

Decision No. R14-0946-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0337CP

IN THE MATTER OF THE APPLICATION OF COY CLUB, LLC DOING BUSINESS AS DENVER BAR CART FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ACCEPTING AMENDMENT, SCHEDULING
HEARING, ESTABLISHING DEADLINES,
AND ACKNOWLEDGING WAIVER
OF STATUTORY DEADLINE**

Mailed Date: August 5, 2014

I. STATEMENT, FINDINGS, DISCUSSION AND CONCLUSIONS

1. On April 14, 2014, CoY Club, LLC, doing business as Denver Bar Cart (Applicant) filed the above-captioned application. That same day, Applicant's counsel entered his appearance. Applicant amended the Application by a filing made on April 21, 2014.

2. The Commission provided public notice of the Application on April 21, 2014.

3. MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, Northwest Suburban Taxi (Metro), Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), Shamrock Taxi of Fort Collins Inc. (Shamrock), Colorado Springs Transportation LLC (Colorado Springs Transportation), and Colorado Cruisers Inc., doing business as Colorado Crewz-In (Colorado Cruisers) (collectively, interveners) timely intervened of right.

4. During the Commission's weekly meeting held May 28, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

5. After holding a prehearing conference wherein the parties agreed to a procedural schedule and hearing dates, the ALJ scheduled an evidentiary hearing for August 4, 5, 6, and 7, 2014. Decision No. R14-0661-I.

6. At the date, time and location designated, the evidentiary hearing was convened. All parties appeared.

7. During the hearing, Applicant requested that the Application be amended to remove language in the Application requesting authority to provide service within and between Fort Collins, Colorado Springs and Boulder, Colorado. No party objected to this requested amendment. Finding the amendment to be restrictive, clear and understandable and administratively enforceable, the ALJ accepted the amendment. This Decision memorializes that ruling. As amended, the Application now seeks the following authority:

To operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand charter service

between all points within the City of Denver, beginning at the intersection of Interstate 70 and Colorado Boulevard, thence proceeding south on Colorado Boulevard to its intersection with Buchtel Boulevard, thence proceeding northwest on Buchtel Boulevard to its intersection with Mississippi Avenue, thence proceeding west on Mississippi Avenue to its intersection with Sheridan Boulevard, thence proceeding north on Sheridan Boulevard to its intersection with Interstate 70, thence proceeding east on Interstate 70 to the point of the beginning.

RESTRICTION:

The Application is restricted to providing transportation for members of Denver Bar Cart Social Club.

8. After the amendments to the Application were accepted, Colorado Cab, Shamrock, and Colorado Springs Transportation moved to dismiss the Application, arguing that, pursuant to Rules 6201(d) and (f), of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, the authority sought is neither common carriage authority, nor does it meet the definition of charter transportation service. Metro and Colorado Cruisers joined the motion. Applicant objected. The ALJ denied the motion without prejudice, finding that the motion to dismiss raised questions of material fact that should be determined after the presentation of evidence. The ALJ also noted that the Application (as amended) seeks authority that appears to incorporate elements of both common carriage and contract carriage, and that there is no hybrid authority between the two that the Commission may grant.

9. Applicant requested permission to amend the Application again to seek contract carrier authority, and to move forward with the evidentiary hearing with such an amendment. Interveners objected, arguing that additional time is needed to conduct discovery and prepare for a hearing because the proposed amendment would change the applicable legal standards. The ALJ agreed. Applicant agreed to waive the 210-day statutory deadline set by § 40-6-109.5(2), C.R.S., for a Commission decision to issue, in order to allow for the Application to be amended again, and so the hearing may be continued to a later date. This Decision acknowledges that waiver. The ALJ agreed to allow Applicant leave to amend its Application again. Applicant will be ordered to submit its proposed amendment to the authority in writing.¹

¹Applicant is not required to amend its Application. The ALJ takes no position as to whether an amendment would be appropriate, or would address the legal issues Interveners raised in their verbal motion to dismiss.

10. Once Applicant submits its proposed amendment to the authority, the ALJ will review the proposed amendment, determine whether it should be accepted, and whether a new public notice is appropriate. The ALJ will issue a separate decision on those issues.²

11. The parties agreed to new hearing dates and the ALJ set a new procedural schedule, which is provided below.

12. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

13. Witness lists shall include a description of the witnesses' testimony and the witnesses' last known address and telephone number. Witnesses are those persons who will testify under oath on behalf of a party.

14. 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 parties to the proceeding. Service may be accomplished by United States Mail, or through the Commission's E-filing system, if the party being served is registered with the E-filing system.

15. As referenced in this Decision, filing a document means that the party must provide the document to the Commission and must include the proceeding number with that document.

16. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, the Rules Regulating Transportation by Motor Vehicle found at 4 CCR 723-6, and applicable case law and statutory authority. The referenced Commission rules are available on the Commission's website at

² The ALJ put Applicant on notice that if a new public notice is required, it is possible that additional interveners may intervene in this proceeding.

www.dora.colorado.gov/puc, and in hard copy from the Commission. This proceeding is also governed by the Colorado Rules of Evidence, which can be found at the following link, under the “Colorado Court Rules” tab: <http://www.lexisnexis.com/hottopics/colorado/>.

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

18. All parties are advised that failure to make disclosures as required by this Decision may result in a decision dismissing the Application without prejudice, a decision preventing an intervener from participating in this proceeding, or a decision preventing the party who violates this Decision from presenting witnesses and evidence at the evidentiary hearing.

II. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the discussion above, the verbal motion to dismiss made at the August 4, 2014 hearing is denied.

2. The remaining portion of the hearing scheduled for August 4, 2014 is vacated. The hearing scheduled for August 5, 6 and 7, 2014 is vacated.

3. The Application of CoY Club, LLC, doing business as Denver Bar Cart (Applicant) for a Permit to Operate as a Common Carrier by Motor Vehicle for Hire (Application) is amended as set forth in ¶ 7 above.

4. A hearing on the merits of the Application is scheduled as follows:

DATES: December 1, 2, and 3, 2014

TIMES: 9:15 a.m. MST each day, except on December 3, 2014, the hearing is to commence at 10:00 a.m. MST

PLACE: Colorado Public Utilities Commission
Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

5. At the above dates, times, and place you will be given the opportunity to be heard if you so desire.

6. Applicant's waiver pursuant to § 40-6-109.5(3), C.R.S., of the 210-day statutory deadline for a final Commission decision to issue in this matter is hereby acknowledged.

7. On or by 5:00 p.m. MST on August 18, 2014, Applicant shall file its proposed amendment to the Application. The filing shall include the exact language of the authority that Applicant seeks in this proceeding. If Applicant fails to file its proposed amendment by that date, the ALJ will deem Applicant's request to amend (made during the August 4, 2014 hearing) as withdrawn.

8. On or by 5:00 p.m. MST on October 27, 2014, Applicant shall file and serve exhibit and witness lists and exhibits. Applicant is only required to do so if it makes changes or additions to the exhibit and witness disclosures already made.

9. On or by 5:00 p.m. MST on November 10, 2014, MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, Northwest Suburban Taxi, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Shamrock Taxi of Fort Collins Inc., Colorado Springs Transportation LLC, and Colorado Cruisers Inc., doing business as Colorado Crewz-In (collectively, Interveners) shall file and serve exhibit and witness lists and exhibits. Interveners are only required to do so if they make changes or additions to the exhibit and witness disclosures already made.

10. Motions in limine or dispositive motions shall be filed by 5:00 p.m. MST on November 14, 2014. Responses to such motions shall be due by 5:00 p.m. on November 21, 2014.

11. Witness lists shall include a description of the witnesses' anticipated testimony, the witnesses' name and job title (if any), and the witnesses' last known address and telephone number.

12. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3). The parties shall work together to coordinate sequential numbering of exhibits (*e.g.*, Applicant may be designated exhibit numbers 1 through 100 and interveners may have the next block series of exhibit numbers according to the order in which they intervened).

13. 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 must have all their exhibits stamped and properly identified prior to the time the hearing is scheduled to begin.

14. At the hearing, the parties shall bring an original and two copies of each pre-marked exhibit they intend to introduce, along with a completed exhibit list in the format set forth in Appendix A to this Decision. In addition, the parties shall ensure that a copy of their pre-marked exhibits are provided to each other for use during the hearing; the parties have discretion to provide these copies prior to the time of the hearing.

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

16. Except as stated above, failure to file and serve witness lists as required by this Decision, except for witnesses called in rebuttal, may result in a decision prohibiting any undisclosed witnesses from testifying.

17. Failure to file and serve exhibits as required by this Decision, except exhibits for rebuttal or impeachment, may result in a decision rejecting the admission of undisclosed exhibits.

18. This Decision is effective immediately.

(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