

Decision No. R14-1328-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 14A-0904BP

IN THE MATTER OF THE APPLICATION OF COACH TRANSPORTATION, INC. FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING INTERVENTION;
REQUIRING FILINGS REGARDING
LEGAL COUNSEL OR TO SHOW CAUSE WHY
LEGAL COUNSEL IS NOT NECESSARY;
VACATING PROCEDURAL SCHEDULE; AND
SETTING PRE-HEARING CONFERENCE**

Mailed Date: November 3, 2014

I. STATEMENT

1. On September 2, 2014, Coach Transportation, Inc. (Applicant) filed an application for a permit to operate as a contract carrier by motor vehicle for hire (Application).

2. On September 8, 2014, Commission Transportation Staff (Staff) issued a deficiency letter to Applicant requesting that additional information be provided, including a more specific geographic area proposed to be served.

3. On September 15 and 18, 2014, Applicant amended the Application with the additional information requested by Staff.

4. On September 22, 2014, the Commission issued notice of the Application as follows:

For authority
to operate as a contract carrier by motor vehicle for hire

for the transportation of passengers
between all points in El Paso County, State of Colorado.

RESTRICTIONS:

This application is restricted as follows:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Medical Transportation services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from airports, hotels, and motels; and
- (D) to no more than three vehicles in service at any one time.

5. On October 22, 2014, Colorado Springs Transportation, LLC (CST) filed an Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for a Hearing.

6. CST states that it owns and actively operates Certificate of Public Convenience and Necessity (CPCN) No. 109 which authorizes it to provide taxi service between all points in El Paso County, Colorado, and all points within south Douglas County, Colorado. CPCN No 109 is in good standing according to CST. CST argues that the permit sought by Applicant directly conflicts with and overlaps with its transportation service territory. As such, CST claims it has legally protected rights and interests in the subject matter of the Application entitling it to intervene as of right.

7. On October 29, 2014, the Commission, at its regular weekly meeting, deemed the application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

A. Interventions

8. Commission Rule of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1-1401(a) requires that notice of intervention as of right or a motion to permissively intervene shall be filed within 30 days of the Commission notice of any docketed proceeding. The Commission issued notice of the Application on September 22, 2014. Consequently, the deadline to intervene as of right or to petition to permissively intervene in the above-captioned proceeding was October 22, 2014.

9. Rule 1401(b) requires that a notice of intervention as of right, “shall state the basis for the claimed legally protected right that may be affected by the proceeding.” In addition, Rule 1401(e)(I) requires that a notice of intervention as of right in a transportation carrier application proceeding shall:

include a copy of the common carrier’s letter of authority, must show that the common carrier’s authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

10. Pursuant to Rule 1401(c), a motion to permissively intervene shall:

state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding.

Rule 1401(c) further requires that:

the motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented.

11. As relevant to the permit sought by Applicant, CST demonstrates that the permit sought duplicates the rights or overlaps the geographic authority of CST's operating authority. As a result, it is found that CST has a legally protected right that may be affected by a grant of the Application. The intervention was timely filed. CST has shown good cause to find that it is an intervenor as of right in this docket.

12. The intervention period in this matter is closed. The sole intervenor in this proceeding is CST.

B. Procedural Matters

13. Commission Rule 4 CCR 723-1-1405(k)(I) provides that "[i]f an applicant does not file its testimony or a detailed summary of testimony, and copies of its exhibits with its application, the applicant shall file and serve its list of witnesses and copies of its exhibits within ten days after the conclusion of the notice period." The notice period in this matter concluded on October 22, 2014. Therefore, Applicant had until November 3, 2014¹ to file and serve its list of witnesses and copies of its exhibits. Applicant failed to comply with that requirement.

14. According to Rule 1405(e)(II) if the applicant has not filed its testimony or a detailed summary of testimony and copies of exhibits with the application, each intervenor shall file and serve its list of witnesses and copies of its exhibits no later than 20-days after the notice period has expired – in this instance, by November 11, 2014.

¹ Commission Rule 4 CCR 723-1-1203(a) provides in relevant part that when the day upon which a document must be filed falls on a Saturday, Sunday, legal holiday, or any other day when the Commission's office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.

