw their interventions.

6. The Stipulation proposes the following amendment to the Application, “. . . between all points in Adams, Arapahoe, Denver and Douglas County, State of Colorado, that are located north of a line beginning on the Douglas/Jefferson County boundary, to a point on the Douglas/Elbert boundary, said line is parallel to the northern El Paso County boundary as drawn through Exit 172 of Interstate Highway 25, State of Colorado.”

7. Finding the above language to be ambiguous, the ALJ ordered that the parties appear at a hearing regarding the Stipulation. Decision No. R13-1569-I.

8. At the date, time, and location scheduled for the hearing, January 13, 2014, the ALJ convened the hearing. Intervenors appeared by telephone through counsel,

Ms. Cesilie Garles and Mr. Mark Valentine.¹ Applicant's counsel, Mr. Andrew Andrade, appeared in person on Applicant's behalf.

9. At the hearing, the parties discussed the language referenced in paragraph 6 above. The parties agreed that the above language should be modified to ensure clarity and that the parties' intent is accurately reflected in the authority.

10. The parties agreed that the proposed amendment should be listed as a restriction to the authority, rather than being included in the general description of the geographical area of the authority. Thus, the parties agreed that the language describing the geographical territory will remain unchanged from the language in the Application. The parties agreed to add the following restriction to the proposed authority: "against providing service in Douglas County, Colorado, south of a line beginning on the Douglas and Jefferson County boundary, to a point on the Douglas and Elbert County boundary, said line being an east-west line drawn through Exit 172 of Interstate Highway 25." This language replaces the proposed language from the parties' Stipulation.

11. This language clarifies the parties' intent that the southern-most boundary of the authority to be an east-west line drawn through Exit 172 of Interstate Highway 25 and that this is a restriction to the authority. Interveners agreed that the change satisfies their clients' interests, as the change reflects the parties' intent with the original language they proposed in the Stipulation.

12. To be acceptable, the proposed amendment must be restrictive in nature, clear and understandable, and administratively enforceable.

¹ The ALJ's Decision scheduling the hearing explicitly permitted the parties to appear by telephone. Decision No. R13-1569-I.

13. The contract carrier permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract carrier permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

14. The ALJ finds and concludes that, as modified in paragraph 10 above, the proposed amendment is restrictive in nature, clear and understandable, and administratively enforceable. The restrictive amendment, as modified in paragraph 10 above, will be accepted.

15. Accepting the amendment to the Application has several impacts. First, the authority sought (as stated in the notice and the Application) will be amended to conform to the restrictive amendment. Second, all interventions will be withdrawn. Third, the amended Application is unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the uncontested Application may be considered under the modified procedure, without a formal hearing.

16. The Application requests authority to operate as a contract carrier for motor vehicle for hire. The ALJ finds that the requested authority is clear, understandable and administratively enforceable. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those Rules. The Application and its supporting documentation, including exhibits filed in this proceeding, establish that Applicant has sufficient equipment with which to

render the proposed service and is financially fit to conduct operations under the authority requested. In addition, the Application and supporting documents establish that the service proposed is specialized and tailored to meet the customer's distinct needs. Finally, the Application and its supporting documentation indicate a need for the proposed service. The ALJ finds that the Application is reasonable and in the public interest. For the foregoing reasons, the permit should be granted.

17. In accordance with § 40-6-109, C.R.S., the ALJ now transmits the record in this proceeding along with this written recommended decision. The ALJ recommends the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The "Stipulated Combined Motion to Amend Application and Contingently Dismiss Interventions" is granted with the modifications described in paragraph 10 above.

2. The interventions filed by MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi (Metro), Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab), and Colorado Springs Transportation LLC (Colorado Springs Transportation) are withdrawn.

3. Metro is dismissed as a party to this proceeding.

4. Colorado Cab is dismissed as a party to this proceeding.

5. Colorado Springs Transportation is dismissed as a party to this proceeding.

6. KM Transportation (Applicant) is granted a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

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

RESTRICTIONS. This permit is restricted as follows:

- (A) to providing non-medical transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (B) to the transportation of passengers who are recipients of Medicaid;
- (C) against making pickups from Denver International Airport;
- (D) against making pickups from hotels and motels; and
- (E) against providing service in Douglas County, Colorado, south of a line beginning on the Douglas and Jefferson County boundary, to a point on the Douglas and Elbert County boundary, said line being an east-west line drawn through Exit 172 of Interstate Highway 25.

7. Applicant shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the permit granted shall be strictly contract carrier operations.

8. Applicant shall not commence the operations under the permit until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;

- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and
- (d) paying the applicable issuance fee (\$5).

9. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the extended operations under the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

10. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph 8.

11. 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.

12. 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.

13. 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.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge