

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1242BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF GOLDEN GATE MANOR, INC., DOING
BUSINESS AS GOLDEN GATE MANOR TRANSPORTATION, FOR AUTHORITY TO
EXTEND OPERATIONS UNDER CONTRACT CARRIER PERMIT NO. B-9904.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED MOTION; AMENDING
APPLICATION, SUBJECT TO CONDITIONS;
DISMISSING INTERVENOR; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE AND SUBJECT TO
CONDITIONS; AND GRANTING CONTRACT
CARRIER PERMIT, SUBJECT TO CONDITIONS**

Mailed Date: July 17, 2014

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I. STATEMENT

1. On November 21, 2013, Golden Gate Manor, Inc., filed a verified Application for Permanent Authority to Extend Current Operations. That filing commenced this Proceeding.

2. On November 25, 2013, Golden Gate Manor, Inc., filed a supplement to the November 21, 2013 filing. In that filing, Golden Gate Manor, Inc., stated that the Applicant is

Golden Gate Manor, Inc., doing business as Golden Gate Manor Transportation (Golden Gate Manor oApplicant).

3. On November 25, 2013, Applicant filed an amendment to the authority requested in the November 21, 2013 filing.

4. Reference in this Decision to the Application is to the November 212013 filing as supplemented and amended on November 25, 2013.

5. On December 22013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4-5). The Notice established an intervention period and contained a procedural schedule. On January 13, 2014, Decision No. R124-0035-I vacated that procedural schedule.

6. On December 102013, City Cab Co. (City Cab or Intervenor) filed (in one document) its Entry of Appearance and Notice of Intervention and Initial List of Witnesses & Exhibits. On January 15, 2014, City Cab filed an Amended Entry of Appearance and Notice of Intervention and Initial List of Witnesses & Exhibits. These filings establish that City Cab is an intervenor as of right, and is party, in this Proceeding. City Cab opposes the Application.

7. The Parties in this Proceeding are Applicant and Intervenor. Each party is represented by legal counsel.

8. On January 8, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

9. On January 8, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5, C.R.S., absent an enlargement of time, the Commission should issue its decision on the Application not later than August 6, 2014.

10. On April 11, 2014, the Parties filed a Joint Motion to Extend the Time Within Which to Reset this Matter for Hearing or Resolution. In that filing, the Parties state that neither had an objection to the Commission's enlarging the time within which the Commission should issue its decision in this Proceeding.

11. On April 28, 2014, by Decision No. R14-0438-I, the ALJ found that: (a) the statement in the April 11, 2014 motion constituted Applicant's waiver of a § 40-6-109.5(4), C.R.S., hearing; and (b) the circumstances of this Proceeding (as discussed in that Interim Decision) warranted an enlargement of time for an additional 90 days. The ALJ enlarged, to and including November 4, 2014, the time within which the Commission should issue its decision in this Proceeding.

12. On February 3, 2014, by Decision No. R14-0125-I, the ALJ established the procedural schedule and scheduled a March 25 and 26, 2014 evidentiary hearing in this matter.

13. Pursuant to Decision No. R14-0125-I, each party filed its list of witnesses and filed its exhibits.

14. On March 25, 2014, the ALJ called the hearing as scheduled. The Parties were present, were represented, and participated.

15. The ALJ heard the testimony of some of Applicant's witnesses. The hearing was scheduled for two days. At the conclusion of the second day of hearing, Applicant had not completed the presentation of its direct case. The ALJ ordered the hearing to continue on March 27, 2014.

16. On March 27, 2014, the Parties informed the ALJ that they had begun settlement discussions. The Parties requested that the ALJ continue the hearing to a later date so that they could pursue their settlement discussions. The ALJ granted the request; ordered the Parties to

file a settlement agreement, if one was reached, not later than April 11, 2014;¹ and adjourned the evidentiary hearing pending further order.

17. Because the Parties were unable to file their agreement by the date ordered by the ALJ, on April 28, 2014, by Decision No. R14-0438-I, the ALJ scheduled the continuation of the evidentiary hearing for July 14 through 18, 2014 and established additional filing dates.

18. On June 25, 2014, by Decision No. R14-0704-I, the ALJ vacated the July hearing dates because the Parties had reached an agreement that, if approved by the Commission, will settle all issues in this Proceeding.

