

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1078BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF FOUR STAR TRANSPORTATION INC. FOR
AUTHORITY TO EXTEND OPERATIONS UNDER CONTRACT CARRIER PERMIT
NO. B-09963.

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

Mailed Date: February 27, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On October 11, 2013, Four Star Transportation Inc. (Applicant), filed an Application for Authority to Extend Operations Under Contract Carrier Permit No. B-09963 (Application).

2. On October 21, 2013, the Public Utilities Commission (Commission) gave public notice of the Application as follows:

Currently, Permit No. B-09963 authorizes the following:

Transportation of

passengers between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld, State of Colorado.

RESTRICTIONS: The permit is restricted:

- (a) to providing Non-Emergent Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202;
- (b) to the transportation of passengers who are recipients of Medicaid;
- (c) against providing transportation services to or from Denver International Airport;

- (d) against the transportation of passengers to or from hotels or motels; and
- (e) to the use of a maximum of ten (10) vehicles.

This application to extend authority seeks to increase the maximum number of vehicles in restriction (e) from ten to fifteen vehicles.

3. On November 14, 2013, MKBS, LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi (Metro) timely intervened of right.

4. On November 20, 2013, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Shamrock Taxi of Fort Collins Inc., and Colorado Springs Transportation LLC (collectively, Colorado Cab) timely intervened of right.

5. During its weekly meeting held November 26, 2013, the Commission deemed the Application complete and referred this matter to an administrative law judge (ALJ) for disposition.

6. By Decision Nos. R13-1567-I and R14-0160-I, the matter was scheduled for a Hearing on the merits of the Application for February 26, 2014.

7. On February 25, 2014, Applicant filed a “Joint Stipulated Motion for Approval of Restrictive Amendment and Conditional Withdrawal of Interventions” (Stipulation). The Stipulation is executed by all parties.

8. The Stipulation proposes that the Application be amended as follows:

- to increase the maximum number of vehicles in operation to 12 vehicles;
- to add a restrictive amendment which would prohibit Applicant from seeking any additional extensions to its current authority until August 20, 2015; and

- if Applicant violates the above provision, its authority would automatically be limited to a maximum of 10 vehicles instead of 12, until August 20, 2015.

Stipulation, ¶ 7.

9. The Stipulation indicates that if the proposed amendments to the Application are accepted, Metro and Colorado Cab's interventions will be withdrawn. *Id.* at ¶ 10.

10. At the date, time, and location designated for the hearing on the merits of the Application, February 26, 2014, the ALJ convened the hearing. All parties appeared through counsel. Specifically, Mr. Mark Valentine appeared on behalf of Colorado Cab; Ms. Cesilie Garles appeared on behalf of Metro; and Mr. Igor Raykin appeared on behalf of Applicant. At the hearing, the ALJ raised a concern regarding the parties' proposed amendment to the Application. In particular, the ALJ identified as problematic the provision requiring that Applicant's authority be automatically restricted back to ten vehicles if Applicant seeks to extend its authority before August 20, 2015. The parties agreed to withdraw that provision from their Stipulation. All other provisions of the parties' Stipulation remain in effect.

11. Because the Stipulation is executed by all parties, it is unopposed. The ALJ finds good cause to waive the response time to the Stipulation pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and will do so.

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

13. The ALJ finds and concludes that the proposed amendments pursuant to Applicant's requests in the Stipulation and as modified during the February 26, 2014 hearing are restrictive in nature, clear, understandable, and administratively enforceable. The proposed restrictive amendments, as modified during the February 26, 2014 hearing and described in ¶10 above, will be accepted.

14. Accepting the amendments 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 amendments. Second, all interventions will be withdrawn. Third, the amended Application is unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 14034 CCR 723-1, the uncontested Application may be considered under a modified procedure, without a formal hearing on the merits of the Application.

15. The Application requests an extension of operations under contract carrier Permit No. B-09963, as amended through the parties' Stipulation and at hearing. 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 establish that Applicant has sufficient equipment with which to render the proposed extended service and is financially fit to conduct operations under the extended 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, review of the Application and its supporting documentation indicates a need for the

proposed service. The ALJ finds that the Application with the proposed restrictive amendments is reasonable, and in the public interest. For the foregoing reasons, the extension of operations under the permit should be granted.

16. 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 response time to the “Joint Stipulated Motion for Approval of Restrictive Amendment and Conditional Withdrawal of Interventions” (Stipulation) is waived.

2. The Stipulation is granted as modified at the February 26, 2014 hearing and described in ¶10 above.

3. 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 and Boulder Yellow Cab, Shamrock Taxi of Fort Collins Inc., and Colorado Springs Transportation LLC (collectively, Colorado Cab) are withdrawn.

4. Metro and Colorado Cab are dismissed as parties to this proceeding.

5. Four Star Transportation Inc.’s (Applicant) Application for Authority to Extend Operations Under Contract Carrier Permit No. B-09963 is amended as requested by the Stipulation and as modified at the February 26, 2014 hearing and described in ¶10 above.

6. Applicant is granted an extension under Permit No. B-09963 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, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld, State of Colorado.

RESTRICTIONS: The permit is restricted:

- (a) to providing Non-Emergent Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202;
- (b) to the transportation of passengers who are recipients of Medicaid;
- (c) against providing transportation services to or from Denver International Airport;
- (d) against the transportation of passengers to or from hotels or motels;
- (e) to the use of a maximum of twelve (12) vehicles; and
- (f) against seeking an extension on the permit until August 20, 2015; this restriction automatically expires after August 20, 2015.

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

8. Applicant shall not commence the operations under the extended 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