15. The procedural schedule under Rule 1405(e) will be vacated. As part of the discussion during the pre-hearing conference as discussed in more detail below, dates for filing of witness lists and copies of exhibits will be determined.

C. Legal Representation

16. The original Application indicates that Applicant is represented by legal counsel. Later in the Application at the Self Representation section (f), Applicant states that it does not wish to represent the interests of the corporation. However, in the September 15, 2014 supplement to the Application, Applicant states that it will not be represented by the attorney it listed in the Application. Due to the ambiguous filings, clarification as to legal representation of Applicant will be required. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent his or her own interests, or the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

17. This is an adjudicative proceeding before the Commission. Applicant is a Colorado corporation, is a party in this matter and is not represented by an attorney.

18. If Applicant wishes to be represented by an individual who is not an attorney, then it must meet the legal requirements established in Rule 4 CCR 723-1-1201(b)(II). This means that: (a) Applicant must be a closely-held entity; (b) the amount in controversy must not exceed \$15,000; and (c) Applicant must provide certain information to the Commission.

19. Applicant has the burden to prove that it is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant must provide information so that the Commission can determine whether it may proceed without an attorney. To show that it may proceed without an attorney, Applicant must do the following: **First**, it must establish that it is a

closely-held entity, which means that it has no more than three owners. *See*, Section 13-1-127(1)(a), C.R.S. **Second**, it must demonstrate that it meets the requirements of §13-1-127(2), C.R.S. That statute provides that an officer² may represent a closely held entity before the Commission only if **both** of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; **and** (b) the officer provides the Commission with evidence, satisfactory to the Commission, of the authority of the officer to represent the closely held entity.³

20. Applicant must either obtain legal counsel or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

21. If Applicant elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **November 21, 2014**.

22. If Applicant elects to show cause, then, on or before **close of business on, November 21, 2014**, it must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by legal counsel in this matter. To show cause, Applicant must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy does not exceed \$15,000, including a statement explaining the basis for that assertion; (c) identifies the individual whom Applicant wishes to have as its representative in this proceeding; (d) establishes that the identified individual is an officer of the Applicant; and (e) if the identified individual is not an officer of Applicant,

² Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

³ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

a resolution from entity's Board of Directors that authorizes the individual to represent Applicant in this matter.

23. Applicant is advised, and is on notice, that if it fails to either show cause or to have legal counsel file an entry of appearance on or before **the close of business on November 21, 2014**, then Applicant may be ordered to obtain legal counsel in order to proceed in this matter.

D. Pre-hearing Conference

24. Given the procedural posture of the case at this point, it is appropriate to hold a pre-hearing conference to address several issues. The parties to this proceeding should be prepared to discuss and set procedural dates, including a date for a hearing on the Application. However, the parties are strongly encouraged to discuss and arrive at an agreeable procedural schedule prior to the pre-hearing conference.⁴ If such a proposed schedule is agreed to, the parties shall file a motion to adopt such a schedule no later than 5 days prior to the date of the pre-hearing conference.

25. The parties should be prepared to discuss any other relevant matters ancillary to this docket.

26. A pre-hearing conference in this matter will be scheduled for **Monday December 1, 2014**.

II. ORDER

A. It is Ordered That:

1. A pre-hearing conference is scheduled in this matter as follows:

⁴ A proposed procedural schedule must set a hearing in this matter that concludes no later than 94 days prior to the expiration of the 210 day statutory deadline to issue a Final Commission Decision in this matter, or no later than February 22, 2015.

DATE: December 1, 2014
TIME: 10:00 a.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. The Motion to Intervene as of Right of Colorado Springs Transportation, LLC, doing business as Denver Yellow Cab is granted.

3. Applicant, Coach Transportation, Inc. must choose either to obtain legal counsel or to make a show cause filing as to why it should be allowed to proceed without an attorney.

4. If Applicant, Coach Transportation, Inc. elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before November 21, 2014.

5. If Applicant, Coach Transportation, Inc. elects to show cause, then on or before November 21, 2014, it shall show cause why it is not required to be represented by legal counsel. The show cause filing shall meet the requirements set out in Paragraph Nos. 19 and 22 above.

6. The procedural schedule pursuant to Rule 4 CCR 723-1-1405(e) is vacated.

7. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director