

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION; ACKNOWLEDGING
WITHDRAWAL OF INTERVENTION; AMENDING
APPLICATION, SUBJECT TO CONDITIONS; DISMISSING
INTERVENORS; VACATING EVIDENTIARY HEARING,
GRANTING APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE AND SUBJECT TO
CONDITIONS; GRANTING CONTRACT
CARRIER PERMIT, SUBJECT TO CONDITIONS;
AND WAIVING RESPONSE TIME TO MOTION**

Mailed Date: October 20, 2014

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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, Elite filed an amendment and a confidential supplement to the June 3, 2014 filing. Unless the context indicates otherwise, reference in this 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. On June 20, 2014, MKBS, LLC, doing business as Metro Taxi (Metro), timely filed (in one document) its Entry of Appearance and Intervention by Right in Opposition to Permanent Authority or Alternative Motion to Permissively Intervene. By that filing, Metro is an intervenor by right and, thus, a party in this Proceeding. Metro opposed the Application. On October 14, 2014, Metro filed its Withdrawal of Intervention. Consistent with that filing, the Administrative Law Judge (ALJ) will dismiss Metro as a party.

5. On July 16, 2014, Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for a Hearing. By that filing, Colorado Cab is an intervenor by right and, thus, a party in this Proceeding. Colorado Cab opposes the Application.

6. On July 16, 2014, Colorado Springs Transportation, LLC (CST), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for a Hearing. By that filing, CST is an intervenor by right and, thus, a party in this Proceeding. CST opposes the Application.

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

8. On July 23, 2014, by Minute Order, the Commission referred this matter to an ALJ.

9. 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.

10. On August 15, 2014, Elite filed an Unopposed Proposed Procedural Schedule. On August 22, 2014, by Decision No. R14-1021-I, the ALJ scheduled an October 21 and 22, 2014 evidentiary hearing and established the procedural schedule in this Proceeding.¹ By this Decision, the ALJ will vacate the evidentiary hearing.

11. On September 25, 2014, Elite filed its Witness and Exhibit List.

12. On September 25, 2014, Intervenors filed their Witness and Exhibit List.

13. On October 17, 2014, the Parties filed (in one document) a Stipulated Motion to Restrictively Amend the Application [Motion to Amend], for Conditional Withdrawal of Intervenor's Intervention [Motion to Withdraw], and for a Waiver of the Response Time [Motion for Waiver].

14. The Motion for Waiver states good cause as all Parties are signatories to the October 17, 2014 filing. Waiving response time to the Motion to Amend and to the Motion to Withdraw will not prejudice any party. The ALJ will grant the Motion for Waiver and will waive response time to the Motion to Amend and the Motion to Withdraw.

¹ On motion, the ALJ subsequently modified the procedural schedule.

15. As noticed by the Commission, the Application sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing non-emergent medical transportation (NEMT) to the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against the transportation of passengers to or from hotels, motels and airports; and
- (D) against the use of more than three vehicles in service at any one time.

Notice at 3.

16. In the Motion to Amend, Elite moves to amend the authority sought by the Application. If the Motion to Amend is granted, Elite will seek authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Broomfield, Denver, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

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

- (D) against the use of more than three vehicles in service at any one time; and
- (E) against the transportation of passengers in Broomfield County outside an area the boundaries of which are Wadsworth [Parkway]/State Highway 287 on the west, 144th Avenue/West Dillon Road on the [n]orth, 112th Avenue on the [s]outh, and Huron Street on the [e]ast.

October 17, 2014 filing at ¶ 6.

17. Colorado Cab states that, if the Commission approves the Application as amended by the October 17, 2014 filing, Colorado Cab’s “interests in the Application will be satisfied and [its intervention] may be deemed withdrawn.” October 17, 2014 filing at ¶ 8.

18. CST states that, if the Commission approves the Application as amended by the October 17, 2014 filing, CST’s “interests in the Application will be satisfied and [its intervention] may be deemed withdrawn.” October 17, 2014 filing at ¶ 8.

19. To be acceptable, an amendment must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. 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 contract carrier’s operations are within the scope of its Commission-granted authority.

20. The amendments and the resulting contract carrier permit, if the amended Application is granted, meet the standards stated above. The ALJ will approve the amendments contained in the October 17, 2014 filing at ¶ 6, as set out above.

21. The ALJ finds that the Motion to Amend states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion to Amend.

22. Approving the restrictive amendments to the Application (*i.e.*, to the scope of the contract carrier permit that Applicant seeks) has these effects. First, the contract carrier authority sought, as stated in the Application, will be amended to conform to the amendments contained in this Decision. Second, the Motion to Withdraw will be granted; and the Colorado Cab intervention and the CST intervention will be dismissed.

23. Dismissal of the interventions leaves the Application uncontested and unopposed.

24. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The ALJ finds that the Application, as amended, should be considered, and will be considered, under the Commission's modified procedure and without a formal hearing.

25. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

26. Applicant is a Colorado corporation in good standing.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

27. By the Application, as amended, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Broomfield, Denver, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing non-emergent medical transportation (NEMT) to the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against the transportation of passengers to or from hotels, motels and airports;
- (D) against the use of more than three vehicles in service at any one time; and
- (E) against the transportation of passengers in Broomfield County outside an area the boundaries of which are Wadsworth Parkway/State Highway 287 on the west, 144th Avenue/West Dillon Road on the north, 112th Avenue on the south, and Huron Street on the east.

28. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 CCR 723, and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites

have been met, the ALJ will grant the Application, as amended, and will issue the contract carrier permit subject to conditions.

29. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below.

30. One of the conditions stated in the Ordering Paragraphs is: before commencing service as a contract carrier, Elite must file with the Commission its written contract with the Colorado Department of Health Care Policy and Financing to provide NEMT. The basis for this condition is Rule 4 CCR 723-6-6209, which governs the contracts pursuant to which a contract carrier provides transportation service. That Rule reads:

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for compensation except in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.
- (c) *Contracts shall be written.*
- (d) *At a minimum, all contracts shall specify the following:*
 - (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date(s) and terms of the contract, including rates.
- (e) A contract carrier shall not operate in conflict with the contract carrier's permit.

- (f) A contract carrier shall not operate in conflict with the contract carrier's tariff.

(Emphasis supplied.) Elite may file this contract under seal if Elite believes that the contract constitutes or contains confidential information. See Rules 4 CCR 723-1-1100 and 723-1-1101.

31. **Questions concerning completion of the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).**

32. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

- 1. The Stipulated Motion to Restrictively Amend the Application is granted.
- 2. Consistent with the discussion above and the Stipulated Motion to Restrictively Amend the Application, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire, which was filed on June 3, 2014 and amended and supplemented on June 20, 2014, is amended.
- 3. The Stipulated Motion for Conditional Withdrawal of the interventions is granted.
- 4. Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab, is dismissed from this Proceeding.
- 5. Colorado Springs Transportation, LLC, is dismissed from this Proceeding.
- 6. Consistent with its Withdrawal of Intervention, MKBS, LLC, doing business as Metro Taxi, is dismissed from this Proceeding.

7. Consistent with the discussion above and subject to the conditions stated below, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed on June 3, 2014, as amended and supplemented, is granted.

8. Subject to the conditions stated in the Ordering Paragraphs below, Elite, Inc., is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as set out in the Appendix A to this Decision. Appendix A is incorporated here as if set out in full.

9. All operations under the contract carrier permit granted by Ordering Paragraph No. 8 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

10. The authority granted in Ordering Paragraph No. 8 is conditioned on Elite, Inc., meeting the conditions contained in this Decision. The authority granted in Ordering Paragraph No. 8 is not effective until Elite, Inc., meets the stated conditions.

11. Elite, Inc., shall not begin operation under the contract carrier permit granted by this Decision until it has complied with the requirements of applicable Colorado law and applicable Commission rules, including without limitations all of the following conditions:

(a) Elite, Inc., shall file with the Commission a copy of the written contract with the Colorado Department of Health Care Policy and Financing to provide Non-Emergent Medical Transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Elite, Inc., may file this contract under seal if Elite, Inc., believes that the contract constitutes or contains confidential information.

(b) Elite, Inc., shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the

ten-day notice period; and the entire ten-day notice period must expire prior to the proposed effective date. Elite, Inc., shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(c) Elite, Inc., shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(d) Elite, Inc., shall pay to the Commission the applicable \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(e) For each vehicle to be operated under the contract carrier permit granted by this Decision, Elite, Inc., shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Elite, Inc., shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(f) Elite, Inc., has received from the Commission a written notice that Elite, Inc., has complied with conditions (a) through (e) in this Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

12. If Elite, Inc., does not comply with the requirements of Ordering Paragraph No. 11 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 7 and No. 8 shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Elite, Inc., additional time within which to comply with the requirements of Ordering Paragraph No. 11.

13. The right of Elite, Inc., to operate pursuant to the contract carrier permit granted by this Decision shall depend on Elite, Inc.'s compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

14. The evidentiary hearing scheduled for October 21 and 22, 2014 is vacated.

15. The Stipulated Motion for a Waiver of the Response Time is granted.

16. Response time to the Stipulated Motion to Restrictively Amend the Application is waived.

17. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

18. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

19. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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