

Decision No. R14-1125-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0479CP

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING TAZCO, INC., TO SHOW CAUSE WHY ITS
INTERVENTION SHOULD NOT BE STRICKEN**

Mailed Date: September 12, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On May 14, 2014, Starry Nights 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). Applicant amended its Application on May 22, 2014.

3. The Commission provided public notice of the amended Application on June 2, 2014. As originally noticed, the amended Application seeks, “authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand shuttle service and call-and-demand sightseeing service between all points within a 1.5 mile radius of the intersection of West 1st Street and Main Street in Palisade, Colorado.”

4. GISDHO Shuttle, Inc., doing business as American Spirit Shuttle (American Spirit) and Tazco, Inc., doing business as Sunshine Taxi (Sunshine) timely intervened of right objecting to the Application.

5. During the Commission's weekly meeting held July 9, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

6. On July 8, 2014, Applicant filed a second amendment to the Application. The second amendment seeks to remove the following language from the authority sought, "and call-and-demand sightseeing service." In other words, the amendment seeks to eliminate Applicant's original request for authority to operate call-and-demand sightseeing service.

7. On July 9, 2014, American Spirit filed a "Motion for Acceptance of Amendment to Application and Withdrawal of Intervention" (Motion). The Motion sought the Commission to accept the second amendment to the Application, and if accepted, to withdraw American Spirit's intervention and objection to the Application.

8. By Decision No. R14-0884-I issued July 24, 2014, the ALJ accepted the proposed restrictive amendment, accepted American Spirit's withdrawal of its intervention, and dismissed it as a party to this proceeding.

9. On August 12, 2014, Applicant filed a document titled in the Commission's E-filing system as "Amendment 3- in compliance to Agreement with Sunshine Taxi, LLC for

Withdrawal of Intervention to Proceeding No. 14A-0479CP” (Third Amendment). The Third Amendment proposes that the Application be amended to seek the following:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle service

between all points within a 1.5 mile radius of the intersection of West 1st Street and Main Street in Palisade, Colorado.

RESTRICTION: This application is restricted:

Starry Nights will offer only Golf Cart Shuttle services.

10. Although the title of the document in the Commission’s E-filing system indicates that Applicant submitted its Third Amendment pursuant to an agreement with Sunshine to withdraw its intervention, there is no agreement in the record indicating that Sunshine wishes to withdraw its intervention in this proceeding subject to approval of the Third Amendment.

11. Sunshine filed no response to the Third Amendment. Sunshine’s silence is deemed a confession of the relief requested by the Third Amendment (that is, that the Application be amended as stated in the Third Amendment).

12. On September 4, 2014, the ALJ ordered Sunshine to make a filing by 5:00 p.m. on September 12, 2014 indicating whether it will withdraw its intervention in this proceeding if the Third Amendment is accepted. Decision No. R14-1077-I.

13. Sunshine failed to make the filing required by Decision No. R14-1077-I. Sunshine made no request to extend the deadline for the filing, nor has Sunshine shown any cause for its failure to make the required filing.

14. Sunshine’s failure to abide by the requirements of Decision No. R14-1077-I has resulted in unnecessary delay in resolving this proceeding. Sunshine’s decision to ignore a

lawfully issued order in this proceeding demonstrates its contempt for the Commission's authority.

15. In addition, Sunshine's failure to make the required filing also indicates that Sunshine no longer wishes to participate in this proceeding, and has abandoned and failed to prosecute its intervention. This is especially the case given that Sunshine had the opportunity, but failed to respond to the Third Amendment, which plainly averred that Sunshine agreed to withdraw its intervention if the Third Amendment is accepted.

16. Sunshine will be ordered to make the filing required by Decision No. R14-1077-I. If Sunshine fails to make the filing, its failure may be construed as Sunshine's abandonment of its intervention and as a failure to prosecute its intervention. In such a circumstance, Sunshine's intervention may be stricken and it may be dismissed as a party to this proceeding.

17. In such a circumstance, the ALJ will render a decision in this proceeding as if the requested relief is unopposed, without a hearing.

II. ORDER

A. It Is Ordered That:

1. On or by 5:00 p.m. MST on September 17, 2014, Tazco, Inc., doing business as Sunshine Taxi (Sunshine) shall make a filing indicating whether it will withdraw its intervention if the administrative law judge accepts the amendments proposed by Applicant Starry Nights LLC's August 12, 2014 filing titled "Amendment 3- in compliance to Agreement with Sunshine Taxi, LLC for Withdrawal of Intervention to Proceeding No. 14A-0479CP" in the Commission's e-filing system.

2. Sunshine's failure to make the filing required by Ordering Paragraph 1 by the stated deadline, may be construed as Sunshine's abandonment of its intervention and as a failure

to prosecute its intervention. In such a circumstance, Sunshine's intervention may be stricken and it may be dismissed as a party to this proceeding.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director