

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-337CP

IN THE MATTER OF THE APPLICATION OF MALCOLM LEWIS, DOING BUSINESS AS
MILE HIGH COMMUTER, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION, MODIFYING DECISION
NO. R04-1048-I, ORDERING RESPONSES TO
DISCOVERY, AND DENYING MOTION TO WAIVE
RESPONSE TIME AS MOOT**

Mailed Date: October 4, 2004

I. STATEMENT

1. On June 23, 2004, Malcolm Lewis, doing business as Mile High Commuter (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. Alpine Taxi/Limo, Inc., intervened of right. Metro Taxi, Inc., intervened of right.¹ Casino Transportation, Inc., intervened of right. Golden West Commuter, LLC (Golden West), intervened of right. SuperShuttle International Denver, Inc., and Denver Taxi, LLC, intervened of right. Each intervenor opposes the Application.

¹ By Decision No. R04-0993-I, the ALJ granted the Joint Motion filed by Metro and MKBS, LLC, doing business as Metro Taxi, for Substitution of Intervenor and Intervenor's Counsel.

3. Golden West filed a motion to dismiss and alternative motions. Among other things, Golden West asserted that it served discovery on Applicant and that Applicant failed to respond to that discovery despite Golden West's having sent a demand letter. Golden West provided documents which support its allegations.

4. By Decision No. R04-1048-I, the undersigned Administrative Law Judge (ALJ), *inter alia*, denied the motion to dismiss and alternative motion *in limine* but granted some of the requested relief. Specifically, the ALJ vacated the then-scheduled hearing; set the hearing in this matter for November 4, 2004; and established a new procedural schedule. That decision did not address the pending discovery.

5. On September 17, 2004, Golden West filed a Rule 86(b)(2) Motion to Modify Interim Order R04-1048-I (Motion).² In that filing Golden West seeks an order modifying Decision No. R04-1048-I "to address and remedy a serious fundamental fairness issue" (Motion at 2), namely the failure of that Order to require Applicant to respond to the discovery propounded by Golden West. Golden West argues that it needs the responses in order to prepare for the upcoming hearing and to "eliminate the spectre of [the] hearing on November 4, 2004, being turned into a discovery deposition and the delays attendant therewith." *Id.* at 4. Golden West asserts that this is a question of fundamental fairness to it.

6. Applicant did not respond to the Motion, and no other intervenor responded to the Motion. Thus, the Motion is unopposed.

7. The ALJ finds that the Motion states good cause and that granting the Motion will not prejudice any party. Despite the requirements of Rule 4 *Code of Colorado Regulations*

² A Motion to Waive Response Time accompanied the Motion. The Motion to Waive Response Time will be denied as moot because the 14-day response time permitted by Rule 4 *Code of Colorado Regulations* 723-1-77 has expired.

(CCR) 723-1-77, Applicant did not make written objection to any of the discovery propounded by Golden West; Applicant thus has waived any objection it might have to the discovery; and, as a result, Applicant will not be prejudiced by granting the Motion. In addition, Applicant did not respond to the Motion; the ALJ finds that this is a further and significant indication that granting the Motion will not prejudice Applicant. Finally, the ALJ finds persuasive the argument that Golden West should have access to the requested information in order to prepare for hearing and that denial of access would prejudice Golden West. From the Motion at 1, it is apparent that Golden West seeks an order requiring response to the discovery propounded on July 31, 2004. The Motion will be granted as to that discovery only. Decision No. R04-1048-I will be modified to require Applicant to respond to the Golden West discovery served on July 31, 2004.

8. Golden West seeks an order setting a discovery response date of October 4, 2004. The proposed date is one month before the hearing. The ALJ finds that a discovery response date of October 12, 2004, will suffice and should be ordered. First, the later date will allow Applicant a reasonable period of time within which to prepare his responses. Second, that date will ensure that Golden West receives the responses in advance of the October 15, 2004, deadline for intervenors to file their final lists of witnesses and copies of exhibits. Third, given the date of this Order (*i.e.*, October 4, 2004), October 12, 2004, is a more realistic deadline than that requested by Golden West. For these reasons, Applicant will be ordered to serve, on or before **October 12, 2004**, his responses to the discovery propounded by Golden West.

9. Decision No. R04-1048-I will be modified to be consistent with the discussion above.

10. Applicant will be ordered to serve the responses to discovery on Golden West and on all other parties in this proceeding. Applicant is not to file the responses with the Commission.

II. ORDER

A. It Is Ordered That:

1. The Rule 86(b)(2) Motion to Modify Interim Order R04-1048-I filed by Golden West Commuter, LLC, is granted consistent with the discussion above.

2. On or before October 12, 2004, Applicant Malcolm Lewis, doing business as Mile High Commuter, shall serve his responses to the July 31, 2004, discovery propounded by Golden West Commuter, LLC, on Golden West Commuter, LLC, and on all parties in this docket.

3. This Order modifies Decision No. R04-1048-I and the procedural and other requirements established in that decision.

4. The Motion to Waive Response Time is denied as moot.

5. The procedures and schedule established in Decision No. R04-1048-I, as modified by this Order, remain in effect. The parties shall comply with all requirements and procedures established by that decision, as modified by this Order.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge