

Decision No. R14-0267-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1179BP

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO CONTINUE
EVIDENTIARY HEARING; AND ACKNOWLEDGING
WAIVER OF 210-DAY TIME PERIOD**

Mailed Date: March 10, 2014

I. STATEMENT

1. On November 1 2013, Broadway Express LLC (Applicant), filed an Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this proceeding.

2. On November 4, 2013, the Commission issued its Notice of Application Filed (Notice) in this proceeding by publishing a summary of the same in its Notice 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 Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to providing non-emergency medical transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203; and
- (B) to providing transportation services to recipients of Medicaid.

3. On November 14, 2013, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi (Metro Taxi) filed their Entry of Appearance and Notice of Intervention of Right through counsel. That filing attached Commission Authority No. 1481 held by Metro Taxi and a preliminary list of witnesses and exhibits.

4. On December 4, 2013, Colorado Cab Company LLC, doing business as, Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Shamrock Taxi of Fort Collins, Inc. (Shamrock); and Colorado Springs Transportation LLC (Springs), timely intervened of right through counsel. That filing attached Commission Authority No. 2378 and No. 150 held by Colorado Cab, Commission Authority No. 13043 held by Shamrock, and Commission Authority No. 109 held by Springs.

5. On December 11, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. By Decision No. R13-1551-I, issued December 17, 2013, a prehearing conference was scheduled for January 14, 2014. Due to a mailing error, the Applicant did not appear at the prehearing conference.

7. Through informal communications the parties agreed upon a procedural schedule that included deadlines for the filing of witness lists, exhibit lists, and exhibits and scheduled an evidentiary hearing for March 10, 2014. These agreements were documented in Decision No. R14-0096-I, issued January 23, 2014.

8. On March 10, 2014, prior to the evidentiary hearing, Intervenors moved to dismiss the Application due to the Applicant's failure to file witness lists, exhibit lists, and exhibits. The Applicant requested a continuance to meet the requirements and agreed to waive

its right to have the Commission issue its final decision within 210 days from the date the application was deemed complete.

9. Due to the mailing error and the failure to conduct a prehearing conference, good cause is found to grant the motion for a continuance and adopt a new procedural schedule.

10. The following procedural schedule shall be adopted:

Applicant’s Witness and Exhibit List & Exhibits due date April 4, 2014
Intervenors Witness and Exhibit List & Exhibits due date..... April 18, 2014
Evidentiary Hearing on Application May 6, 2014

11. Witness lists shall include a description of the witnesses’ anticipated testimony and the witnesses’ last known address and telephone number.

12. If a party intends to introduce any documents in support of their case, they **must file and serve** an exhibit list which references that document and they must serve the exhibit on the other party. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

13. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party to the proceeding. Service may be accomplished by United States Mail, or through the Commission’s E-filing system, if the party is registered with the E-filing system.

14. Except as stated below, all parties must demonstrate through a certificate of service that they have served the filed document on the other party. Documents served through the Commission’s E-filing system do not require a certificate of service. A certificate of service is a statement indicating how and when a document was served on the other party (*e.g.*, the filing

was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).

15. Likewise, reference to filing a document means that the party shall provide the document to the Commission.

16. All exhibits shall be identified by sequential numbers (e.g., Exhibit 1, Exhibit 2, and Exhibit 3). The exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties may utilize the Commission's exhibit stamp to include this information on the exhibits; the parties are advised that they must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

17. At the hearing, the parties shall bring an original and two copies of each exhibit they intend to introduce at the hearing. The filing of an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding.

18. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

19. **The parties are on notice** that no witness, other than the representative of the Applicant, shall be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served as required herein. **The parties are on notice** that failure to provide a description of the witnesses' testimony may also result in a decision prohibiting such witness from testifying.

20. **The parties are on notice** that no exhibit will be received in evidence, except in rebuttal, unless filed and served as required herein.

21. **All parties are advised** that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* 723-1, Part 1. The ALJ expects the parties to comply with the Rules of Practice and Procedure. The rules are available on the Commission's website (www.dora.colorado.gov/puc) and in hard copy from the Commission.

22. **Non-attorneys will be held to the same standards as attorneys.**

23. Any party wishing to make an oral closing statement may do so immediately following the close of the evidence (*i.e.*, after presentation of evidence near the end of the hearing).

24. Applicant is advised and on notice that failure to make the required filings stated in this Decision shall result in the Application being dismissed.

II. **ORDER**

A. **It Is Ordered That:**

1. An evidentiary hearing is scheduled in this matter as follows:

DATE: May 6, 2014

TIME: 9:00 a.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. Broadway Express LLC's waiver of the 210-day time period for issuance of a Commission Decision is acknowledged

3. The Parties shall be held to the advisements in this Decision.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director