

Decision No. R14-0140-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1290BP

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: February 6, 2014

I. STATEMENT

1. On December 10, 2013, Moss LLC (Moss or Applicant) filed an Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application). That filing commenced this Proceeding.

2. On December 16, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. On January 24, 2014, Decision No. R14-0101-I vacated the procedural schedule.

3. The following intervened as of right: Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Colorado Springs Transportation, LLC (CST); MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta

and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi); and Shamrock Taxi of Fort Collins, Inc. (Shamrock). Each intervenor opposes the Application.

4. Colorado Cab, CST, Metro Taxi, and Shamrock, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Pursuant to Decision No. R14-0101-I, Applicant is represented by an individual who is not an attorney.¹ Each intervenor is represented by legal counsel.

5. On January 22, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. On January 22, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than August 20, 2014.

7. In Decision No. R14-0101-I, the ALJ ordered Moss to consult with Intervenors and to make, on or before February 4, 2014, a filing that: (a) contained a procedural schedule, including hearing date, that was satisfactory to all Parties; and (b) addressed the issues discussed in that Interim Decision.

8. Review of the Commission file in this Proceeding establishes that, as of the date of this Interim Decision, Moss has not made the filing required by Decision No. R14-0101-I. Review of the Commission file in this Proceeding establishes that, as of the date of this

¹ In Decision No. R14-0101-I at ¶ 22, the ALJ advised Applicant and its representative that Applicant's non-attorney representative is held, and will be held, to the same procedural and evidentiary rules and standards as those to which attorneys are held.

Interim Decision, Moss has not requested additional time within which to comply with Decision No. R14-0101-I.

9. Applicant has not complied with the Decision No. R14-0101-I requirement that it make, no later than February 4, 2014, a filing that contains an agreed-upon procedural schedule and that addresses additional issues. This failure to comply is unexcused and unexplained.

10. In Decision No. R14-0101-I, the ALJ stated:

The Parties are advised, and are on notice, that if Applicant fails to make the February 4, 2014 filing regarding the proposed hearing dates 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.

Decision No. R14-0101-I at ¶ 29 (bolding in original). Pursuant to that advisement and by this Interim Decision, the ALJ will schedule the evidentiary hearing; will establish the procedural schedule; and will address other issues without input from Applicant and Intervenors.

11. The ALJ will order the following procedural schedule, including hearing dates: (a) not later than **February 18, 2014**, Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than **March 14, 2014**, each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than **March 28, 2014**, each party will file, if necessary, an updated and corrected list of witnesses and complete copies of updated or corrected exhibits; (d) not later than **April 11, 2014**, each party will file its prehearing motions, including motions *in limine* and dispositive motions;² (e) not later than **April 21, 2014**, the Parties will file any stipulation or settlement agreement

² As a preliminary matter on the first day of hearing, the ALJ will hear argument on pending prehearing motions.

reached; (f) the evidentiary hearing will be held on **April 24 and 25, 2014**; and (g) the Parties may make oral closing statements at the conclusion of the hearing.

12. Each witness who will be called to testify (except a witness called in Applicant's rebuttal case) must be identified on the list of witnesses that ¶ 11 requires each party to file. The following information must be provided for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

13. **The Parties are advised, and are on notice, that** no person -- *including Mr. Moses K. Abraha* -- will be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

14. Complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or to be used in cross-examination) will be filed as required in ¶ 11.

15. **The Parties are advised, and are on notice, that** no document -- including the Application and its attachments -- will be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

16. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405³ will govern discovery.

17. Subject to rules governing access to information claimed to be confidential, discovery requests and responses to discovery will be served on all Parties.

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

18. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to motions pertaining to discovery will be written and will be filed within *three business days of service of the motion*.⁴ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

19. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

20. **The Parties are advised, and are on notice, that** it is the responsibility of each party to bring to the evidentiary hearing a sufficient number of copies of each document that it wishes to offer as an exhibit.⁵ The fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

21. **The Parties are advised, and are on notice that,** the Commission will *not* make copies of documents that are offered as exhibits.

II. **ORDER**

A. **It Is Ordered That:**

1. The evidentiary hearing in this Proceeding shall be held on the following dates, at the following times, and in the following location:

DATES: April 24 and 25, 2014
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

⁴ By this Interim Decision, the ALJ will shorten response time with respect to discovery-related motions.

⁵ This means that, at the hearing, a party must have the number of copies of each document necessary to provide: (a) one to be marked and retained by the Commission as the hearing exhibit; (b) one to be given to each of the other parties; (c) one to be given to the ALJ; and (d) one to be retained by the party offering the exhibit.

2. The following procedural schedule is adopted: (a) not later than February 18, 2014, Applicant Moss LLC shall file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than March 14, 2014, each intervenor shall file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than March 28, 2014, each party shall file, if necessary, an updated and corrected list of witnesses and complete copies of updated or corrected exhibits; (d) not later than April 11, 2014, each party shall file its prehearing motions; (e) not later than April 21, 2014, the Parties shall file any stipulation or settlement agreement reached; and (f) the Parties may make oral closing statements at the conclusion of the hearing.

3. No person shall be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

4. No document shall be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of that document is filed in accordance with this Interim Decision.

5. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery.

6. Subject to rules governing access to information claimed to be confidential, discovery requests and responses to discovery shall be served on all Parties.

7. Response time to a motion pertaining to discovery is shortened to three business days from the date of service.

8. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern the treatment of information claimed to be confidential.

9. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

10. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director