

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0872CP-TRANSFER

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO TRANSFER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55797 FROM
SPRING CAB, LLC, TO SPRINGS CABS, LLC.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING COUNSEL FOR TRANSFEROR
SPRING CAB, LLC, TO ENTER AN APPEARANCE
IN THIS CASE BY OCTOBER 31, 2014 AND
REQUIRING APPLICANTS TO RESPOND TO
QUESTIONS BY NOVEMBER 7, 2014**

Mailed Date: October 23, 2014

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I. STATEMENT

1. On August 19, 2014, Spring Cab, LLC, doing business as Spring Cab (Transferor), and Springs Cab, LLC (Transferee) (collectively, Applicants¹), filed a verified

¹ There is some uncertainty as to whether Transferor is an applicant. For ease of reference until Transferor's status in this Proceeding is clarified, the ALJ refers to Transferor and Transferee as the Applicants.

Application for Authority to Transfer Certificate of Public Convenience and Necessity PUC No. 55797 from Spring Cab, LLC, to Springs Cab, LLC. Appended to that filing is the Purchase of Business Agreement.² That filing commenced this Proceeding.

2. On September 9, 2014, Applicants filed a supplement to the August 19, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the August 19, 2014 filing as supplemented on September 9, 2014.

3. On August 25, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4); established an intervention period, which has expired; and established a procedural schedule. On October 2, 2014, Decision No. R14-1210-I vacated the procedural schedule.

4. On September 24, 2014, Colorado Springs Transportation LLC, doing business as Yellow Cab of Colorado Springs (Yellow Cab or Intervenor), timely intervened and is a party. Yellow Cab opposes the Application.

5. Applicants and Intervenor, collectively, are the Parties. Transferee and Intervenor are represented by legal counsel in this matter.

6. On October 1, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicants' waiver of the statutory provision, a Commission decision on the Application should issue not later April 28, 2015.

² This document is filed under seal as the Applicants assert that it contains confidential information.

³ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

7. On October 1, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

8. On October 17, 2014, Transferee filed a Proposed Procedural Schedule. In that filing, Transferee proposed a procedural schedule, including a hearing date, that Transferee represents is satisfactory to Transferee and Intervenor. There is no representation that Transferee conferred with Transferor, that Transferee attempted to confer with Transferor, or that the proposed procedural schedule is acceptable to Transferor. Pending receipt of the filings required by this Interim Decision, the ALJ will hold in abeyance establishing the procedural schedule and scheduling the evidentiary hearing in this Proceeding.⁴

A. Transferor Spring Cab, LLC, to Retain Counsel.

9. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)⁵ requires a party in an adjudication 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 the interests of a closely-held entity provided the requirements in § 13-1-127, C.R.S., are met.

10. The Commission has held that, if the exception in Rule 4CCR 723-1-1201(b)(II) does not apply, an entity (such as a limited liability company) must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing made by a non-attorney

⁴ The ALJ is available for a December 17, 2014 evidentiary hearing and advises the Parties to reserve that date for the hearing in this matter.

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

11. This is an adjudication before the Commission.

12. Transferor Spring Cab, LLC, is a limited liability company.

13. Transferor Spring Cab, LLC, appears to be a party (*i.e.*, an applicant) in this matter. This discussion assumes that Transferor is a party.

14. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply in this Proceeding because, as demonstrated by the confidential Purchase of Business Agreement, the value of the transfer at issue in this Proceeding exceeds \$ 15,000. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that Transferor Spring Cab, LLC, must be represented by an attorney in this case.

15. The ALJ will order Transferor Spring Cab, LLC, to obtain legal counsel in this Proceeding. Transferor Spring Cab, LLC's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

16. Transferor Spring Cab, LLC's attorney must enter an appearance in this Proceeding not later than **October 31, 2014**.

17. **Transferor Spring Cab, LLC, is advised and is on notice that it will not be permitted to participate in this Proceeding without an attorney.**

18. **Transferor Spring Cab, LLC, is advised and is on notice that the ALJ will dismiss Transferor Spring Cab, LLC, as a party *unless* Transferor Spring Cab, LLC's attorney enters an appearance in accordance with this Interim Decision.**

B. Applicants to Make Filing Responding to Questions.

19. Review of Commission records reveals that the owner of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55797 is an entity: Spring Cab, LLC, doing business as Spring Cab.⁶ In addition, Commission records show that, as of December 20, 2011 (the most recent information filed with the Commission), the following are Members/Partners of Spring Cab, LLC: Abdullahi J. Buni; Muktar Buni; and Richard Cornfield. Finally, Commission records show that, as of December 20, 2011 (apparently the most recent information filed with the Commission), Ali Gulaid is Spring Cab, LLC's designated agent.

