

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0035CP

IN THE MATTER OF THE APPLICATION OF GC OUTDOOR, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DETERMINING THAT COLORADO
CRUISERS IS NOT AN INTERVENOR,
DISMISSING COLORADO CRUISERS FROM
THIS PROCEEDING, AND VACATING OR
MODIFYING PORTIONS OF DECISION NO. R14-0192-I**

Mailed Date: March 4, 2014

I. STATEMENT, DISCUSSION, AND CONCLUSIONS

1. On January 8, 2014, GC Outdoor, LLC (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this Proceeding.

2. On January 13, 2014, the Commission issued its Notice of Application Filed in this Proceeding; established an intervention period; and established a procedural schedule. On February 20, 2014, Decision No. R14-0192-I vacated the procedural schedule.

3. On February 19, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. The procedural history of this Proceeding is set out in previous Interim Decisions entered in this Proceeding. The procedural history is repeated here as necessary to put this Recommended Decision in context.

5. On February 6, 2014, Colorado Cruisers, doing business as Colorado Crewz-In (Colorado Cruisers), filed a document in this Proceeding (Colorado Cruise document).

6. For the reasons discussed below, the ALJ finds and concludes that the Colorado Cruisers document is deficient and that Colorado Cruisers should be dismissed from this Proceeding. This ruling ends Colorado Cruisers' participation in this Proceeding. As a result, the ALJ will dismiss Colorado Cruisers by recommended decision.

7. For the reasons discussed in Decision No. R14-0192-I at ¶¶ 21-26, the ALJ directed Colorado Cruisers to file, not later than February 28, 2014,

a supplement to the Colorado Cruisers document. The supplementary filing: (a) must be a document that is substituted for the Colorado Cruisers document; (b) must conform to the requirements of Rule 4 CCR [*Code of Colorado Regulations*] 723-1-1202(b)(II); (c) must conform to the requirements of Rule 4 CCR 723-1-1202(d); (d) must contain all the information required by Rule 4 CCR 723-1-1401(e)(I); and (e) must have a certificate of service as required by Rule 4 CCR 723-1-1205(e). In addition, the supplementary filing must conform to the requirements of the Rules of Practice and Procedure, irrespective of whether a particular rule is cited in this Interim Decision.

Decision No. R14-0192-I at ¶ 27.¹ The ALJ also advised Colorado Cruisers that the ALJ

will hold consideration of the Colorado Cruisers intervention pending receipt of the supplemental filing. If Colorado Cruisers timely makes the supplemental filing, the ALJ will determine Colorado Cruisers' status on the basis of the supplemental filing. *If Colorado Cruisers does not timely make the supplemental filing, the ALJ will determine Colorado Cruisers' status in this Proceeding on the basis of the Colorado Cruisers document.*

Id. at ¶ 28 (emphasis supplied).

8. Review of the Commission file in this matter reveals that, on February 20, 2014 by means of the Commission E-Filings System, the Commission served Decision No. R14-0192-I on Colorado Cruisers. The Commission file contains no indication that the

¹ The referenced Rules are found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

notice was not received. As a result, Colorado Cruisers is assumed to have received notice of, and thus to have knowledge of, the requirements contained in Decision No. R14-0192-I.

9. As of the date of this Decision, Colorado Cruisers has made no supplemental filing. As of the date of this Decision, Colorado Cruisers has not requested additional time within which to make the supplemental filing. The failure of Colorado Cruisers to comply with Decision No. R14-0192-I is unexplained and unexcused.

10. Pursuant to the advisement stated in Decision No. R14-0192-I at ¶ 28, the ALJ considers the status of Colorado Cruisers based solely on the Colorado Cruise document.

11. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1202 governs the form and content of filings made with the Commission. As pertinent here, Rule 4 CCR 723-1-1202(b)(II) provides:

Every pleading shall contain a caption that identifies the proceeding by title and proceeding number, that contains the heading “Before the Public Utilities Commission of the State of Colorado,” and that states the title of the pleading.

(Emphasis supplied.) The Colorado Cruisers document does not comply with Rule 4 CCR 723-1-1202(b)(II).

12. Insofar as the record of this Proceeding shows, Colorado Cruisers is not represented by an attorney. Thus, filings made by Colorado Cruisers must meet the requirements of Rule 4 CCR 723-1-1202(d). In relevant part, that Rule provides:

A pleading of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state the person’s title, address, telephone number, and e-mail address.

(Emphasis supplied.) The Colorado Cruisers document does not comply with Rule 4 CCR 723-1-1202(d).

13. Rule 4 CCR 723-1-1205 governs service of documents that are filed with the Commission. As pertinent here, Rule 4 CCR 723-1-1205(a) states:

A person filing any pleading or other document *shall serve* a copy, including all supporting attachments or exhibits, on every other party ... in the proceeding[.]

