

Decision No. R14-0559

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0089CP

IN THE MATTER OF THE APPLICATION OF ERICH ROESLER FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DISMISSING APPLICATION WITHOUT PREJUDICE,
VACATING HEARING, AND CLOSING PROCEEDING**

Mailed Date: May 27, 2014

I. STATEMENT

1. On January 24 2014, Erich Roesler (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. That filing commenced this proceeding.

2. On January 27, 2014, 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 common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service

between all points in the Counties of Denver and Boulder, State of Colorado.

3. On February 26, 2014, 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 February 26, 2014, SuperShuttle International Denver, Inc. (SuperShuttle) and Colorado Cab Company LLC, doing business as, Denver Yellow Cab, Boulder Yellow Cab, and Boulder SurperShuttle (Colorado Cab) timely intervened of right through counsel. This filing attached Commission Authority No. 55686 held by SuperShuttle and Commission Authority No. 2378, No. 150, and No. 191 held by Colorado Cab.

5. On March 5, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge.

6. By Decision No. R14-0287-I, issued March 14, 2014, a prehearing conference was scheduled for April 1, 2014.

7. At the prehearing conference the parties agreed upon the following procedural schedule:

Applicant’s Witness and Exhibit List & Exhibits due date April 25, 2014
Intervenors Witness and Exhibit List & Exhibits due date..... May 9, 2014
Evidentiary Hearing on Application May 29, 2014

8. By Decision No. R14-0347-I, issued April 1, 2014, the procedural schedule agreed to by the parties was adopted.

9. On May 9, 2014, Intervenors SuperShuttle and Colorado Cab filed their witness list and exhibits and also a Motion *in Limine* and Motion to Dismiss (Motion). As grounds they state that the Applicant has failed to file or serve exhibits, an exhibit list, or a witness list as of the date of the Motion, thereby prejudicing the Intervenors.

10. A review of the Commission’s files confirms that Applicant has failed to file exhibits, exhibits list, or a witness list in this matter.

11. Applicant has also failed to file any response to the Motion. Applicant's response to the Motion was due on May 23, 2014. In addition, the Applicant did not file a request for an extension of time to respond to the Motion.

12. Applicant's failure to respond to the Motion shall be deemed a confession of the Motion to Dismiss. *Rule 1400 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1.*

13. Based upon the forgoing circumstances, the above captioned application shall be dismissed without prejudice.

14. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed by SuperShuttle International Denver, Inc. and Colorado Cab Company LLC, doing business as, Denver Yellow Cab, Boulder Yellow Cab, and Boulder SurperShuttle in the above captioned proceeding on May 9, 2014, is granted.

2. The hearing scheduled to commence in this matter on May 29, 2014, is vacated.

3. The above captioned application is dismissed without prejudice.

4. Proceeding No. 14A-0089CP 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. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director