

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0595BP

IN THE MATTER OF THE APPLICATION OF A&F, DOING BUSINESS AS A&F TRANS,
FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR
HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING INTERVENTIONS;
VACATING PROCEDURAL SCHEDULE; AND
SETTING PRE-HEARING CONFERENCE**

Mailed Date: August 5, 2014

I. STATEMENT

1. On June 3, 2014, A&F, doing business as A&F Trans (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, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid; and
- (B) to providing non-emergent medical transportation (NEMT) to the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado.

3. On June 20, 2014, Applicant amended the Application by including a confidential copy of its financial statements pursuant to a Deficiency Letter issued by Commission Staff on June 10, 2014.

4. On June 20, 2014, MKBS, LLC, doing business as Metro Taxi (Metro) filed an Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority or Alternative Motion to Permissively Intervene (Motion to Intervene). According to Metro, the operating authority sought in the Application overlaps Metro's certificate of public convenience and necessity (CPCN) PUC No. 1481, which provides Metro the authority to provide taxi service in a broad area which duplicates and overlaps with the authority sought in the Application.

5. Metro asserts that it has a legally protected right in the subject matter of the Application which may be affected by the grant of the Application. In addition, Metro represents that it is the owner of CPCN PUC No. 1481 and stands ready, willing, and able to provide service within the scope of its authority. Metro claims that a grant of the Application will adversely affect Metro through loss of revenue and will result in destructive competition. Therefore, Metro asserts that through these legally protected rights, it may intervene as of right in this proceeding.

6. In addition to its Motion to Intervene, Metro also attached a copy of its CPCN, as well as copies of its witness and exhibit lists.

7. On July 16, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab (Denver Yellow) and Boulder Yellow Cab (Boulder Yellow), 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, and Opposition to Application.

8. Colorado Cab states the operating authority sought in the Application overlaps CPCN PUC No. 2378, owned and actively operated by Denver Yellow; CPCN PUC No. 150, owned and actively operated by Boulder Yellow; and, CPCN PUC No. 109 owned and actively operated by CST.

9. According to Colorado Cab, the operating authority sought in the Application overlaps the geographic operating authority and operating rights in the above CPCNs operated under Colorado Cab, which authorize Denver Yellow, Boulder Yellow, and CST to provide taxi service in a broad area which duplicates and overlaps with the authority sought in the Application.

10. Colorado Cab asserts that it has a legally protected right in the subject matter of the Application which may be affected by the grant of the Application. In addition, Colorado Cab argues that the proposed authority will put it in direct competition with Applicant, and as a result, Colorado Cab has a legally protected right and interest in the subject matter of the Application which may be affected by the outcome of this case, which entitles the entities listed above and designated as “Colorado Cab” to intervene by right in this matter.

11. Colorado Cab attached the CPCNs of Denver Yellow, Boulder Yellow, and CST.

12. On July 21, 2014, legal counsel entered an appearance on behalf of Applicant.

13. 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

14. 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.

15. 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 that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

16. 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.

B. Interventions

17. Commission Rule of Practice and Procedure 4 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.

18. 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 that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

19. 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.

20. As relevant to the authority sought by Applicant, Metro, and Colorado Cab each demonstrates that the authority sought duplicates the rights or overlaps the geographic authority of each entity’s operating authorities. As a result, it is found that Metro Taxi and Colorado Cab each have a legally protected right that may be affected by a grant of the Application. The interventions were timely filed. Metro Taxi and Colorado Cab have each shown good cause to find that each is an intervenor as of right in this proceeding.

21. The intervention period in this matter is closed. The intervenors in this proceeding are Metro and Colorado Cab.

C. Procedural Matters

22. 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. Applicant failed to comply with that requirement.

23. According to Rule 1405(e)(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. Metro filed its initial list of witnesses and exhibits; however, Colorado Cab did not make such a filing

24. 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.

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.

D. Pre-hearing Conference

25. 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, Metro, and Colorado Cab are strongly encouraged to discuss and arrive at an agreeable procedural schedule prior to the pre-hearing conference.² 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.

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

27. 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: 10:00 a.m.

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

² A proposed procedural schedule must set a hearing in this matter that concludes no later than 94 days prior to the expiration of the 210-day statutory deadline to issue a Final Commission Decision in this matter, or no later than November 17, 2014.

2. The Motion to Intervene as of Right of Colorado Cab Company LLC, doing business as Denver Yellow Cab, Boulder Yellow Cab and Colorado Springs Transport, LLC is granted.
3. The Motion to Intervene of MKBS, LLC, doing business as Metro Taxi as of right is granted.
4. The procedural schedule pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1405(e) is vacated.
5. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge