

Decision No. R14-0953-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0545BP

IN THE MATTER OF THE APPLICATION OF MELAT TRANSPORTATION COMPANY
WHEELCHAIR ACC LLC FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY
MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
STRIKING GOLDEN GATE MANOR'S INTERVENTION**

Mailed Date: August 6, 2014

I. STATEMENT, FINDINGS, DISCUSSION, AND CONCLUSIONS

1. On May 27, 2014, Melat Transportation Company Wheelchair Acc LLC (Applicant), filed an Application for a Permit to Operate as a Contract Carrier by Motor Vehicle for Hire (Application).

2. The Commission provided public notice of the Application on June 16, 2014.

3. MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, and Northwest Suburban Taxi, Golden Gate Manor, Inc. (Golden Gate), City Cab Co., Shamrock Taxi of Fort Collins, and Colorado Cab Company LLC, doing business as Denver Yellow Cab filed timely interventions objecting to the Application.

4. During the Commission's weekly meeting held July 23, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

5. Golden Gate's "Notice of Intervention" (Intervention) alleges it owns and operates a Certificate of Public Convenience and Necessity (CPCN). Intervention, ¶ 2. Golden Gate attached a copy of its letter of authority to its Intervention. Golden Gate did not attach a letter of authority showing it owns a CPCN. Instead, Golden Gate attached its certificate to operate as a contract carrier for motor vehicle for hire. Attachment to Intervention, titled "Letter of Authority."

6. Golden Gate argues that the operating rights sought by the Application overlap the rights contained in its authority, and that it has a legally protected right in the subject matter which would be affected by the granting of this Application. Intervention, ¶ 3.

7. Golden Gate contends the authority requested by Applicant should not be granted because:

- (a) The operating rights sought by Applicant would overlap Golden Gate's authority and service.
- (b) Golden Gate is able and willing to provide its authorized service.
- (c) If the application is granted, Applicant would divert traffic from Golden Gate.
- (d) Golden Gate is capable of handling a substantially greater volume of traffic than it now enjoys.
- (e) Golden Gate has sufficient equipment and capacity to meet the needs of the traveling public within the scope of its authority. Granting this Application would wastefully duplicate Golden Gate's service.
- (f) Granting the Application would endanger Golden Gate's investments, contrary to the public interest.
- (g) There is no unmet need for the services of Applicant.

Intervention, ¶ 4.¹

¹ The ALJ notes that Golden Gate's Intervention often refers to itself in the plural, as if it was referring to more than one intervention or more than one authority. However, only one letter of authority was attached.

8. In order to intervene as a matter of right in a transportation application proceeding, Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires a party hold a common carrier permit, that is, a CPCN, that conflicts with the authority requested by the applicant. Under Rule 1400(e), 4CCR 723-1, Golden Gate was required to include a copy of its “common carrier” letter of authority. Golden Gate’s intervention does not include a common carrier letter of authority for a CPCN issued by this Commission; rather, it includes a contract carrier permit.

9. Golden Gate’s intervention demonstrates a lack of understanding of its permitted contract services. A contract carrier is not a common carrier. §§ 40-10.1-101(4) and (6), C.R.S. Contract carriage serves distinct specialized and tailored needs of a contracting customer.

10. Colorado law does not afford protection of a contract carrier from competition. *De Lue v. Public Util’s Comm’n*, 169 Colo. 159, 166 (Colo. 1969). Only common carriers are obliged to serve the public and have a property interest that is entitled to protection from competition. *Id.* “Under Colorado law a private [contract] carrier has no legal right to be protected from lawful competition. . .” *Id.*

11. It is well recognized that a contract carrier cannot serve the general public. *Miller Bros., Inc. v. Public Util’s Comm’n*, 185 Colo. 414, 421 (Colo. 1974). “The protection of common carriers, therefore, is not an end in itself but a means of promoting the public interest in the coordination of common carrier and contract carrier operations in such a way as not to impair the public’s access to common carrier service at reasonable rates.” *Regular Route Common Carrier Conference of Colorado Motor Carriers Assoc. v. Public Util’s Comm’n*, 761 P.2d 737, 745 (Colo. 1988).

12. Indivisible rights and responsibilities of common carriage simply do not apply to contract carriage. “A common carrier has the duty of giving adequate and sustained public service at reasonable rates, without discrimination . . . A common carrier is held to the highest degree of care.” *Vassos v. Dolce International/Aspen, Inc.*, 2006 U.S. Dist. LEXIS 19370 (D. Colo. 2006), quoting *De Lue v. Public Util’s Comm’n*, 169 Colo. 159, 166-67, 454 P.2d 939 (Colo. 1969).

13. Section 40-10.1-101(6), C.R.S., essentially defines a contract carrier as a carrier providing transportation who is not a common carrier. While a common carrier must convey for all desiring its transportation, a contract carrier owes an obligation only to its contract customers. *Salida Transfer Co. v. Public Util’s Comm’n*, 792 P.2d 809, 810 (Colo. 1990) citing *Denver Cleanup Service, Inc. v. Public Util’s Comm’n*, 516 P.2d 1252, 1253 (Colo. 1977).

14. Golden Gate’s intervention fails to demonstrate that it holds a CPCN conflicting with the authority requested.

15. Because Golden Gate is not protected from competition, it has no standing as a contract carrier to contest the Application in this proceeding.

16. For the foregoing reasons and authorities, the ALJ will strike Golden Gate’s Intervention and will dismiss it as a party to this proceeding.²

17. Pursuant to the authority provided by Rule 1501(d), 4 CCR 723-1, the ALJ will certify this interim decision as immediately appealable through the filing of a motion subject to review by the Commission *en banc*. Any such motion shall be filed pursuant to Rule 1400 and shall be titled “Motion Contesting Interim Decision No. R14-0953-I.”

² To the extent that Golden Gate seeks permissive intervention, the ALJ denies permissive intervention, for the reasons and authorities set forth herein.

II. ORDER

A. It Is Ordered That:

1. The “Notice of Intervention” and all attachments thereto filed by Golden Gate Manor, Inc. (Golden Gate), are stricken; Golden Gate is dismissed as a party to this proceeding.

2. The Administrative Law Judge certifies this interim decision as immediately appealable through the filing of a motion subject to review by the Commission *en banc*. Any such motion shall be filed pursuant to Rule 1400, 4 *Code of Colorado Regulations*, and shall be titled “Motion Contesting Interim Decision No. R14-0953-I.”

3. A motion contesting this interim decision must be filed within 14 days of the date this Decision is served upon Golden Gate. Any responses to such a motion shall be due within seven days of service of the motion contesting the interim decision.

4. 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