

Decision No. R14-1078-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
SCHEDULING TELEPHONE HEARING**

Mailed Date: September 4, 2014

I. STATEMENT

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On April 14, 2014, CoY Club, LLC, doing business as Denver Bar Cart (Applicant) filed the above-captioned application.

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

4. 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.

5. 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.

6. 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 issued June 16, 2014. 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. Decision No. R14-0946-I issued August 5, 2014.

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* 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. The ALJ gave Applicant leave to file a request to amend its Application.

10. On August 12, 2014, Applicant filed a “Petition for Declaratory Order” (Petition). The Petition seeks a determination that, based on Applicant’s current business plan, it is not subject to the Commission’s regulatory authority in its transportation carrier operations.

11. On August 18, 2014, Applicant filed its proposed amended authority (second Application). The proposed amendment is an entirely new application, seeking authority to operate as a contract carrier by motor vehicle for hire. It also proposes to include geographical territories that Applicant already withdrew from the current Application. *Supra*, ¶ 7.

12. The second Application does not state that Applicant seeks the authority as an alternative form of relief, in the event its Petition is not granted. This creates confusion as to the relief Applicant is seeking in this proceeding. Indeed, Metro Taxi and Colorado Cab’s responses to the Petition both point to the fact that Applicant has filed the second Application, which plainly contradicts the Petition. For example, the Petition avers that Applicant does not intend to operate in a manner subject to the Commission’s jurisdiction, yet the second Application requests authority from the Commission to operate in a manner subject to the Commission’s jurisdiction.

13. The ALJ finds that a hearing is necessary to clarify the relief that Applicant seeks in this proceeding.

14. If Applicant only seeks to amend its Application if its Petition is not granted, it is appropriate to consider adjusting the current procedural schedule to address the Petition.¹ If that

¹ The ALJ is inclined to address the Petition because there has been uncertainty involving this Applicant for a period of time, and resolution of the issue raised by the Petition may terminate the controversy or remove uncertainty affecting the Applicant with regard to statutory provisions and Commission rules.

is the case, the ALJ will order that the Petition be publicly noticed before it may be addressed. In such an event, there is a possibility that additional interveners may join the proceeding.

15. However, if Applicant has not submitted the Second Application as an alternative form of relief, at the hearing, the ALJ expects Applicant to explain the conflict between the requests for relief sought by the Petition and the Second Application and how that conflict may be resolved.

16. All parties are expected to participate in the telephone hearing.

II. ORDER

A. It Is Ordered That:

1. A telephone hearing is scheduled as follows:

DATE: September 11, 2014

TIME: 3:00 p.m.

PLACE: Dial +1 (571) 317-3131
Enter Meeting Access Code: 625-932-385
If prompted for a meeting password, enter: 14A-0479CP

2. 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