

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1035CP

IN THE MATTER OF THE APPLICATION FOR ALLRIDES COLORADO LLC'S
APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO OPERATE AS A COMMON CARRIER OF PASSENGERS BY MOTOR VEHICLE
FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING APPLICATION WITHOUT PREJUDICE**

Mailed Date: January 29, 2014

I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. On September 30, 2013, Allrides Colorado LLC (Applicant) filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application).

2. The Commission gave public notice of the Application on October 7, 2014.

3. On November 6, 2013, Colorado Jitney LLC (Jitney) timely intervened of right.

That same day, Colorado Cab Company LLC, doing business as Denver Yellow Cab, Boulder Yellow Cab, Boulder SuperShuttle, Boulder Express Shuttle, Boulder Airporter, Boulder Airport Shuttle and Peak Taxi (Colorado Cab), timely intervened of right.

4. During the Commission's weekly meeting held November 13, 2013, the Commission deemed the application complete and referred the matter to an administrative law judge (ALJ) for disposition.

5. In anticipation of the hearing in this matter, the ALJ held a telephone prehearing conference on December 5, 2013. Decision No. R13-1437-I.

6. At the date, time, and location designated, the ALJ convened the prehearing conference. Applicant and Jitney appeared by telephone. At the prehearing conference, Applicant and Jitney agreed to, and the ALJ approved a hearing date and procedural schedule, as set forth in Decision No. R13-1512-I. The matter was scheduled for an evidentiary hearing on the Application for January 28 and 29, 2014.

7. Colorado Cab failed to appear at the prehearing conference. On December 6, 2013, the ALJ issued an order to Colorado Cab to show cause why its intervention should not be stricken for its failure to appear at the prehearing conference. Decision No. R13-1506-I. That same day, Colorado Cab filed a “Response to the Order to Show Cause” (Response). The Response states that counsel incorrectly calendared the prehearing conference, due to an “internal firm docketing error.” The Response indicates that counsel has taken precautions to ensure that similar errors do not happen in the future. The ALJ finds that Colorado Cab has shown cause for its failure to appear at the prehearing conference; the intervention will not be stricken for failing to appear.

8. Based on statements made during the prehearing conference, the ALJ ordered that Applicant may be represented by a non-attorney, Mr. David Soya, and that Jitney may be represented by a non-attorney, Mr. Brad Doran. Decision No. R13-1510-I.

9. Applicant timely filed an exhibit list and exhibits as required by Decision No. R13-1512-I. Applicant did not file a witness list.

10. Jitney and Colorado Cab timely filed exhibits and witness lists and exhibits as required by Decision No. R13-1512-I.

11. On January 22, 2014, Colorado Cab filed a “Stipulation, Motion for Approval of Restrictive Amendments and Conditional Withdrawal of Intervention” (Stipulation). The Stipulation is executed by Colorado Cab and Applicant. The Stipulation proposes to restrictively amend the Application to include the following restriction: “against providing service to or from hotels, motels, or airports.” The Stipulation proposes that Colorado Cab withdraws its intervention upon approval and acceptance of the restrictive amendment. The Stipulation does not indicate whether Jitney opposes the relief sought.

12. On January 28, 2014, all parties appeared for the evidentiary hearing on the Application, as scheduled by Decision No. R13-1512-I. During the course of the hearing, Applicant identified and offered Hearing Exhibits 1 and 2. Neither exhibit was admitted into evidence.

13. At the hearing, Jitney indicated that it does not oppose the Stipulation executed by Applicant and Colorado Cab. Upon finding the amendment proposed by the Stipulation to be restrictive, administratively enforceable, clear, and understandable, the ALJ accepted the amendment at the time of the hearing, and Colorado Cab’s withdrawal of its intervention. Since Colorado Cab’s intervention was deemed withdrawn, Colorado Cab is no longer a party to the proceeding. Colorado Cab did not participate in the evidentiary portion of the January 28, 2014 hearing.

14. As the proponent of the order granting Applicant a certificate, Applicant carried the burden of proof at the evidentiary hearing on the Application. Rule 1500, Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. During the hearing, Applicant attempted to call its representative, Mr. David Soya, to testify. Jitney objected, arguing that Applicant

should be barred from calling Mr. Soya to testify because Applicant failed to file a witness list. Mr. Soya admitted that Applicant failed to file a witness list.

15. Decision No. R13-1512-I, ¶ 9 states: “[t]he parties are advised that they **must file and serve a** witness list even if the party intends to call only one witness to testify on its behalf.” (bolding in original) The Decision also warns, “**All parties are advised that failure to make disclosures as required by this Decision may result in an order dismissing the application without prejudice, an order preventing an intervener from participating in this proceeding, or an order preventing the party who has violated this order from presenting evidence at the hearing.**” *Id.* at ¶ 12 (bolding in original).

16. Applicant did not show good cause for its failure to file a witness list. The ALJ granted Jitney’s request to prohibit Mr. Soya from testifying. Without any witness testimony to authenticate exhibits, Applicant offered two exhibits for admission. Jitney objected on multiple grounds. The ALJ sustained the objections. Applicant rested its case without presenting evidence. Jitney opted not to present any evidence given that Applicant presented no evidence. Finding that Applicant failed to make any evidentiary showing in support of its Application, thereby failing to meet its burden of proof, the ALJ dismissed the Application without prejudice.

17. The ALJ finds that Applicant was specifically warned that it could be prohibited from presenting evidence if it failed to make disclosures as required by Decision No. R13-1512-I.¹ More importantly, Applicant was also warned that its Application could be dismissed if it failed to make disclosures as required. Applicant’s failure to comply with Decision No. R13-1512-I was done with knowledge of the potential repercussions.

¹ The ALJ did not exclude Applicant’s exhibits for failing to disclose its witnesses. The ALJ sustained Jitney’s objections to the admission of the exhibits on evidentiary grounds. The ALJ notes that Applicant disclosed its exhibits as required.

18. Dismissal without prejudice preserves Applicant's ability to re-apply.

19. In accordance with § 40-6-109, C.R.S., the ALJ now transmits the record in this proceeding along with this written recommended decision. The ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) filed by Allrides Colorado LLC is amended as set forth in ¶ 12 above.

2. The intervention filed by Colorado Cab Company LLC, doing business as Denver Yellow Cab, Boulder Yellow Cab, Boulder SuperShuttle, Boulder Express Shuttle, Boulder Airporter, Boulder Airport Shuttle and Peak Taxi is withdrawn.

3. The Application is dismissed without prejudice.

4. Proceeding No. 13A-1035CP is closed.

5. 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.

6. 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 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 basic findings 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.

7. If exceptions to this 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director