

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0545BP

IN THE MATTER OF THE APPLICATION OF MELAT TRANSPORTATION COMPANY
WHEELCHAIR ACC LLC FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY
MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ACCEPTING AMENDMENTS TO APPLICATION AND
GRANTING AMENDED APPLICATION**

Mailed Date: September 12, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On May 27, 2014, Melat Transportation Company Wheelchair Acc LLC (Applicant) filed an Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application).

2. The Commission provided public notice of the Application on June 16, 2014. As originally noticed, the Application sought 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, Larimer, Morgan, Pueblo, and Weld, State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid; and
- (B) to providing non-medical transportation (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado.

3. MKBS LLC, doing business as Metro Taxi, (Metro), City Cab Co. (City Cab), Shamrock Taxi of Fort Collins (Shamrock), and Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab) filed timely interventions objecting to the Application.

4. Golden Gate Manor, Inc. (Golden Gate) also filed an intervention in this proceeding. Golden Gate's intervention was later stricken, and it was dismissed as a party. Decision No. R14-0953-I issued August 6, 2014. The remaining parties are Applicant, Metro, City Cab, Shamrock and Colorado Cab.

5. During the Commission's weekly meeting held July 23, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

6. In anticipation of the hearing on the Application, the ALJ held a prehearing conference on August 18, 2014. Decision No. R14-0998-I. All parties appeared, and the ALJ approved agreed-upon hearing dates and procedural deadlines. Decision No. R14-0998-I issued August 19, 2014.

7. On August 22, 2014, City Cab filed a "Conditional Withdrawal of Intervention" (Withdrawal). The Withdrawal is executed by City Cab and Applicant. The Withdrawal indicates that if Applicant amends its request for authority to exclude service in the County of Pueblo, City Cab withdraws its intervention in this proceeding. The Withdrawal does not propose that the Application be amended to exclude the County of Pueblo.

8. On August 27, 2014, Applicant filed a letter seeking to amend the Application (Amendment). The Amendment seeks to revise the Application so that it seeks the following authority:

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, and Denver, State of Colorado.

This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing non-medical transportation (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from airports, hotels, and motels; and
- (D) to no more than two (2) vehicles in service at any one time.

9. On September 8, 2014, Metro filed a “Motion for Conditional Withdrawal of Intervention” (Metro’s Motion). Metro’s Motion states that if the Applicant’s proposed amendments are approved and accepted, that Metro’s interests in this proceeding will be satisfied, and its intervention should be deemed withdrawn.

10. On September 10, 2014, Shamrock and Colorado Cab filed a “Motion for Conditional Withdrawal of Intervention” (Colorado Cab’s Motion). Colorado Cab’s Motion indicates that if the Applicant’s proposed amendments are approved and accepted, that both Colorado Cab’s and Shamrock’s interests in this proceeding will be satisfied, and their intervention should be deemed withdrawn.

11. As discussed above, City Cab’s Withdrawal indicates that its interests will be satisfied and its intervention withdrawn if Pueblo County is excluded from the geographical

territory Applicant may serve. Applicant's August 27, 2014 Amendment excludes Pueblo County from the proposed authority.

12. Colorado Cab, Shamrock, and Metro's responses to Applicant's proposed Amendment indicate that they do not object to the proposed Amendment. And, City Cab has not filed a response to Applicant's August 27, 2014 Amendment, despite the fact that the time to respond has expired. Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The ALJ deems City Cab's failure to respond as a confession of Applicant's August 27, 2014 Amendment. Thus, the ALJ concludes that Applicant's August 27, 2014 Amendment is unopposed.

13. 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.

14. The ALJ finds and concludes that the proposed amendments pursuant to Applicant's August 27, 2014 request are restrictive in nature, administratively enforceable, clear and understandable. The proposed amendments are also unopposed. For good cause shown, and because the proposed amendments are unopposed, the restrictive amendments proposed by Applicant's August 27, 2014 Amendment will be accepted.

15. 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, since the interventions are withdrawn, the amended Application is now unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403,4 CCR 723-1, the uncontested Application may be considered under a modified procedure, without a formal hearing.

16. The Application requests authority to operate as a contract carrier by motor vehicle for hire. 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 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 is reasonable, and in the public interest. For the foregoing reasons, the permit should be granted.

17. In accordance with § 40-6-109, C.R.S., the ALJ now transmits the record in this proceeding, and recommends the Commission enter the below order.

II. ORDER

A. The Commission Orders That:

1. The amendments to the Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application) in this proceeding proposed by Melat Transportation

Company Wheelchair Acc LLC (Applicant) by a filing made on August 27, 2014 are approved and granted. The Application is amended as set forth in ¶ 8 above.

2. The intervention filed by City Cab Co. (City Cab) is withdrawn. City Cab is dismissed as a party to this proceeding.

3. The intervention filed by Shamrock Taxi of Fort Collins (Shamrock), and Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab) is withdrawn. Colorado Cab and Shamrock are dismissed as parties to this proceeding.

4. The intervention filed by MKBS LLC, doing business as Metro Taxi (Metro), is withdrawn. Metro is dismissed as a party to this proceeding.

5. Applicant is granted a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points within the Counties of Adams, Arapahoe, and Denver, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing non-medical transportation (NMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from airports, hotels, and motels; and
- (D) to no more than two (2) vehicles in service at any one time.

6. The hearing and procedural schedule in Decision No. R14-0998-I and in the Decision No. R14-0998-I-E are vacated.

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

8. Applicant shall not commence the operations under the 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 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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge