

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0949CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF HEAVENLY HANDS TRANSPORTATION SERVICES LLC, FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55807.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING STIPULATION AND WITHDRAWAL
OF INTERVENTIONS; GRANTING
PERMANENT EXTENSION OF AUTHORITY WITH
RESTRICTIVE AMENDMENT UNDER MODIFIED
PROCEDURES; WAIVING RESPONSE
TIME; AND CLOSING PROCEEDING**

Mailed Date: May 12, 2014

I. STATEMENT

A. Background

1. On August 30, 2013, Heavenly Hands Transportation, LLC (Applicant) filed an application for an extension of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55807 (Application).

2. On September 9, 2013, the Commission issued notice of the Application as follows:

For an order of the Commission authorizing the extension of Certificate of Public Convenience and Necessity No. 55807. Currently, CPCN No. 55807 authorizes the following:

Transportation of

passengers in call-and-demand limousine service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, and Jefferson, State of Colorado with the following restrictions:

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid;
- (B) To providing non-medical transportation for the Colorado Department of Health Care Policy & Financing, 1570 Grant Street, Denver, Colorado;
- (C) To the transportation of passengers classified as disabled under the provisions of 42 U.S.C. Section 12012 of the Americans with Disabilities Act of 1990;
- (D) To providing for passengers, “door-through-door” service, wherein the driver takes responsibility for the passenger either at the door or inside the structure at the pickup point and maintains responsibility for the passenger through the door to inside the structure at the destination point;
- (E) Against providing transportation service to or from Denver International Airport;
- (F) Against providing transportation service to or from hotels and motels; and
- (G) To the use of not more than three vehicles.

This application to extend authority seeks to eliminate restriction (G).

3. On October 4, 2013, MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi (Metro Taxi) filed an Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternate Motion to Permissively Intervene.

4. On October 9, 2013, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab) filed its Entry of Appearance and Notice of Intervention by Right and Alternative Motion for Permissive Intervention and Request for Hearing.

5. On October 16, 2013, 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.

6. An evidentiary hearing on the Application was set for February 13, 2014 pursuant to Interim Decision No. R14-0039-I, issued January 13, 2014.

7. Interim Decision No. R14-0167-I, issued February 12, 2014, granted a Stipulated Motion to Continue Evidentiary Hearing until April 17, 2014 due to the medical situation of Applicant's attorney. In addition, Applicant affirmatively stated that it waived the 210-day statutory deadline for the Commission to issue a final decision pursuant to § 40-6-109.5(3), C.R.S.

8. At the scheduled date and time, the evidentiary hearing was held. Appearances were entered by Colorado Cab and Metro Taxi. While Applicant or its legal counsel did not appear at the hearing, legal counsel for Colorado Cab explained that Applicant's attorney was still incapacitated and unable to attend the hearing. However, it was further explained that the parties were close to a settlement agreement and that it was anticipated that such an agreement would be filed in the near future.

9. On May 8, 2014, Metro Taxi, Colorado Cab, and Applicant filed a Stipulated Motion for Imposition of Restrictive Amendments and Conditional Withdrawal of Interventions (Stipulation). According to the Stipulation, the parties agree that Restriction (G) is modified to restrict Applicant to the use of not more than five vehicles, and that Applicant will not seek another extension of, or the removal of, Restriction (G) for a period of two years from the date of approval of the Stipulation by the Commission.

10. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission, the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

11. A proposed restrictive amendment to an application for a CPCN to operate as a common carrier by motor vehicle for hire must be restrictive in nature, clear and understandable, and administratively enforceable. The proposed restriction and authority must be unambiguous and must be contained entirely within the authority granted.

12. The intent of the Stipulation between the parties is clear that Applicant is to restrict its service to the use of not more than five vehicles, and that Applicant will not seek another extension of, or the removal of, Restriction (G) for a period of two years from the date of approval of the Stipulation by the Commission.

