

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0974BP

IN THE MATTER OF THE APPLICATION OF AGAPE CARE COMMUNITY, LLC, FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION; AMENDING APPLICATION;
DISMISSING INTERVENTIONS; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE AND SUBJECT TO
CONDITIONS; GRANTING CONTRACT CARRIER
PERMIT, SUBJECT TO CONDITIONS; VACATING
HEARING; VACATING PROCEDURAL
SCHEDULE; AND WAIVING RESPONSE TIME**

Mailed Date: January 15, 2014

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I. STATEMENT

1. On September 6, 2013, Agape Care Community, LLC (Applicant), filed a verified Application for a Permit to Operate as a Contract Carrier Motor Vehicle for Hire. Appended to the filing are several documents. That filing commenced this Proceeding.

2. On September 20, 2013, Applicant supplemented its September 6, 2013 filing. On October 21, 2013, Applicant filed an amendment to add a restriction to its September 6, 2013 filing. Unless the context indicates otherwise, reference in this Decision to the Application is to the September 6, 2013 filing as supplemented on September 20, 2013 and as amended on October 21, 2013.

3. On September 9, 2013, the Commission issued its Notice of Application Filed (Notice) in this proceeding (Notice at 6); established an intervention period; and established a procedural schedule. On October 25, 2013, Decision No. R13-1346-I vacated that procedural schedule.

4. On October 4, 2013, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely intervened in this Proceeding. Metro Taxi opposed the Application and was represented by counsel. On November 21, 2013, Decision No. R13-1454-I granted Metro Taxi's motion and dismissed Metro Taxi as a party in this Proceeding.

5. On October 9, 2013, Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab), timely intervened in this Proceeding. Colorado Cab is a party in this Proceeding, opposes the Application, and is represented by counsel.

6. On October 9, 2013, Colorado Springs Transportation, LLC (CST), timely intervened in this Proceeding. CST is a party in this Proceeding, opposes the Application, and is represented by counsel.

7. Colorado Cab and CST, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Applicant appears *pro se*. Intervenors are represented by legal counsel.

8. On October 16, 2013, by Minute Order, the Commission deemed the Application complete as of that date.

9. On October 16, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

10. By Decision No. R13-1454-I, the ALJ established the procedural schedule for, and scheduled a February 13 and 14, 2014 evidentiary hearing in, this Proceeding. On December 9, 2013, by Decision No. R13-1511-I, the ALJ stayed the procedural schedule pending further order. On December 24, 2014, by Decision No. R13-1592-I and for the reasons stated in that Interim Decision, the ALJ lifted the stay and modified the procedural schedule.

11. By this Decision, the ALJ will vacate the scheduled evidentiary hearing and will vacate the procedural schedule established in Decision No. R13-1454-I as modified by Decision No. R13-1592-I.

12. In its September 6, 2013 filing, Applicant sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (a) to the transportation of passengers who are recipients of Medicaid; and,
- (b) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado.

13. On October 21, 2013, Applicant made a filing to add a third restriction. By Decision No. R13-1454-I, the ALJ permitted the amendment. As a result of the October 21,

2013 filing, Applicant sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (a) to the transportation of passengers who are recipients of Medicaid;
- (b) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado; and
- (c) to the transportation of passengers who are clients of Agape Care Community LLC and Agape Care Community Adult Day Program, 1690 South Chambers Road, Aurora, Colorado 80017.

14. On December 3, 2013, Applicant filed an amendment to add two restrictions:

(a) restrict Applicant to providing transportation “from clients['] homes and medical facilities to/from Agape Care Community office”; and (b) preclude Applicant from “providing transportation services to/from hotels and restaurants.” December 3, 2013 filing at 1.

15. On December 5, 2013, by Decision No. R13-1503-I, the ALJ determined that she would treat the December 3, 2013 filing as a motion to amend the Application; provided notice of the December 3, 2013 filing to Intervenors; and permitted Intervenors 14 days within which to file a response to the December 3, 2013 filing.

16. On December 5, 2013, Intervenors filed their Motion for Conditional Withdrawal of Intervention (December 5 Motion). In that filing Intervenors stated that their interests in this Proceeding would be satisfied if the Commission approved the two additional amendments contained in the December 3, 2013 filing. If the Commission approved the December 3, 2013

amendments, Intervenors stated that their interventions may be deemed withdrawn. The December 5 Motion is Intervenors' response to the December 3, 2013 filing.

17. The ALJ determined that the language of proposed restrictions contained in the December 3, 2013 filing required clarification. By Decision No. R13-1511-I, as pertinent here, the ALJ ordered Applicant to make, no later than December 20, 2013, a filing that clarified the language of the proposed restrictions.

18. On December 20, 2013, Applicant filed an Amendment to Previous Notice (December 20 Filing). In that filing, Applicant withdrew the restrictions filed on December 3, 2013 and submitted the following language:

1. Application is restricted to transportation of clients of Agape Care Community Adult Day Program.
2. Application is restricted from providing transportation services to a hotel or motel establishment. Applicant requests an exception, if an Agape Care Community client or Agape Care Adult Day program client is residing at a hotel or motel establishment.
3. Application is restricted from providing transportation services to a restaurant establishment.

December 20 Filing at 1.

19. By Decision No. R13-1592-I, the ALJ determined that: (a) the December 20 Filing revoked the December 3, 2013 filing to which Intervenors agreed in their December 5 Motion; (b) as a result, the condition precedent stated in the December 5 Motion was not satisfied and the interventions were not withdrawn; and (c) as a consequence, Intervenors continued to contest the Application. Because the Intervenors continued to contest the Application, the ALJ ordered a modified procedural schedule. In doing so, the ALJ rejected the December 20 Filing and denied as moot the December 5 Motion.

