

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1390BP

IN THE MATTER OF THE APPLICATION OF LYNDSANE CORP DOING BUSINESS AS MESA VIEW ELDERLY DAY SERVICES FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING APPLICATION UNDER
MODIFIED PROCEDURE**

Mailed Date: March 3, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 30, 2013, Lyndsane Corp., doing business as Mesa View Elderly Day Services (Applicant) filed an Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application). Applicant supplemented the Application by separate filings made on January 13 and 14, 2014.

2. On January 13, 2014, the Public Utilities Commission (Commission) gave public notice of the Application as follows:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers

between all points in the Counties of Delta, Mesa, and Montrose, State of Colorado.

RESTRICTIONS: This application 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 80203.

3. On February 11, 2014, Tazco, Inc., doing business as Sunshine Taxi (Sunshine) timely intervened of right.

4. During its weekly meeting held February 19, 2014, the Commission deemed the Application complete and referred this matter to an administrative law judge (ALJ) for disposition.

5. On February 21, 2014, Sunshine filed a “Stipulated Motion of Lyndsane Corp. d/b/a Mesa View Elderly Day Services, and Tazco, Inc. d/b/a Sunshine Taxi to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor’s Intervention and for Waiver of the Response Time” (Stipulation). The Stipulation is executed by Sunshine and Applicant. The Stipulation proposes to restrictively amend the Application to eliminate service in Mesa and Montrose Counties. In other words, if accepted, the authority would limit the service territory to Delta County, Colorado. No other changes are requested.

6. The Stipulation also states that if the restrictive amendment is accepted, Sunshine’s intervention will be withdrawn.

7. Because the Stipulation is executed by all parties, it is unopposed. The ALJ finds good cause to waive the response time to the Stipulation pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and will do so.

8. To be acceptable, the proposed 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 operation of a contract carrier is within the scope of its Commission-granted authority.

9. The ALJ finds and concludes that the proposed amendments pursuant to Applicant's request in the Stipulation are restrictive in nature, clear, understandable, and administratively enforceable. The proposed restrictive amendment will be accepted.

10. Accepting the amendments to the Application has several impacts. First, the authority sought (as stated in the notice and the Application) will be amended to conform to the restrictive amendments. Second, Sunshine's intervention will be withdrawn. Third, the amended Application is unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Application may be considered under a modified procedure, without a formal hearing on the merits of the Application.

11. The Application requests authority to operate as a contract carrier by motor vehicle for hire. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those Rules. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. In addition, the Application and supporting documents establish that the service proposed is specialized and tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation indicates a need for the proposed service. The ALJ finds that the Application with the proposed

restrictive amendments is reasonable, and in the public interest. For the foregoing reasons, the permit should be granted.

12. 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 response time to the “Stipulated Motion of Lyndsane Corp. d/b/a Mesa View Elderly Day Services, and Tazco, Inc. d/b/a Sunshine Taxi to Restrictively Amend the Application, for Conditional Withdrawal of Intervenor’s Intervention and for Waiver of the Response Time” (Stipulation) is waived.

2. The relief sought by the Stipulation is granted.

3. The intervention filed by Tazco, Inc., doing business as Sunshine Taxi (Sunshine) is withdrawn.

4. Sunshine is dismissed as a party to this proceeding.

5. The Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire filed by Lyndsane Corp., doing business as Mesa View Elderly Day Services (Applicant) is amended as requested by the Stipulation, as set forth in ¶5 above.

6. Applicant is granted a permit to operate as a contract carrier by motor vehicle for hire, as follows:

For the transportation of

passengers

between all points in the County of Delta, State of Colorado.

RESTRICTIONS. This permit 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 80203.

7. Applicant shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the permit granted shall be strictly contract carrier operations.

8. Applicant shall not commence the operations under the permit until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and

(d) paying the applicable issuance fee (\$5).

9. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of operations under the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

10. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph 8.

11. 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.

12. As provided by § 40-6-106, 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.

13. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director