

Decision No. R14-0478

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ACCEPTING AMENDMENTS; VACATING HEARING;
DISMISSING INTERVENTIONS; GRANTING
APPLICATION AMENDED UNDER MODIFIED
PROCEDURE; AND CLOSING PROCEEDING**

Mailed Date: May 6, 2014

I. STATEMENT

1. On November 1, 2013, Broadway Express LLC (Broadway Express or 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:

- (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. This 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 (Colorado Cab), doing business as Denver Yellow Cab and Boulder Yellow Cab; Shamrock Taxi of Fort Collins, Inc. (Shamrock); and Colorado Springs Transportation LLC (Springs), timely intervened of right through counsel. This 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, 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 was found to grant the motion for a continuance and adopt a new procedural schedule. These rulings were documented in Decision No. R14-0267-I, issued March 10, 2014.

10. On May 6, 2014, the parties filed their Stipulation, Motion for Approval of Restrictive Amendments, and Conditional Withdrawal of Intervention based upon the adoption of the proposed amendment to the Application.

11. Under the amendment, the restrictively amended authority will read:

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, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1750 Grant Street, Denver, Colorado;
- (C) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25;
- (D) against providing transportation service to and from hotels, motels, and airports; and
- (E) against the use of more than two vehicles at any one time.

12. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that

authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the 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 an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority. The proposed amendment to the Application meets these standards.

13. The ALJ finds and concludes that the proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable.

14. The restriction to the authority sought by Applicant (*i.e.*, the amendment to the Application) will be accepted.

15. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment. Second, the intervention of the Intervenors will be withdrawn.

16. Withdrawal of the interventions and dismissal of the Intervenors leaves the Application, as amended, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the uncontested application may be processed under the modified procedure, without a formal hearing.

17. 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 AND CONCLUSIONS

18. Applicant is a Colorado limited liability company in good standing.

19. Applicant requests authority to operate as a contract carrier. By the Amended Application, Broadway Express seeks authority to operate as a contract carrier by motor vehicle for hire:

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, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1750 Grant Street, Denver, Colorado;
- (C) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25;
- (D) against providing transportation service to and from hotels, motels, and airports; and
- (E) against the use of more than two vehicles at any one time.

20. The verified 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 verified 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 verified Application establishes that the service proposed is specialized and tailored to meet the customer's distinct needs. Finally, review of the verified Application indicates a need for the proposed service. Therefore, because the Applicant is fit, financially and otherwise, to perform

the proposed service and because the other prerequisites have been met, the permit should be granted.

21. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion for Restrictive Amendments is granted.
2. The evidentiary hearing scheduled for May 6, 2014 is vacated.
3. The intervention filed by, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi is withdrawn and it is dismissed from the proceeding.
4. The interventions filed by, Colorado Cab Company LLC, doing business as, Denver Yellow Cab and Boulder Yellow Cab; Shamrock Taxi of Fort Collins, Inc.; and Colorado Springs Transportation, LLC are withdrawn and they are dismissed from the proceeding
5. The verified Application to Operate as a Contract Carrier of Passengers by Motor Vehicle filed by Broadway Express LLC, is amended consistent with the discussion above.
6. The Application to Operate as a Contract Carrier of Passengers by Motor Vehicle filed by, Broadway Express LLC, as that application has been amended, is granted.
7. Broadway Express LLC, is granted authority to operate as a contract carrier by motor vehicle for hire 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, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS:

- (A) To the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1750 Grant Street, Denver, Colorado;
- (C) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25;
- (D) against providing transportation service to and from hotels, motels, and airports; and
- (E) against the use of more than two vehicles at any one time.

8. Broadway Express LLC, shall operate in accordance with all applicable Colorado law and Commission rules. All operations under the permit granted shall be strictly contract carrier operations.

9. Broadway Express LLC, shall not commence operation until it has complied with the requirements of Colorado law 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. [Broadway Express LLC 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).

10. If Broadway Express LLC 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 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.

11. The Commission will notify Broadway Express LLC in writing when the Commission's records demonstrate compliance with ¶ 9.

12. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Decision.

13. Proceeding No. 13A-1179BP is closed.

14. 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.

15. 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.

16. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director