13. The undersigned ALJ finds that the proposed restriction contained in the Stipulation between Colorado Cab and Metro Taxi will not hamper the ability of the Applicant to provide its authorized service. Therefore, the ALJ finds that the proposed restriction meets the criteria described above. The proposed restrictive amendment to the Application contained in the Stipulation is restrictive in nature, clearly stated, and capable of enforcement. The restrictive language achieves the purposes sought by Metro Taxi, Colorado Cab, and Applicant. It provides protection to Colorado Cab's and Metro Taxi's authority, while allowing Applicant to provide the substance of the service it seeks. As a result, the restrictive amendment which restricts Applicant as indicated above will be accepted. Therefore, good cause is found to adopt the proposed restriction. The interventions of Colorado Cab and Metro Taxi will therefore be deemed withdrawn.

14. Since the Application as amended is now unopposed, the matter will be considered pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and the

Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-1403.

15. The amendment to the Application which states that Applicant will be limited to no more than five vehicles will be adopted. It is found that the restriction is unambiguous, is clear, and is administratively enforceable.

16. Therefore, as restrictively amended, Applicant now seeks an extension of its common carrier authority to provide call-and-demand limousine service as follows:

Transportation of

passengers

in call-and-demand limousine service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, and Jefferson, State of Colorado.

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid;
- (B) To providing non-medical transportation for the Colorado Department of Health Care Policy & Financing, 1570 Grant Street, Denver, Colorado;
- (C) To the transportation of passengers classified as disabled under the provisions of 42 U.S.C. Section 12012 of the Americans with Disabilities Act of 1990;
- (D) To providing for passengers, "door-through-door" service, wherein the driver takes responsibility for the passenger either at the door or inside the structure at the pickup point and maintains responsibility for the passenger through the door to inside the structure at the destination point;
- (E) Against providing transportation service to or from Denver International Airport;
- (F) Against providing transportation service to or from hotels and motels; and
- (G) To the use of not more than five (5) vehicles.

17. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to comply with those Rules to the extent applicable to Applicant.

18. Additionally, the information provided by Applicant provides that Applicant possesses sufficient equipment to provide the proposed service and is financially viable to conduct operations under the authority requested. The Application and the supporting information attached to it demonstrate that a need exists for the extension of service.

19. It is found that Applicant is fit to provide the proposed extension of transportation service as restrictively amended and the Application with the proposed restrictive amendment is reasonable, in the public interest, and should be granted.

20. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion for Imposition of Restrictive Amendments and Conditional Withdrawal of Interventions filed by Heavenly Hands Transportation, LLC (Applicant); Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); and, MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi (Metro Taxi) is granted consistent with the discussion above.

2. The interventions of Colorado Cab and Metro Taxi are deemed withdrawn.

3. Response time to the Stipulated Motion for Imposition of Restrictive Amendments and Conditional Withdrawal of Interventions is waived.

4. The Application for Authority to Extend Certificate of Public Convenience and Necessity (CPCN) PUC No. 55807 is amended by the Stipulation and as described in Paragraph No. 16 above.

5. Applicant is granted an extension under CPCN PUC No. 55807 to operate as a common carrier by motor vehicle for hire, as follows:

Transportation of
passengers

in call-and-demand limousine service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, and Jefferson, State of Colorado.

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid;
- (B) To providing non-medical transportation for the Colorado Department of Health Care Policy & Financing, 1570 Grant Street, Denver, Colorado;
- (C) To the transportation of passengers classified as disabled under the provisions of 42 U.S.C. Section 12012 of the Americans with Disabilities Act of 1990;
- (D) To providing for passengers, “door-through-door” service, wherein the driver takes responsibility for the passenger either at the door or inside the structure at the pickup point and maintains responsibility for the passenger through the door to inside the structure at the destination point;
- (E) Against providing transportation service to or from Denver International Airport;
- (F) Against providing transportation service to or from hotels and motels; and
- (G) To the use of not more than five (5) vehicles.

6. 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.

7. 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).

8. 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 CPCN 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.

9. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph 7.

10. Proceeding No. 13A-0949CP-Extension is closed.

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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge