

Decision No. R14-1129-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
AMENDING APPLICATION AND
REQUIRING APPLICANT TO MAKE FILING**

Mailed Date: September 15, 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, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Shamrock Taxi of Fort Collins Inc., Colorado Springs Transportation LLC, and Colorado Cruisers Inc., doing business as Colorado Crewz-In (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 ALJ denied without prejudice a verbal motion to dismiss made by interveners, 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, and after Applicant waived the statutory deadline for a Commission decision to issue, continued the hearing to December 1, 2, and 3, 2014. Decision No. R14-0946-I.

9. On August 12, 2014, Applicant filed a "Petition for Declaratory Order" (Petition). The Petition seeks a declaratory order that based on Applicant's current business plan, it is not subject to the Commission's regulatory authority in its transportation carrier operations.

10. 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 withdrew from the Application during the August 4, 2014 hearing. *Supra*, ¶ 7.

11. No party filed a response to the second Application.

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. Given the confusion this creates, the ALJ set a telephone hearing for September 11, 2014 to clarify the relief Applicant is seeking in this proceeding. Decision No. R14-1078-I issued September 4, 2014.

13. At the date, time and location designated, the ALJ convened the telephone hearing. All parties appeared. During the course of the hearing, Applicant decided to withdraw its Petition from this proceeding.¹ Applicant agreed it would submit a filing withdrawing its Petition by September 19, 2014. The ALJ will order Applicant to do so by that date.

14. Applicant also requested that the proposed amendments in the second Application be amended to exclude the following cities from the geographical territories proposed therein: Fort Collins, Colorado Springs, and Boulder.

15. To be acceptable, amendments to an application must be restrictive in nature, administratively enforceable, clear, and understandable. Both the contract carrier permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract carrier permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

¹ Applicant indicated that it will file a new petition as a separate proceeding.

16. As the ALJ ruled during the September 11, 2014 hearing, the ALJ finds and concludes that the proposed amendments in the second Application, as modified during the September 11, 2014 hearing, are restrictive in nature, administratively enforceable, clear, and understandable. For good cause shown, the restrictive amendments proposed by the second Application with the changes made during the September 11, 2014 hearing are accepted.

17. As amended by the second Application, and during the September 11, 2014 hearing, the Application in this proceeding now seeks the following:

Authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers

within and between the following borders in the City of Denver:

Interstate 70 to Colorado Boulevard, Colorado Boulevard to Buchtel Boulevard, Buchtel Boulevard to Mississippi Avenue, Mississippi Avenue to Sheridan Boulevard, and Sheridan Boulevard to Interstate 70.

18. A contract carrier authority, by its very definition, is more restrictive than a common carrier authority. *See* § 40-1-102(3), C.R.S. and § 40-10.1-101(6), C.R.S. Because the amendments to the Application propose an authority that is more restrictive than the authority originally sought and noticed to the public, the ALJ finds that it is not necessary to require the amended Application be re-noticed to the public.

19. Because Applicant is withdrawing its Petition, the Petition will not be addressed in this proceeding. The current procedural schedule and hearing dates remain in full force and effect. The evidentiary hearing will be on the merits of the Application as amended by this Decision.

II. ORDER

A. It Is Ordered That:

1. The amendments proposed by CoY Club, LLC, doing business as Denver Bar Cart (Applicant) in its August 18, 2014 “Contract Carrier Application,” and during the September 11, 2014 hearing are accepted.
2. The Application in this proceeding is hereby amended as set forth in ¶ 17 above.
3. On or by 5:00 p.m. MST on September 19, 2014, Applicant shall make a filing withdrawing the Petition for Declaratory Order it filed in this proceeding.
4. The hearing scheduled for December 1, 2, and 3, 2014 in this proceeding shall be a hearing on the merits of the Application as that Application is amended by this Decision.
5. 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