

Decision No. R14-1021-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
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
CLARIFYING TWO PROPOSED FILING
DATES, SHORTENING RESPONSE TIME
TO MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: August 22, 2014

I. STATEMENT

1. On June 3, 2014, Elite, Inc. (Elite or Applicant), filed a verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. 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 to 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. On August 5, 2014, Decision No. R14-0940-I vacated the procedural schedule.

4. The following intervened as of right: Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Colorado Springs Transportation,

LLC (CST); and MKBS, LLC, doing business as Metro Taxi (Metro Taxi). Each opposes the Application.

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

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

7. On July 23, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than February 18, 2015.

8. On August 15, 2014, Elite filed an Unopposed Proposed Procedural Schedule. In that filing, Elite proposes hearing dates of October 21 and 22, 2014. The ALJ is available on those dates. In addition, the proposed procedural schedule allows sufficient time for the Commission to issue its decision in this Proceeding by February 18, 2015. For these reasons, with two clarifications (*infra*), the ALJ will accept the proposed procedure.

9. The ALJ will order the following procedural schedule: (a) not later than **September 10, 2014**, Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than **September 25, 2014**, each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than **October 7, 2014**, each party will file its prehearing motions, including motions *in limine* and dispositive motions; (d) not later than **October 8, 2014**, each party will file, but only if necessary to correct an error in the previous filing, a corrected list of witnesses and complete copies of corrected exhibits; (e) not later than **October 15, 2014**, the Parties will file any stipulation or

settlement agreement reached; (f) the evidentiary hearing will be held on **October 21 and 22, 2014**; and (g) the Parties may make oral closing statements at the conclusion of the hearing.

10. The first clarification addresses the Unopposed Proposed Procedural Schedule at 2, where Applicant states that the “**Parties reserve the right to settle this matter at any point up to hearing**” (bolding in original). The ALJ will not permit this reservation. To be clear, Parties must file any settlement or stipulation not later than October 15, 2014. **The Parties are advised, and are on notice, that**, if the Parties reach a settlement or stipulation but fail to file it by October 15, 2014, the evidentiary hearing will proceed as scheduled; and the Parties may offer the stipulation or settlement as a hearing exhibit.

11. The second clarification addresses the Unopposed Proposed Procedural Schedule at 2, where Applicant states that, on October 7, 2014, “the Parties will file their *dispositive* motions” (emphasis supplied). This statement is too narrow and restrictive. To be clear, **the Parties are advised, and are on notice, that**, not later than October 7, 2014, the Parties are to file all prehearing motions; this includes (without limitation) dispositive motions and motions *in limine*.

12. Each witness who will be called to testify (except a witness called in Applicant’s rebuttal case) must be identified on the list of witnesses that ¶ 9 requires each party to file. The following information must be provided for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

13. **The Parties are advised, and are on notice, that** no person will be permitted to testify on behalf of a party (except in Applicant’s rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

14. Complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or to be used in cross-examination) must be filed as required in ¶ 9.

15. **The Parties are advised, and are on notice, that** no document -- *including the Application and its attachments* -- will be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

16. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405¹ will govern discovery.

17. Subject to rules governing access to information claimed to be confidential, discovery requests and responses to discovery will be served on all Parties.

18. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to motions pertaining to discovery will be written and will be filed within *three business days of service of the motion*.² If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

19. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

20. **The Parties are advised, and are on notice, that** it is the responsibility of each party to bring to the evidentiary hearing a sufficient number of copies of each document that it wishes to offer as an exhibit.³ **The Parties are advised, and are on notice, that** the fact that

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

² By this Interim Decision, the ALJ will shorten response time with respect to discovery-related motions.

³ This means that, at the hearing, a party must have the number of copies of each document necessary to provide: (a) one to be marked and retained by the Commission as the hearing exhibit; (b) one to be given to each of the other parties; (c) one to be given to the ALJ; and (d) one to be retained by the party offering the exhibit.

exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

21. **The Parties are advised, and are on notice that,** the Commission will *not* make copies of documents that are offered as exhibits.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this Proceeding shall be held on the following dates, at the following times, and in the following location:

DATES: October 21 and 22, 2014

TIME: 9:00 a.m. each day

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

2. The following procedural schedule is adopted: (a) not later than September 10, 2014, Applicant Elite, Inc., shall file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than September 25, 2014, each intervenor shall file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than October 7, 2014, each party shall file its prehearing motions; (d) not later than October 8, 2014, each party shall file, but only if necessary to correct an error in the previous filing, a corrected list of witnesses and complete copies of corrected exhibits; (e) not later than October 15, 2014, the Parties shall file any stipulation or settlement agreement reached; and (f) the Parties shall make oral closing statements at the conclusion of the hearing.

3. No person shall be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

4. No document shall be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of that document is filed in accordance with this Interim Decision.

5. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery.

6. Subject to Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101, discovery requests and responses to discovery shall be served on all Parties.

7. Response time to a motion pertaining to discovery is shortened to three business days from the date of service.

8. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern the treatment of information claimed to be confidential.

9. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

10. 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