(Emphasis supplied.) As provided in Rule 4 CCR 723-1-1205(e), evidence of service is a certificate of service. Rule 4 CCR 723-1-1205(e) states, in pertinent part:

Proof of service *shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission.* ... For any filing for which there is no certificate of service ... the Commission will presume that the document has *not* been served[.] ... This presumption may be overcome by evidence of proper service.

(Emphasis supplied.) Rule 4 CCR 723-1-1205(e) requires a certificate of service for a filing whether the document is filed through the Commission's E-Filings System or is filed by paper copy. The Colorado Cruisers document does not have a certificate of service.

14. Rule 4 CCR 723-1-1401 governs intervention. The Rule provides for two types of intervention: intervention as of right and intervention by permission.

15. The Colorado Cruisers document may be read as an attempt to intervene as of right in this transportation proceeding. Rule 4 CCR 723-1-1401(e)(I) governs intervention in transportation proceedings and provides:

A notice of intervention as of right *must include* a copy of the common carrier's letter of authority, *must show* that the common carrier's authority is in good standing, *must identify* the specific parts of that authority that are in conflict with the application, and *must explain* the consequences to the common carrier and the public interest if the application is granted.

(Emphasis supplied.)

16. The Colorado Cruisers document does not comply with the requirements contained in Rule 4 CCR 723-1-1401(e)(I). Absent compliance with this Rule, Colorado

Cruisers has not met its burden to establish that Colorado Cruisers is an intervenor as of right because it has a common carrier authority that: (a) is in good standing; (b) conflicts with the authority sought by Applicant; and (c) will be harmed (along with the public interest) if the Application is granted. The ALJ finds that Colorado Cruisers has not established that it is an intervenor as of right in this Proceeding.

17. Rule 4 CCR 723-1-1401(c) governs intervention by permission. In relevant part, that Rule provides:

A motion to permissively intervene *shall state* [a] the specific grounds relied upon for intervention; [b] the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and [c] why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion *must demonstrate* that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

(Emphasis supplied.)

18. The ALJ finds that the Colorado Cruisers document does not contain sufficient information with respect to the three requirements contained in the first sentence of the Rule and that, as a result, Colorado Cruisers has not met its burden with respect to intervention by permission. To the extent that the Colorado Cruisers document may be read as -- or to the extent that Colorado Cruisers intended the document to be -- a motion for leave to intervene by permission, the ALJ finds that the Colorado Cruisers document does not meet the Rule 4 CCR 723-1-1401(c) requirements and is insufficient to support Colorado Cruisers' intervention by permission.

19. The ALJ finds that the Colorado Cruisers document does not comply with Rule 4 CCR 723-1-1202(b)(II); does not comply with Rule 4 CCR 723-1-1202(d); does not comply in full with Rule 4 CCR 723-1-1401(e)(I); and does not comply with Rule 4 CCR 723-1-1401(c). In addition, the Colorado Cruisers document does not have a certificate of service as required by Rule 4 CCR 723-1-1205(a) and Rule 4 CCR 723-1-1205(e). Although given a reasonable opportunity to correct the identified deficiencies, Colorado Cruisers chose not to do so. The ALJ finds that the Colorado Cruisers document is deficient, that the Colorado Cruisers document does not support Colorado Cruisers' intervention, and that Colorado Cruisers should be dismissed from this Proceeding.

20. In Decision No. R14-0192-I at ¶ 34 and Ordering Paragraphs No. 5 through No. 7, the ALJ ordered Colorado Cruisers either to retain legal counsel in this Proceeding or to show cause why it is not required to have legal counsel in this Proceeding. As a result of the dismissal of Colorado Cruisers, the ALJ will vacate those provisions of Decision No. R14-0192-I.

21. In Decision No. R14-0192-I at ¶ 29, the ALJ stated that, for purposes of Decision No. R14-0192-I only, reference to the intervenors included Colorado Cruisers. As a result of the dismissal of Colorado Cruisers, there are two Intervenors in this Proceeding: Colorado Cab Company, LLC, doing business as Denver Yellow Cab (Denver Yellow Cab); and MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi). Consequently, the requirement in Decision No. R14-0192-I at ¶ 40 that Applicant consult with the Intervenors with respect to the filing to be made not later than March 14, 2014 is modified to require consultation only with Denver Yellow Cab and Metro Taxi.

22. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Colorado Cruisers, doing business as Colorado Crewz-In, is not an intervenor in this Proceeding.

2. Consistent with the discussion above, Colorado Cruisers, doing business as Colorado Crewz-In, is dismissed from this Proceeding.

3. Consistent with the discussion above, Decision No. R14-0192-I at ¶ 34 and Ordering Paragraphs No. 5 through No. 7 is vacated.

4. Consistent with the discussion above, Decision No. R14-0192-I at ¶ 40 is modified to require GC Outdoor, LLC, to consult with: (a) Colorado Cab Company, LLC, doing business as Denver Yellow Cab; and (b) MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi.

5. 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.

6. As provided by § 40-6-109, 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 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 basic findings 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.

7. If exceptions to this 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

MANA L. JENNINGS-FADER

Administrative Law Judge