

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0871CP

IN THE MATTER OF THE APPLICATION OF ETUK DENVER, 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
PAUL C. GOMEZ
GRANTING INTERVENTIONS;
REQUIRING FILINGS REGARDING
LEGAL COUNSEL OR TO SHOW CAUSE WHY
LEGAL COUNSEL IS NOT NECESSARY;
VACATING PROCEDURAL SCHEDULE; AND
SETTING PRE-HEARING CONFERENCE**

Mailed Date: October 9, 2014

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I. STATEMENT

1. On August 19, 2014, eTuk Denver, LLC (Applicant) filed an application for a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire (Application).

2. On August 25, 2014, the Commission issued notice of the Application as follows:

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

passengers in scheduled service, call-and-demand shuttle service, call-and-demand charter service, and call and demand sight-seeing service

between all points within a 5-mile radius of Union Station, 17th Street and Wynkoop Street, Denver, Colorado 80202.

RESTRICTIONS:

This application is restricted against providing transportation on streets with a speed limit above 35 miles per hour.

3. On September 23, 2014, MKBS, LLC, doing business as Metro Taxi (Metro Taxi) filed an Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority or Alternative Motion to Permissively Intervene (Motion to Intervene). According to Metro Taxi, the operating authority sought in the Application overlaps Metro's CPCN PUC No. 1481, which provides Metro Taxi authority to provide taxi service in a broad area which duplicates and overlaps with the authority sought in the Application.

4. Metro Taxi asserts that it has a legally protected right in the subject matter of the Application which may be affected by the grant of the Application. In addition, Metro Taxi represents that as the owner of CPCN No. 1481 it stands ready, willing, and able to provide service within the scope of its authority. Metro Taxi claims that a grant of the Application will adversely affect Metro Taxi through loss of revenue and will result in destructive competition.

Therefore, Metro Taxi asserts that through these legally protected rights, it may intervene as of right in this proceeding.

5. In addition to its Motion to Intervene, Metro Taxi also attached a copy of its CPCN, as well as copies of its witness and exhibit lists.

6. On September 23, 2014, Colorado Jitney, LLC, doing business as Colorado Jitney (Colorado Jitney) filed an Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing.

7. Colorado Jitney represents that it owns and actively operates CPCN PUC No. 55785 which provides it authority to provide passenger transportation service in an area that duplicates and overlaps with the proposed authority sought in the Application. Colorado Jitney argues that the proposed authority will put Applicant in direct competition with Colorado Jitney, which will harm Colorado Jitney by diverting passengers.

8. On September 24, 2014, Colorado Cruisers, doing business as Colorado Crewz-In (Colorado Cruisers) filed an Entry of Appearance and Intervention in Opposition to the Permanent Authority Application or Alternate Motion to Permissively Intervene.

9. Colorado Cruisers states that it has authority pursuant to CPCN PUC No. 55825 to provide call-and-demand limousine service between all points in the City and County of Denver utilizing golf carts which are restricted to traveling on streets with a speed limit of 30 miles per hour or less. Colorado Cruisers argues that the proposed authority duplicates the services it offers under its CPCN and will take away existing clients. Colorado Cruisers represents that it currently meets the demand in the proposed geographic area for low speed-type services.

10. On September 24, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab) filed an Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Opposition to Application (Intervention).

11. Colorado Cab states the operating authority sought in the Application overlaps CPCN PUC No. 2378, owned and actively operated by Colorado Cab. According to Colorado Cab, the operating authority sought in the Application overlaps Colorado Cab's geographic operating authority and operating rights, which authorize Colorado Cab to provide taxi service in a broad area which duplicates and overlaps with the authority sought in the Application.

12. Colorado Cab asserts that it has a legally protected right in the subject matter of the Application which may be affected by the grant of the Application. In addition, Colorado Cab argues that the proposed authority will put it in direct competition with Applicant, 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 it to intervene by right in this matter.

13. Colorado Cab attached a copy of Denver Yellow Cab's CPCN with its Intervention.

14. On October 1, 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

15. 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 August 25, 2014. Consequently, the deadline to intervene as of right or to petition to permissively intervene in the above-captioned proceeding was September 24, 2014.

16. 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, must show that the common carrier’s authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

17. 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 the 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.

18. As relevant to the authority sought by Applicant, Metro Taxi, Colorado Cab, Colorado Jitney, and Colorado Cruisers each demonstrates that the authority sought duplicates the rights or overlaps the geographic authority of each entity’s operating authorities. As a result, it is found that Metro Taxi, Colorado Cab, Colorado Jitney, and Colorado Cruisers each has a legally protected right that may be affected by a grant of the Application. The interventions were

timely filed. Each party has shown good cause to find that each is an intervenor as of right in this proceeding.

19. The intervention period in this matter is closed. The intervenors in this proceeding are Metro Taxi, Colorado Cab, Colorado Jitney, and Colorado Cruisers.

B. Procedural Matters

20. 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 September 24, 2014. Therefore, Applicant had until October 6, 2014¹ to file and serve its list of witnesses and copies of its exhibits. Applicant failed to comply with that requirement.

21. According to Rule 1405(e)(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 October 14, 2014. While Metro Taxi filed its initial list of witnesses and exhibits, Colorado Cab, Colorado Jitney and Colorado Cruisers did not make such a filing

¹ 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.

22. The procedural schedule under Rule 1405(e) will be 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

23. As of the date of this Decision, Applicant, Colorado Jitney and Colorado Cruisers have not had an attorney enter an appearance on each entity's behalf. 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.

24. 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.

25. 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.

26. Each of the above-listed entities has the burden to prove that it is entitled to proceed in this case without an attorney. To meet that burden of proof, each entity 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, each entity 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 officer² 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 evidence, satisfactory to the Commission, of the authority of the officer to represent the closely held entity.³

27. Applicant, Colorado Jitney, and Colorado Cruisers must **either** obtain legal counsel **or** 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.

28. If Applicant, Colorado Jitney, or Colorado Cruisers elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **close of business on October 29, 2014**.

29. If Applicant, Colorado Jitney, or Colorado Cruisers elects to show cause, then, on or before **close of business on, October 29, 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, the entity 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 does not exceed \$15,000, including a statement explaining the basis for that assertion; (c) identifies the individual whom the entity wishes to have as its representative in this proceeding; (d) establishes that the identified individual is an officer of the entity; and (e) if the identified individual is not an officer

² 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.

³ 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[.]"

of entity, a resolution from entity's Board of Directors that authorizes the individual to represent the entity in this matter.

30. Applicant, Colorado Jitney and Colorado Cruisers are each advised, and are each on notice, that if it fails to either show cause or to have legal counsel file an entry of appearance on or before **the close of business on October 29, 2014**, then the ALJ may order those entities to obtain legal counsel in order to proceed in this matter.

D. Pre-hearing Conference

31. 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, all parties are strongly encouraged to discuss and arrive at an agreeable procedural schedule prior to the pre-hearing conference.⁴ If such a proposed schedule is agreed to, the parties shall file a motion to adopt such a schedule no later than five days prior to the date of the pre-hearing conference.

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

33. A pre-hearing conference in this matter will be scheduled for **Thursday, October 30, 2014**.

⁴ A proposed procedural schedule must set a hearing in this matter that concludes no later than 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 January 25, 2015.

II. ORDER

A. It is Ordered That:

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

DATE: October 30, 2014

TIME: 10:00 a.m.

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

2. The Motion to Intervene as of Right of Colorado Cab Company LLC, doing business as Denver Yellow Cab is granted.

3. The Motion to Intervene of MKBS, LLC, doing business as Metro Taxi as of right is granted.

4. The Motion to Intervene of Colorado Jitney, LLC, doing business as Colorado Jitney as of right is granted.

5. The Motion to Intervene of Colorado Cruisers, doing business as Colorado Crewz-In as of right is granted.

6. Applicant, eTuk Denver, LLC must choose either to obtain legal counsel or to make a show cause filing as to why it should be allowed to proceed without an attorney.

7. If Applicant, eTuk Denver, LLC elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before October 29, 2014.

8. If Applicant, eTuk Denver, LLC elects to show cause, then on or before October 29, 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. 26 and 29 above.

9. Colorado Jitney, LLC, doing business as Colorado Jitney must choose either to obtain legal counsel or to make a show cause filing as to why it should be allowed to proceed without an attorney.

10. If Colorado Jitney, LLC, doing business as Colorado Jitney elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before October 29, 2014.

11. If Colorado Jitney, LLC, doing business as Colorado Jitney elects to show cause, then on or before October 29, 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. 26 and 29 above.

12. Colorado Cruisers, doing business as Colorado Crewz-In must choose either to obtain legal counsel or to make a show cause filing as to why it should be allowed to proceed without an attorney.

13. If Colorado Cruisers, doing business as Colorado Crewz-In elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before October 29, 2014.

14. If Colorado Cruisers, doing business as Colorado Crewz-In elects to show cause, then on or before October 29, 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. 26 and 29 above.

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

16. 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