19. On July 7, 2014, Applicant filed an Unopposed Motion to Amend Application (Motion). On July 15, 2014, Intervenor filed its Conditional Withdrawal;² this filing is Intervenor's response to the Motion. These filings appear to constitute the settlement agreement.

20. As noticed, Golden Gate Manor sought authority, pursuant to extended Contract Carrier Permit PUC No. B-9904, to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the County of Pueblo, and between those points, on the one hand, and all points in the state of Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) to providing non-medical transportation services (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202 or non-emergent medical transportation services (NEMT) for the Pueblo County Department of Social Services, 212 West 12th Street, Pueblo, Colorado 81003; and

¹ On motion of the Parties, the ALJ subsequently changed this filing date.

² Intervenor made this filing in the appropriate Proceeding but used an incorrect caption.

- (B) to providing transportation of passengers who are recipients of Medicaid.

Notice at 5.

21. In the Motion, Applicant moves to amend the extended authority that it seeks. If the Motion is granted, Applicant will seek authority, pursuant to an extended Permit No. B-9904, to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the County of Pueblo, and between those points, on the one hand, and all points in the state of Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) to providing non-medical transportation services (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202 or non-emergent medical transportation services (NEMT) for the Pueblo County Department of Social Services, 212 West 12th Street, Pueblo, Colorado 81003;
- (B) to providing transportation of passengers who are recipients of Medicaid; and
- (C) against the use of more than four vehicles at any one time.

The Motion at ¶ 2 adds the proposed third restriction.

22. City Cab states that, if the Commission approves the amendment contained in the Motion, the Commission may enter a decision dismissing City Cab's intervention. Conditional Withdrawal of Interventions at 1.

23. To be acceptable, an 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 contract carrier's operations are within the scope of its Commission-granted authority.

24. The Motion and, if the Application is granted, extended Permit No. B-9904 meet the standards stated above. The ALJ will approve the amendment contained in the Motion at ¶ 2, as set out above.

25. The ALJ finds that the Motion states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion.

26. Approving the restrictive amendment to the Application (*i.e.*, to the scope of the extended contract carrier permit that Applicant seeks) has these effects. First, the extended contract carrier authority sought, as stated in the Application, will be amended to conform to the amendment contained in the Motion. Second, the Conditional Withdrawal will be granted; and City Cab's intervention will be dismissed.

27. Dismissal of the intervention leaves the Application, as amended, uncontested and unopposed.

28. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,³ the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The ALJ finds that the Application should be considered, and will be considered, under the Commission's modified procedure and without a formal hearing.

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

29. 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, DISCUSSION, AND CONCLUSION

30. Applicant is a Colorado corporation.

31. By the Application, as amended, Applicant seeks an extended Permit No. B-9904 to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the County of Pueblo, and between those points, on the one hand, and all points in the state of Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) to providing non-medical transportation services (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202 or non-emergent medical transportation services (NEMT) for the Pueblo County Department of Social Services, 212 West 12th Street, Pueblo, Colorado 81003;
- (B) to providing transportation of passengers who are recipients of Medicaid; and
- (C) against the use of more than four vehicles at any one time.

32. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6 and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation

indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application and will issue the contract carrier permit subject to conditions.

33. Having determined that the extended contract carrier permit should issue, the ALJ finds and concludes that the extended contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below.

34. One of the conditions stated in the Ordering Paragraphs is: before commencing service under extended Permit No. B-9904, Golden Gate Manor must file with the Commission its written contract with the Colorado Department of Health Care Policy and Financing to provide NMT. The basis for this condition is Rule 4CCR 723-6-6209, which governs the contracts pursuant to which a contract carrier provides transportation service. That Rule reads:

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for compensation except *in compliance with the contract between the contract carrier and the person named in the contract carrier's permit*.
- (c) *Contracts shall be written.*
- (d) *At a minimum, all contracts shall specify the following:*
 - (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date(s) and terms of the contract, including rates.
- (e) A contract carrier shall not operate in conflict with the contract carrier's permit.

- (f) A contract carrier shall not operate in conflict with the contract carrier's tariff.