20. As pertinent to this Proceeding, Rule 4CCR 723-6-6205⁷ governs applications to transfer "any right or interest in any portion of" a CPCN. Rule 4 CCR 723-6-6205(a). Subject to exceptions that do not appear to be applicable in this Proceeding, Rule 4 CCR 723-6-6205(b) states that "only the owners of an authority as shown in the official records of the Commission may transfer" a CPCN or any portion of a CPCN. Rule 4CCR 723-6-6205(c) provides that an application to transfer a CPCN "shall, if possible, take the form of a joint application submitted by *all parties to the transaction*" (emphasis supplied). Rule 4CCR 723-6-6205(c)(VII) requires the filing of "all agreements concerning the transaction" with an application for transfer.

21. The Application identifies Spring Cab, LLC, as the Transferor⁸ (Application at 1); identifies Abdillahi Buni as Transferor's person to contact if there are questions about the Application (*id.*); and is attested to by Abdillahi Buni on behalf of the Transferor (*id.* at 7).

⁶ As discussed below, the entity has changed its name to Springs Cab, LLC.

⁷ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

⁸ Rule 4 CCR 723-6-6201(u) defines transferor as: "any entity transferring control of any authority to a transferee."

22. The Application identifies Springs Cab, LLC, as the Transferee⁹ (Application at 2); identifies Liban Buni as Transferee's person to contact if there are questions about the Application (*id.*); and is attested to by Liban Buni on behalf of the Transferee (*id.* at 8).

23. A confidential Purchase of Business Agreement was submitted with the Application. As confirmed by the Withdrawal of Appearance as Counsel for Spring Cab, LLC, Transferor filed on October 14, 2014 (*see* discussion below), this document is the agreement concerning the proposed transfer. Review of the Purchase of Business Agreement reveals that neither the Transferor Spring Cab, LLC, nor the Transferee Springs Cab, LLC, is a party to that agreement. The Purchase of Business Agreement shows an individual as the seller and four individuals as the purchasers. In addition, in the Purchase of Business Agreement at 1 (*i.e.*, the discussion under paragraph b and the definition of Assets), the seller appears to represent that the seller is the owner of the assets being transferred. Whether those assets include CPCN PUC No. 55797 is unclear. Assuming that the assets include CPCN PUC No. 55797, whether the assets include CPCN PUC No. 55797 in its entirety or only a portion of CPCN PUC No. 55797 is unclear.

24. On September 18, 2014, R. Gregory Haller, Esquire, entered his appearance in this Proceeding "on behalf of Spring Cab, LLC, Lessor." Entry of Appearance at 1.

25. On October 14, 2014, Mr. Haller entered his appearance on behalf of Transferee.

⁹ Rule 4 CCR 723-6-6201(t) defines transferee as: "any entity *newly* acquiring control of any authority from a transferor." (Emphasis supplied.)

26. On October 14, 2014, Mr. Haller also filed a Withdrawal of Appearance as Counsel for Spring Cab, LLC, Transferor (Withdrawal of Appearance). As pertinent here, that filing states:

A little history may be helpful to clarify possible confusion caused by the Application. There is no conflict in the two appearances as *there is one entity involved. Spring Cab, LLC and Springs Cab, LLC are the same entity. The Spring Cab LLC CPCN 55797 is being transferred pursuant to proposed new ownership.* This matter is a transfer matter ... and the transfer document has been previously filed with the Commission as a confidential document.

The Commission's Notice correctly states that this is a transfer of CPCN 55797. The correct legal name of the entity involved is Springs Cab, LLC, as member Ali Gulaid changed the name with the Colorado Secretary of State, but did not inform the Commission of the change. The Commission still considers the entity as Spring Cab, LLC. *The transfer is required as the LLC is in the process of obtaining new ownership.* In the process the name should be corrected with the Commission, which is why the application is titled the way it reads.

Withdrawal of Appearance at 1 (emphasis supplied).

27. Given counsel's representations, the language of the confidential Purchase of Business Agreement, and the appearance that neither Transferor nor Transferee is involved in the Purchase of Business Agreement transaction, the ALJ will order Transferor and Transferee to submit, not later than **November 7, 2014**, responses to the following questions:

a. Is Transferor an applicant in this Proceeding? If Transferor is not an applicant, explain why it is not.

b. Explain in detail why the individual who is named as the seller in the Purchase of Business Agreement is not named or identified as the transferor in the Application.

c. As of the date on which the Purchase of Business Agreement was executed, which of the following carried on (e.g., conducted, operated, controlled) the taxi service provided under the name Spring Cab, LLC: (1) Transferor; (2) Transferee;

(3) the individual named as the seller in the Purchase of Business Agreement; or
(4) someone else? Explain the response.

d. On August 19, 2014 (the date on which the Application was filed), which of the following carried on (*e.g.*, conducted, operated, controlled) the taxi service provided pursuant to CPCN PUC No. 55797: (1) Transferor; (2) Transferee; (3) the individual named as the seller in the Purchase of Business Agreement; or (4) someone else? Explain the response.

e. As of the date of this Interim Decision, which of the following owns CPCN PUC No. 55797: (1) Transferor; (2) Transferee; (3) the individual named as the seller in the Purchase of Business Agreement; or (4) someone else? Explain the response.

f. In the Withdrawal of Appearance at 1, Mr. Haller states that “the LLC is in the process of obtaining new ownership” and that CPCN PUC No. 55797 “is being transferred pursuant to proposed new ownership.” With respect to these statements:

(1) Do the statements refer to the Purchase of Business Agreement?

If the answer is no, to what do the statements refer?

(2) If the statements refer to the Purchase of Business Agreement:

Has the Closing (as defined in the Purchase of Business Agreement at 2) occurred? If the answer is yes, state the date of the Closing. If the answer is no, explain why the Closing has not occurred. If the answer is no, state the date on which the Closing is expected to occur.

(3) Is CPCN PUC No. 55797 in its entirety among the Assets (as defined in the Purchase of Business Agreement at 1) included in the Purchase of Business Agreement?

(4) Is any portion of CPCN PUC No. 55797 among the Assets (as defined in the Purchase of Business Agreement at 1) included in the Purchase of Business Agreement?

g. In the Withdrawal of Appearance at 1, Mr. Haller states: “The correct legal name of the entity involved is Springs Cab, LLC, as member Ali Gulaid changed the name with the Colorado Secretary of State, but did not inform the Commission of the change.” State the date on which the entity’s legal name changed from Spring Cab, LLC, to Springs Cab, LLC.

h. Is the transfer at issue in this Proceeding: (a) a change in the ownership of the entity (*i.e.*, change in the Members of the LLC) that owns CPCN PUC No. 55797; (b) a change in the ownership of CPCN PUC No. 55797 itself (*e.g.*, one entity purchasing the CPCN from another separate entity or individual); or (c) something else? Explain the response.

i. Are Abdullahi J. Buni (name in Commission records) and Abdillahi Buni (name on Application) the same person? If they are the same individual, which is the correct first name?

28. The written responses must be verified by an individual (other than counsel) with the authority to verify the responses on behalf of Transferor. The written responses must be verified by an individual (other than counsel) with the authority to verify the responses on behalf of Transferee. The verification must state the title of the individual with the authority to verify the responses on behalf of Transferor and must state the title of the individual with the authority to verify the responses on behalf of Transferee.

29. The written responses must be filed jointly by counsel for Transferor and counsel for Transferee. If only Transferee’s counsel files the written responses, counsel for Transferee must explain in full why the responses were not jointly filed. If one or more responses contain

information that is claimed to be confidential, the response(s) may be filed under seal in accordance with Rules 4 CCR 723-1-1100 and 723-1-1101.

30. **Transferor and Transferee, collectively and individually, are advised and are on notice that** failure to respond to the questions as required by this Interim Decision may result in dismissal of the Application without prejudice.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, Transferor Spring Cab, LLC (Transferor), must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

2. Not later than October 31, 2014, legal counsel for Transferor shall enter an appearance in this Proceeding.

3. Failure of Transferor's legal counsel to enter an appearance as required by Ordering Paragraph No. 2 shall result in dismissal of Transferor from this Proceeding.

4. Consistent with the discussion above, not later than November 7, 2014, Transferor and Transferee Springs Cab, LLC (Transferee), shall file written responses to the questions posed in this Interim Decision. The written responses shall be verified by an individual (other than counsel) with authority to verify the responses on behalf of Transferor and shall be verified by an individual (other than counsel) with authority to verify the responses on behalf of Transferee. The verification shall state the title of the individual with the authority to verify the responses on behalf of Transferor and shall state the title of the individual authorized to verify the responses on behalf of Transferee. The written responses shall be filed jointly by

counsel for Transferor and counsel for Transferee. If only Transferee's counsel files the written responses, counsel for Transferee shall explain in full why the responses were not jointly filed.

5. Failure of Transferor and of Transferee to file responses to the questions posed in this Interim Decision as required by Ordering Paragraph No. 4 may result in dismissal of the Application filed on August 19, 2014 without prejudice.

6. The Parties are held to the advisements contained in the Interim Decisions issued in this Proceeding.

7. This Interim Decision is effective immediately.

(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