

Decision No. R14-0285-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0071BP

IN THE MATTER OF THE APPLICATION OF DIVERSIFIED TRANSPORTATION AND
HI GO TOWN CAR, LLC, FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY
MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING INTERVENTION; REQUIRING FILING
REGARDING LEGAL COUNSEL OR TO SHOW CAUSE
WHY LEGAL COUNSEL IS NOT NECESSARY;
VACATING PROCEDURAL SCHEDULE; AND
SETTING PRE-HEARING CONFERENCE**

Mailed Date: March 13, 2014

TABLE OF CONTENTS

I.	STATEMENT.....	2
A.	Interventions	4
B.	Procedural Matters.....	5
C.	Legal Representation	6
D.	Pre-hearing Conference	9
II.	ORDER.....	10
A.	It is Ordered That:	10

I. STATEMENT

1. On January 16, 2014, Diversified Transportation and Hi Go Town Car, LLC (Applicant) filed an application for a permit to operate as a contract carrier by motor vehicle for hire (Application).¹

2. On January 27, 2014, the Commission issued notice of the Application as follows:

For 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, Boulder, 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;
- (B) to the transportation of passengers who are recipients of Medicaid;
- (C) against providing service to or from hotels, motels, or airports;
- (D) against providing transportation to or from points in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert border that is parallel to an east-west line drawn through Exit 172 on Interstate 25; and
- (E) to the use of a maximum of two vehicles at any one time.

3. On February 26, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (collectively, Colorado Cab) filed an Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Opposition to Application (Intervention).

¹ On January 23, 2014, Applicant filed an amendment to the Application in which it clarified the counties for which it seeks authority, as well as the proposed restrictions to the Application, and that Mr. Hajji Gobana wishes to represent the interests of Applicant in this proceeding without an attorney.

4. Colorado Cab states the operating authority sought in the Application overlaps the certificate of public convenience and necessity (CPCN) held by Denver Yellow Cab. Denver Yellow Cab owns and actively operates CPCN PUC No. 2378, which authorizes it to provide taxi service between all points located within a radius of 16 miles of 16th and Champa Streets in Denver, Colorado, and also including as part of the base area, Denver International Airport, and from said points, on the one hand, to all points in the State of Colorado on the other hand. Colorado Cab represents that CPCN PUC No. 2378 is in good standing.

5. Colorado Cab, doing business as Boulder Yellow Cab owns and actively operates CPCN PUC No. 150, which authorizes it to provide taxi service between points in Boulder County, and between those points and all points within a 35-mile radius of the intersection of Arapahoe Avenue and U.S. Highway 36 in Boulder. Colorado Cab represents that CPCN PUC No. 150 is in good standing.

6. Colorado Cab argues that the proposed authority will put it in direct competition with each entity listed above, and as a result, Colorado Cab has a legally protected right and interest in the subject matter of the Application which may be affected by the outcome of this case, which entitles the entities listed above and designated as “Colorado Cab” to intervene by right in this matter.

7. On February 26, 2014, Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or North West Suburban Taxi (Metro Taxi) filed an Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternative Motion to Permissively Intervene in this proceeding. However, on February 27, 2014, Metro Taxi filed a Motion to Withdraw Intervention (Motion). According to the Motion, Metro Taxi has

determined that after a review of the Application, its interests are satisfied and it no longer contests the Application and therefore seeks to withdraw its intervention in this proceeding.

8. On March 5, 2014, the Commission, at its regular weekly meeting, deemed the application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

A. Interventions

9. Commission Rule of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1-1401(a) requires that notice of intervention as of right or a motion to permissively intervene shall be filed within 30 days of the Commission notice of any docketed proceeding. The Commission issued notice of the application on January 27, 2014. Consequently, the deadline to intervene as of right or to petition to permissively intervene in the above-captioned proceeding was February 26, 2014.

10. Rule 1401(b) requires that a notice of intervention as of right, “shall state the basis for the claimed legally protected right that may be affected by the proceeding.” In addition, Rule 1401(e)(I) requires that a notice of intervention as of right in a transportation carrier application proceeding shall:

include a copy of the common carrier’s letter of authority, shall show that the common carrier’s authority is in good standing, must identify the specific parts of that authority which are in conflict with the application, and must explain the consequences to the motor vehicle carrier and the public interest if the application is granted.

11. Pursuant to Rule 1401(c), a motion to permissively intervene shall:

state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding.

Rule 1401(c) further requires that:

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 ... Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

12. As relevant to the authority sought by Applicant, Colorado Cab demonstrates that the authority sought duplicates the rights or overlaps the geographic authority of each of its operating entities listed above. As a result, it is found that Colorado Cab has a legally protected right that may be affected by a grant of the Application. The intervention was timely filed. Colorado Cab has shown good cause to find that it is an intervenor as of right in this proceeding.

13. The intervention period in this matter is closed. Good cause is found to grant the Motion of Metro Taxi to withdraw as an intervenor in this proceeding. Therefore, the sole intervenor in this proceeding is Colorado Cab.

B. Procedural Matters

14. Commission Rule 4 CCR 723-1-1405(k)(I) provides that “[i]f an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.” The notice period in this matter concluded on February 26, 2014. Therefore, Applicant had until March 10, 2014² to file and serve its list of witnesses and copies of its exhibits. Applicant failed to comply with that requirement.

² Commission Rule 4 CCR 723-1-1203(a) provides in relevant part that when the day upon which a document must be filed falls on a Saturday, Sunday, legal holiday, or any other day when the Commission's office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.

15. According to Rule 1405(k)(II) if the applicant has not filed its testimony or a detailed summary of testimony and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits no later than 20 days after the notice period has expired – in this instance, by March 20, 2014. Colorado Cab has not made such a filing as of the date of this Decision.

16. The procedural schedule under Rule 1405(k) is hereby vacated. As part of the discussion during the pre-hearing conference as discussed in more detail below, dates for filing of witness lists and copies of exhibits will be determined.

C. Legal Representation

17. Review of the Commission's file in this matter reveals that as of the date of this Decision, no attorney has entered an appearance on behalf of the Applicant. While Applicant indicated in a check box in an amendment to the Application that it wished to be represented by an individual not an attorney, the amendment fails to comport with relevant legal requirements.

18. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent his or her own interests, or the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has found this requirement to be mandatory. In addition, the Commission has held that, if a party does not meet the criteria of Rule 4 CCR 723-1-1201(b), then there are two consequences: first, filings made by a non-attorney on behalf of that party are

void and of no legal effect; and, second, a non-attorney may not represent that party in a Commission adjudicative proceeding.³

19. This is an adjudicative proceeding before the Commission. Applicant is a Colorado limited liability corporation, is a party in this matter, and is not represented by an attorney.

20. If Applicant wishes to be represented by an individual who is not an attorney, then it must meet the legal requirements established in Rule 4 CCR 723-1-1201(b)(II). This means that: (a) Applicant must be a closely-held entity; (b) the amount in controversy must not exceed \$15,000; and (c) Applicant must provide certain information to the Commission.

21. **Applicant has the burden to prove** that it is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant must provide information so that the Commission can determine whether it may proceed without an attorney. To show that it may proceed without an attorney, Applicant must do the following: **First**, it must establish that it is a closely-held entity, which means that it has no more than three owners. *See*, § 13-1-127(1)(a), C.R.S. **Second**, it must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁴ may represent a closely-held entity before the Commission only if **both** of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; **and** (b) the officer provides the Commission with

³ See, e.g., Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 14G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No. 04G-101CP issued August 2, 2004.

⁴ Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

evidence, satisfactory to the Commission, of the authority of the officer to represent the closely held entity.⁵

22. Applicant is ordered either to obtain counsel or to show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

23. If Applicant elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **close of business on March 21, 2014**.

24. If Applicant elects to show cause, then, on or before **close of business on, March 21, 2014**, it must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by legal counsel in this matter. To show cause, Applicant must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, has appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

⁵ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

25. **Applicant is advised, and is on notice, that if it fails either to show cause or to have its legal counsel file an entry of appearance on or before close of business on March 21, 2014, then the ALJ may order Applicant to obtain counsel. Applicant is advised, and is on notice that, if the ALJ issues a decision requiring Applicant to obtain counsel, it will not be permitted to proceed in this matter without counsel and the Application may be dismissed.**

D. Pre-hearing Conference

26. Given the procedural posture of the case at this point, it is appropriate to hold a pre-hearing conference to address several issues. The parties to this proceeding should be prepared to discuss and set procedural dates, including a date for a hearing on the Application. However, Applicant and Colorado Cab are strongly encouraged to discuss and arrive at an agreeable procedural schedule prior to the pre-hearing conference.⁶ If such a proposed schedule is agreed to, the parties shall file a motion to adopt such a schedule no later than 5 days prior to the date of the pre-hearing conference.

27. The parties should be prepared to discuss any other relevant matters ancillary to this proceeding.

28. A pre-hearing conference in this matter will be scheduled for **Monday March 24, 2014.**

⁶ A proposed procedural schedule must set a hearing in this matter no later than approximately 94 days prior to the expiration of the 210-day statutory deadline to issue a Final Commission Decision in this matter, or no later than August 27, 2014.

II. ORDER

A. It is Ordered That:

1. A pre-hearing conference is scheduled in this matter as follows:

DATE: March 24, 2014

TIME: 10:00 a.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. The Petition to Intervene of Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab is granted.

3. The Motion of Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or North West Suburban Taxi to Withdraw Intervention is granted.

4. Applicant Diversified Transportation and Hi Go Town Car, LLC must choose either to obtain legal counsel or to make a show cause filing that comports with Paragraph No. 24 above.

5. If Applicant elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before March 21, 2014.

6. If Applicant elects to show cause, then on or before March 21, 2014, it shall show cause why it is not required to be represented by legal counsel. The show cause filing shall meet the requirements set out in Paragraph Nos. 21 and 24, above.

7. The procedural schedule pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1405(k) is vacated.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director