(Emphasis supplied.) Golden Gate Manor may file this contract under seal if Golden Gate Manor believes that the contract constitutes or contains confidential information. *See* Rules 4 CCR 723-1-1100 and 723-1-1101.

35. Another of the conditions stated in the Ordering Paragraphs is: before commencing service under extended Permit No. B-9904, Golden Gate Manor must file with the Commission its written contract with the Pueblo County Department of Social Services, 212 West 12th Street, Pueblo, Colorado 81003 to provide NEMT. The basis for this condition is Rule 4 CCR 723-6-6209. Golden Gate Manor may file this contract under seal if Golden Gate Manor believes that the contract constitutes or contains confidential information. *See* Rules 4 CCR 723-1-1100 and 723-1-1101.

36. **Questions concerning completion of the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).**

37. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Unopposed Motion to Amend Application, which motion was filed on July 7, 2014, is granted.

2. Consistent with the discussion above, the verified Application for Permanent Authority to Extend Current Operations filed on November 21, 2013 by Golden Gate Manor, Inc., doing business as Golden Gate Manor Transportation (Golden Gate Manor), is amended.

3. The Conditional Withdrawal filed on July 15, 2014 by City Cab Co. is granted.
4. City Cab Co. is dismissed from this Proceeding.
5. Consistent with the discussion above and subject to the conditions stated below, the verified Application for Permanent Authority to Extend Current Operations filed on November 21, 2013 by Golden Gate Manor, as amended, is granted.
6. Subject to the conditions stated in the Ordering Paragraphs below, Golden Gate Manor is granted an extended Contract Carrier PUC Permit No. B-9904 to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the County of Pueblo, and between those points, on the one hand, and all points in the state of Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) to providing non-medical transportation services (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80202 or non-emergent medical transportation services (NEMT) for the Pueblo County Department of Social Services, 212 West 12th Street, Pueblo, Colorado 81003;
 - (B) to providing transportation of passengers who are recipients of Medicaid; and
 - (C) against the use of more than four vehicles at any one time.
7. All operations under the extended contract carrier permit granted by Ordering Paragraph No. 6 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this extended contract carrier permit as the Commission deems advisable.

8. The authority granted in Ordering Paragraph No. 6 is conditioned on Golden Gate Manor meeting the conditions contained in this Decision and is not effective until Golden Gate Manor meets the stated conditions.

9. Golden Gate Manor shall not begin operation under the extended contract carrier permit granted by this Decision until Golden Gate Manor has satisfied all of the following conditions:

(a) Golden Gate Manor shall file with the Commission a copy of the written contract with the Colorado Department of Health Care Policy and Financing to provide non-medical transportation services. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Golden Gate Manor may file this contract under seal if Golden Gate Manor believes that the contract constitutes or contains confidential information.

(b) Golden Gate Manor shall file with the Commission a copy of the written contract with the Pueblo County Department of Social Services to provide non-emergent medical transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Golden Gate Manor may file this contract under seal if Golden Gate Manor believes that the contract constitutes or contains confidential information.

(c) Golden Gate Manor shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period; and the entire ten-day notice period must expire prior to the proposed effective date. Golden Gate Manor shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(d) Golden Gate Manor shall cause to be filed with the Commission either proof of insurance coverage (Form for self-insurance) or proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(e) Golden Gate Manor shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(f) For each vehicle to be operated under the extended contract carrier permit granted by this Decision, Golden Gate Manor shall pay to the Commission

the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Golden Gate Manor shall pay to the Commission, for each vehicle to be operated under the extended contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(g) Golden Gate Manor has received from the Commission a written notice that Golden Gate Manor has complied with conditions (a) through (f) in this Ordering Paragraph and may begin providing transportation service pursuant to the extended contract carrier permit granted by this Decision.

10. If Golden Gate Manor does not comply with the requirements of Ordering Paragraph No. 9, above, within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 5 and No. 6, above, shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Golden Gate Manor additional time within which to comply with the requirements of Ordering Paragraph No. 9, above.

11. The right of Golden Gate Manor to operate pursuant to the extended contract carrier permit granted by this Decision shall depend on Golden Gate Manor's compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

12. 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.

13. 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 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.

14. 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

MANA L. JENNINGS-FADER

Administrative Law Judge