

Decision No. R14-0940-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0598BP

IN THE MATTER OF THE APPLICATION OF ELITE, INC., FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING APPLICANT TO MAKE FILING,
VACATING PROCEDURAL SCHEDULE,
NOTIFYING PARTIES THAT APPLICATION
HAS BEEN DEEMED COMPLETE,
AND CONTAINING ADVISEMENTS**

Mailed Date: August 5, 2014

I. STATEMENT

1. On June 3, 2014, Elite, Inc. (Elite or Applicant), filed an Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. Attached to the filing are several documents. That filing commenced this Proceeding.

2. On June 20, 2014, Applicant filed an amendment and a confidential supplement to the June 3, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is the June 3, 2014 filing as amended and supplemented.

3. On June 16, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On June 20, 2014, MKBS, LLC, doing business as Metro Taxi (Metro), timely filed (in one document) its Entry of Appearance and Intervention by Right in Opposition to

Permanent Authority or Alternative Motion to Permissively Intervene.¹ By that filing, Metro is an intervenor by right and, thus, a party in this Proceeding. Metro opposes the Application.

5. On July 16, 2014, Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for a Hearing. By that filing, Colorado Cab is an intervenor by right and, thus, a party in this Proceeding. Colorado Cab opposes the Application.

6. On July 16, 2014, Colorado Springs Transportation, LLC (CST), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for a Hearing. By that filing, CST is an intervenor by right and, thus, a party in this Proceeding. CST opposes the Application.

7. The intervention period has expired. No other person has filed an intervention of right or a motion for leave to intervene. In addition, as of the date of this Interim Decision, there is no pending motion for leave to intervene out-of-time.

8. Colorado Cab, CST, and Metro, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Each party is represented by legal counsel.

9. On July 23, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Application Deemed Complete and Time for Commission Decision.

10. On July 23, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Elite filed neither its supporting

¹ On the same date, Metro filed (in two documents) its Preliminary List of Witnesses and its Preliminary List of Exhibits, to which the referenced exhibits were attached.

testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

11. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission² or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application on or before **February 18, 2015**.

B. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

12. Intervenors oppose the Application and request an evidentiary hearing in this matter. Thus, it is necessary to establish a procedural schedule and to schedule the evidentiary hearing. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order Applicant to consult with Intervenors and to make, on or before **August 15, 2014**, a filing that: (a) contains a procedural schedule, including hearing date, that is satisfactory to all Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenors to cooperate with Applicant with respect to this filing.

13. The procedural schedule filing must contain at least the following: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, only as

² Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

necessary to correct errors in the previous filings, a corrected list of witnesses and complete copies of corrected exhibits; (d) the date by which each party will file prehearing motions, including dispositive motions;³ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁴ (f) *three* proposed evidentiary hearing dates;⁵ and (g) a statement as to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

14. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue not later than February 18, 2015. To allow time for issuance of a recommended decision, filing of exceptions, filing of response to exceptions, and issuance of a Commission decision on exceptions, and taking into consideration the holiday season, the **hearing in this matter must be concluded not later than November 14, 2014.**

15. Unless modified, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405⁶ governs discovery. The August 15, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the ALJ to order with respect to discovery; and (b) a statement of the Parties' reasons for requesting the modifications or special provisions.

16. Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the August 15, 2014 filing must contain:

³ This date must be not later than ten calendar days before the first day of hearing.

⁴ This date must be not later than three business days before the first day of hearing.

⁵ If possible, the ALJ will choose one of the proposed hearing dates.

If the Parties are of the opinion that more than one hearing day will be necessary, Applicant must propose three "sets" of hearing dates. Within each proposed "set," the hearing days should be consecutive within the same week (*i.e.*, no intervening weekend and no intervening State holiday).

⁶ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

(a) any special provisions that the Parties wish the ALJ to order with respect to the treatment of information claimed to be confidential; and (b) a statement of the Parties' reasons for requesting the special provisions.

17. When the August 15, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

18. **The Parties are advised, and are on notice, that** if Applicant fails to make the August 15, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

19. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information will be provided on the list of witnesses to be filed in accordance with the procedural schedule. No person will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

20. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document will be admitted as an exhibit (except when offered in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

C. Additional Advisements.

21. **The Parties are advised, and are on notice, that** the Parties must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at dora.colorado.gov/puc.

22. **The Parties are advised, and are on notice, that** filing with the Commission occurs on the date that the Commission *receives* a document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the filing is *not* timely.

23. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER**A. It Is Ordered That:**

1. Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab, is a party in this Proceeding.

2. Colorado Springs Transportation, LLC, is a party in this Proceeding.

3. MKBS, LLC, doing business as Metro Taxi, is a party in this Proceeding.

4. The procedural schedule established in the Notice of Application Filed dated June 16, 2014 is vacated.

5. Not later than August 15, 2014, Elite, Inc., shall make a filing that complies with the requirements of ¶¶ 12-16, above.

6. Intervenors shall cooperate with Elite, Inc., in the preparation of the filing required by Ordering Paragraph No. 5.

7. Consistent with the discussion above, if Elite, Inc., fails to make the filing required by Ordering Paragraph No. 5, the Administrative Law Judge, without input from the Parties, will schedule the evidentiary hearing and will establish the procedural schedule.

8. The Parties are held to the advisements in this Interim Decision.

9. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director