20. On January 3, 2014, pursuant to the procedural schedule, Applicant filed its Preliminary List of Witnesses; its Preliminary List of Exhibits; and copies of the exhibits it proposed to offer during the hearing.

21. On January 10, 2014, the Parties filed (in one document) a Stipulation, Motion for Approval of Restrictive Amendments, and Conditional Withdrawal of Interventions (January 10 Filing).

22. Because the January 10 Filing is unopposed and is signed by all Parties, no party will be prejudiced if the ALJ waives response time to the filing. The ALJ will waive response time to the January 10 Filing.

23. By the restrictive amendments contained in the January 10 Filing at ¶ 7, Applicant seeks authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (a) to the transportation of passengers who are recipients of Medicaid;
- (b) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (c) to the transportation of passengers who are clients of Agape Care Community LLC and Agape Care Community Adult Day Program, 1690 South Chambers Road, Aurora, Colorado 80017; and
- (d) against providing transportation service to and from hotels, motels, and airports.

24. To be acceptable, an amendment must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. Both the contract carrier permit and

any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract carrier permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the contract carrier's operations are within the scope of its Commission-granted authority.

25. The January 10, 2014 amendments and the resulting contract carrier permit, if the Application is granted, meet the standards stated above. The ALJ will approve the amendments contained in the January 10 Filing at ¶ 7.

26. The ALJ finds that the Motion for Approval of Restrictive Amendments filed on January 10, 2014 states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion for Approval of Restrictive Amendments filed on January 10, 2014.

27. Approving the restrictive amendments to the Application (*i.e.*, to the scope of the contract carrier permit that Applicant seeks) has these effects. First, the contract carrier authority sought, as stated in the Application, will be amended to conform to the amendments contained in this Decision. Second, the Conditional Withdrawal of Interventions filed on January 10, 2014 will be granted; and the interventions will be dismissed.

28. Dismissal of the interventions leaves the Application, as amended, uncontested and unopposed.

29. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,¹ the Commission may consider an uncontested and unopposed application pursuant to the Commission’s modified procedure and without a formal hearing. The ALJ finds that the Application, as amended, should be considered, and will be considered, under the Commission’s modified procedure and without a formal hearing.

30. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

31. Applicant is a Colorado limited liability company.

32. By the Application, as amended, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers, as a contract carrier,
between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and
Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (a) to the transportation of passengers who are recipients of Medicaid;
- (b) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (c) to the transportation of passengers who are clients of Agape Care Community LLC and Agape Care Community Adult Day Program, 1690 South Chambers Road, Aurora, Colorado 80017; and
- (d) against providing transportation service to and from hotels, motels, and airports.

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

33. The Application, as amended, establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6, and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application, as amended, and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the Application, as amended, and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application, as amended, and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application, as amended, and will issue the contract carrier permit subject to conditions.

34. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below. **Questions concerning completion of the conditions should be directed to Ms. Vanessa Condra of the Commission Staff (telephone no.: 303.894.2850).**

35. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Motion for Approval of Restrictive Amendments and Conditional Withdrawal of Interventions filed on January 10, 2014 is granted.

2. The amendments contained in the Stipulation filed on January 10, 2014, are approved.

3. The verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed by Agape Care Community, LLC, on September 6, 2013, as supplemented on September 20, 2013 and as amended on October 21, 2013, is amended to conform to the terms of the restrictive amendments filed on January 10, 2014 and approved in Ordering Paragraph No. 2, above.

4. Colorado Cab Company LLC, doing business as Denver Yellow Cab, is dismissed as an intervenor in this Proceeding.

5. Colorado Springs Transportation, LLC, is dismissed as an intervenor in this Proceeding.

6. Subject to the conditions stated below, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed by Agape Care Community, LLC, on September 6, 2013, as supplemented and amended, is granted.

7. Subject to the conditions stated below, Agape Care Community, LLC, is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers, as a contract carrier,

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

(a) to the transportation of passengers who are recipients of Medicaid;

- (b) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (c) to the transportation of passengers who are clients of Agape Care Community LLC and Agape Care Community Adult Day Program, 1690 South Chambers Road, Aurora, Colorado 80017; and
- (d) against providing transportation service to and from hotels, motels, and airports.

8. All operations under the contract carrier permit granted by Ordering Paragraph No. 7 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

9. The authority granted in Ordering Paragraph No. 7 is conditioned on Agape Care Community, LLC, meeting the conditions contained in this Decision and is not effective until Agape Care Community, LLC, meets the stated conditions.

10. Agape Care Community, LLC, shall not begin operation under the contract carrier permit granted by this Decision until it has satisfied all of the following conditions:

(a) Agape Care Community, LLC, shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period and the entire ten-day notice period must expire prior to the proposed effective date. Agape Care Community, LLC, shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(b) Agape Care Community, LLC, shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(c) Agape Care Community, LLC, shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(d) For each vehicle to be operated under the contract carrier permit granted by this Decision, Agape Care Community, LLC, shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Agape Care Community, LLC, shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(e) Agape Care Community, LLC, has received from the Commission a written notice that Agape Care Community, LLC, is in compliance with conditions (a) through (d) in this Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

11. If Agape Care Community, LLC, does not comply with the requirements of Ordering Paragraph No. 10, above, within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 6 and No. 7, above, shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Agape Care Community, LLC, additional time for compliance.

12. The right of Agape Care Community, LLC, to operate pursuant to the contract carrier permit granted by this Decision shall depend on Agape Care Community, LLC's compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

13. The evidentiary hearing in this Proceeding scheduled for February 13 and 14, 2014 is vacated.

14. The procedural schedule established by Decision No. R13-1592-I is vacated.

15. Response time to the Motion for Approval of Restrictive Amendments filed on January 10, 2014 is waived.

16. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

17. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

18. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director