

Decision No. R04-0546-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-143CP

IN THE MATTER OF THE APPLICATION OF AURORA LIMOUSINE, LLC,
D/B/A AURORA AIRPORT SHUTTLE, 17668 E. LOYOLA DRIVE, UNIT A, AURORA,
COLORADO 80013, FOR AUTHORITY TO OPERATE AS A COMMON CARRIER BY
MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DENYING MOTION TO DISMISS
APPLICATION, GRANTING MOTION
TO STRIKE “REBUTTAL” AND
GRANTING PETITION FOR
LEAVE TO INTERVENE**

Mailed Date: May 26, 2004

I. STATEMENT

1. On March 24, 2004, Aurora Limousine, LLC, doing business as Aurora Airport Shuttle (Applicant) filed an application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire.
2. On April 5, 2004, the Commission issued notice of the application.
3. On April 16, 2004, Metro Taxi, Inc. (Metro Taxi), filed a Notice of Intervention.
4. On April 30, 2004, Applicant filed a pleading entitled “Rebuttal to Intervention to Our Application by Metro Taxi, Inc. ...”. Applicant essentially asserts that Metro Taxi lacks standing to intervene.

5. On May 4, 2004, Metro Taxi filed a combined Motion: (1) to Dismiss the Application; (2) Motion to Strike “Rebuttal” to Intervention; (3) Alternate Reply to “Rebuttal”, and (4) Request for Shortened Response Time.

6. Metro Taxi moves to dismiss the application since Applicant, a Limited Liability Company is not represented by an attorney. Metro Taxi cites 4 *Code of Colorado Regulations* (CCR) 723-1-21(a) which requires an attorney to represent an entity before the Commission other than an individual. Metro Taxi states that since the applicant in this case is a Limited Liability Company, the Rule requires representation by an attorney. Metro Taxi also cites 4 CCR 723-1-21(b)(3) which only permits a non-attorney to act on behalf of a partnership, corporation, association, or other entity by completing forms which do not require knowledge and skill beyond that possessed by laymen. Metro Taxi states that the Rebuttal to Metro Taxi’s intervention is not a form.

7. Metro Taxi states that if its motion to dismiss is not granted, its Alternate Motion to Strike Applicant’s Rebuttal should. In support of its Alternate Motion to Strike Rebuttal, Metro Taxi states two grounds:

1. The rebuttal does not constitute completion of “forms which do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman.” *See* Rule 21(b)(3). Therefore it is improper; and
2. The rebuttal constitutes a response to Metro Taxi’s intervention of right, which is not a permitted pleading under Rule 22(b) of the PUC’s *Rules of Practice and Procedure*.
8. Although the motion of Metro Taxi to dismiss the application has merit, the matter can, and should be decided on the basis of the alternate motion to strike the rebuttal. To grant Metro Taxi’s Motion to Dismiss the Application at this state of the proceeding would be

unduly harsh given the fact, that Applicant is acting pro se at this juncture, and that a ruling on the alternative motion to strike Rebuttal would be dispositive of the matter.

9. Metro Taxi's Alternate Motion to Strike Rebuttal states good grounds, therefore the Motion to Strike will be granted. Under the provisions of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-22(b) the "Rebuttal" which purports to be a response to Metro Taxi's intervention, is not a permitted pleading.

10. The Rules of Practice and Procedure of the Commission, 4 CCR 723-1-21(a) requires that all parties to a Commission proceeding, other than an individual, must be represented by an attorney licensed by the Colorado Supreme Court. Although the Motion to Dismiss the Application will be denied, Applicant is put on notice that failure to comply with Rule 21(a) could subject the application to further motions to dismiss the application. Applicant is urged to read 4 CCR 723-1-21, and to comply with the Rule.

11. On May 7, 2004, Nemarda Corporation filed a Petition for Leave to Intervene. The petition is untimely since it was filed one day after the intervention period ended in this case.

12. No response to the petition was filed.

13. Good cause having been shown, the Petition for Leave to Intervene will be granted.

II. ORDER

A. It Is Ordered That:

1. The motion of Metro Taxi, Inc., to dismiss the application is denied.

2. The Motion to Strike Rebuttal to Intervention of Metro Taxi, Inc., is granted. The “Rebuttal” is stricken.

3. The Petition for Leave to Intervene filed by Nemarda Corporation is granted.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge