

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0633BP

IN THE MATTER OF THE APPLICATION OF SYLVER HOME CARE LLC DOING BUSINESS AS HOME HELPERS/DIRECT LINK #58650 FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING INTERVENTION; REQUIRING FILING
FROM APPLICANT REGARDING LEGAL COUNSEL OR
TO SHOW CAUSE WHY LEGAL COUNSEL IS NOT
NECESSARY; VACATING PROCEDURAL SCHEDULE;
AND SETTING PRE-HEARING CONFERENCE**

Mailed Date: August 5, 2014

I. STATEMENT

1. On June 9, 2014, Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 (Applicant) filed an application for a permit to operate as a contract carrier by motor vehicle for hire (Application).

2. On June 16, 2014, the Commission issued notice of the Application 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, Douglas, Larimer, and Weld, State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;

(C) against providing transportation services to or from airports and hotels;
and,

(D) to no more than two (2) vehicles in service at a time.

3. The Commission issued notice of the Application to all interested parties on June 16, 2014. Therefore, parties had until July 16, 2014 to intervene in this proceeding.

4. On July 16, 2014, Colorado Cab Company, LLC, doing business as Denver Yellow Cab (Denver Yellow), Boulder Yellow Cab (Boulder Yellow), Shamrock Taxi of Fort Collins, Inc. (Shamrock), and Colorado Springs Transportation, LLC (CST) (collectively, Colorado Cab), filed an Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application and Request for Hearing. Colorado Cab states that the operating authority sought in the Application overlaps Denver Yellow Certificate of Public Convenience and Necessity (CPCN) PUC No. 2378; Boulder Yellow CPCN PUC No. 150; Shamrock CPCN PUC No. 13043; and CST CPCN PUC No. 109 which authorize each provider to provide taxi service in service areas that overlap the extension of authority sought by Applicant.

5. Colorado Cab argues that the authority sought by Applicant directly conflicts with and overlaps the authorities it owns and actively operates and will put Applicant in direct competition with Colorado Cab which would likely harm Colorado Cab by diverting its passengers to Applicant. Colorado Cab provided copies of each of the operating authorities for Denver Yellow, Boulder Yellow, Shamrock, and CST.

6. On July 23, 2014, the Commission, at its regular weekly meeting, deemed the application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

A. Interventions

7. Commission Rule of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1-1401(a) requires that notice of intervention as of right or a motion to permissively intervene shall be filed within 30 days of the Commission notice of any docketed proceeding. The Commission issued notice of the application on June 16, 2014. Consequently, the deadline to intervene as of right or to petition to permissively intervene in the above-captioned proceeding was July 16, 2014.

8. Rule 1401(b) requires that a notice of intervention as of right, “shall state the basis for the claimed legally protected right that may be affected by the proceeding.” In addition, Rule 1401(e)(I) requires that a notice of intervention as of right in a transportation carrier application proceeding shall:

include a copy of the common carrier’s letter of authority, must show that the common carrier’s authority is in good standing, must identify the specific parts of that authority which are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

9. Pursuant to Rule 1401(c), a motion to permissively intervene shall:

state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding.

Rule 1401(c) further requires that:

the motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented. ... Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

10. As relevant to the authority, Colorado Cab demonstrates that the authority sought duplicates the rights or overlaps the geographic authority of each of its operating entities’

operating authorities. As a result, it is found that Colorado Cab has a legally protected right that may be affected by a grant of the Application. The intervention was timely filed. Colorado Cab has shown good cause to find that it is an intervenor as of right in this proceeding.

11. The intervention period in this matter is closed. The sole intervenor in this proceeding is Colorado Cab.

B. Procedural Matters

12. Commission Rule 4 CCR 723-1-1405(k)(I) provides that “[i]f an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period.” The notice period in this matter concluded on July 16, 2014. Therefore, Applicant had until July 28, 2014¹ to file and serve its list of witnesses and copies of its exhibits.

13. According to Rule 1405(k)(II) if the applicant has not filed its testimony or a detailed summary of testimony and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits no later than 20 days after the notice period has expired – in this instance, by August 5, 2014.

14. Colorado Cab has not as of the date of this Decision filed its lists.

¹ Commission Rule 4 CCR 723-1-1203(a) provides in relevant part that when the day upon which a document must be filed falls on a Saturday, Sunday, legal holiday, or any other day when the Commission’s office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.

15. The procedural schedule under Rule 1405(e) will be vacated. As part of the discussion during the pre-hearing conference as discussed in more detail below, dates for filing of witness lists and copies of exhibits will be determined.

C. Legal Representation

16. As of the date of this Decision, Applicant has not had an attorney enter an appearance on its behalf. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent his or her own interests, or the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

17. This is an adjudicative proceeding before the Commission. Applicant is a Colorado limited liability corporation, is a party in this matter, and is not represented by an attorney.

18. If Applicant wishes to be represented by an individual who is not an attorney, then it must meet the legal requirements established in Rule 4 CCR 723-1-1201(b)(II). This means that: (a) Applicant must be a closely-held entity; (b) the amount in controversy must not exceed \$15,000; and (c) Applicant must provide certain information to the Commission.

19. Applicant has the burden to prove that it is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant must provide information so that the Commission can determine whether it may proceed without an attorney. To show that it may proceed without an attorney, Applicant must do the following: **First**, it must establish that it is a closely-held entity, which means that it has no more than three owners. *See*, § 13-1-127(1)(a), C.R.S. **Second**, it must demonstrate that it meets the requirements of

§ 13-1-127(2), C.R.S. That statute provides that an officer² may represent a closely held entity before the Commission only if **both** of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; **and** (b) the officer provides the Commission with evidence, satisfactory to the Commission, of the authority of the officer to represent the closely held entity.³

20. Applicant must **either** obtain legal counsel **or** show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

21. If Applicant elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **close of business on August 20, 2014**.

22. If Applicant elects to show cause, then, on or before **close of business on, August 20, 2014**, it must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by legal counsel in this matter. To show cause, Applicant must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy does not exceed \$15,000, including a statement explaining the basis for that assertion; (c) identifies the individual whom Applicant wishes to have as its representative in this proceeding; (d) establishes that the identified individual is an officer of Applicant; and (e) if the identified individual is not an officer of Applicant, it must obtain a resolution from Applicant's Board of Directors that authorizes the individual to represent Applicant in this matter.

² Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

³ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

23. Applicant is advised, and is on notice, that if it fails to either show cause or to have legal counsel file an entry of appearance on or before **the close of business on August 20, 2014**, then the ALJ may order Applicant to obtain legal counsel in order to proceed in this matter.

D. Pre-hearing Conference

24. Given the procedural posture of the case at this point, it is appropriate to hold a pre-hearing conference to address several issues. The parties to this proceeding should be prepared to discuss and set procedural dates, including a date for a hearing on the Application. However, Applicant and Intervenors are strongly encouraged to discuss and arrive at an agreeable procedural schedule prior to the pre-hearing conference. If such a proposed schedule is agreed to, the parties shall file a motion to adopt such a schedule no later than five days prior to the date of the pre-hearing conference.

25. The parties should be prepared to discuss any other relevant matters ancillary to this proceeding.

26. A pre-hearing conference in this matter will be scheduled for **Thursday, August 21, 2014**.

II. ORDER

A. It Is Ordered That:

1. A pre-hearing conference is scheduled in this matter as follows:

DATE: August 21, 2014

TIME: 11:00 a.m.

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

2. The Petition to Intervene of Colorado Cab Company, LLC, doing business as Denver Yellow Cab, Boulder Yellow Cab, Shamrock Taxi of Fort Collins, Inc., and Colorado Springs Transportation, LLC is granted.

3. Applicant, Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 must choose either to obtain legal counsel or to make a show cause filing as to why it should be allowed to proceed without an attorney.

4. If Applicant elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before August 20, 2014.

5. If Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 elects to show cause, then on or before August 20, 2014, it shall show cause why it is not required to be represented by legal counsel. The show cause filing shall meet the requirements set out in Paragraph Nos. 19 and 22 above.

6. The procedural schedule pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1405(e) is vacated.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director