

Decision No. R14-1494-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1004BP

IN THE MATTER OF THE APPLICATION OF TM MEDICAL TRANSPORTATION LLC
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,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: December 19, 2014

I. STATEMENT

1. On October 6, 2014, TM Medical Transportation LLC (Applicant) filed an 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 October 15, 2014, Applicant filed an amendment to the October 6, 2014 filing. On October 17, 2014, Applicant filed a supplement to the October 6, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is the October 6, 2014 filing as amended on October 15, 2014 and supplemented on October 17, 2014.

3. On October 20, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 2); established an intervention period; and established a procedural schedule. On November 25, 2014, Decision No. R14-1411-I vacated that procedural schedule.

4. MKBS, LLC, doing business as Metro Taxi (Metro or Intervenor), timely intervened as of right. Metro is a party in this Proceeding and opposes the Application.

5. Applicant and Intervenor, collectively, are the Parties. Pursuant to Decision No. R14-1411-I, Applicant is represented by an individual who is not an attorney.¹ Intervenor is represented by legal counsel.

6. On November 24, 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 June 22, 2015.

7. On November 24, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

8. In Decision No. R14-1411-I, the ALJ ordered Applicant to consult with Intervenor and to make, not later than December 10, 2014, a filing that: (a) contained a procedural schedule, including hearing date, that was satisfactory to the Parties; and (b) addressed the issues discussed in that Interim Decision.

9. On November 24, 2014, the Commission mailed, by postage-paid first-class U.S. mail, Decision No. R14-1411-I to Applicant at the Denver, Colorado address shown on the Application. As of the date of this Interim Decision, Decision No. R14-1411-I has not been returned to the Commission as not deliverable. Applicant is presumed to have received, and to have knowledge of the requirements contained in, Decision No. R14-1411-I.

¹ In Decision No. R14-1411-I at ¶ 19, the ALJ advised Applicant and its representative that Applicant's non-attorney representative is held, and will be held, to the same procedural and evidentiary rules and standards as those to which attorneys are held.

10. Review of the Commission file in this Proceeding establishes that, as of the date of this Interim Decision, Applicant has not made the filing required by Decision No. R14-1411-I. Review of the Commission file in this Proceeding establishes that, as of the date of this Interim Decision, Applicant has not requested additional time within which to comply with Decision No. R14-1411-I.

11. Applicant has not complied with the Decision No. R14-1411-I requirement that it make, not later than December 10, 2014, a filing that contains an agreed-upon procedural schedule and that addresses the identified additional issues. This failure to comply is unexcused and unexplained.

12. In Decision No. R14-1411-I, the ALJ stated:

The Parties are advised, and are on notice, that if Applicant fails to make the December 10, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

Decision No. R14-1411-I at ¶ 28 (bolding in original). Pursuant to that advisement and by this Interim Decision, the ALJ will schedule the evidentiary hearing; will establish the procedural schedule; and will address other issues without input from the Parties.

13. The ALJ will order the following procedural schedule, including evidentiary hearing date: (a) not later than **January 16, 2015**, Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than **February 20, 2015**, Intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than **March 12, 2015**, each party will file, but only as necessary to correct a previously-filed list of witnesses and copies of exhibits, a corrected list of witnesses and complete copies of corrected exhibits; (d) not later than **March 17, 2015**, each party will file its

prehearing motions, including motions *in limine* and dispositive motions;² (e) not later than **noon on March 20, 2015**, the Parties will file any stipulation or settlement agreement reached; (f) the evidentiary hearing will be held on **March 25, 2015**; and (g) the Parties may make oral closing statements at the conclusion of the hearing.

14. 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 ¶ 13 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.

15. **The Parties are advised and are on notice that** no person -- *including Mr. Wadhah Almulla* -- 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 ¶¶ 13 and 14 of this Interim Decision.

16. Complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or to be used in cross-examination) will be filed as required in ¶ 13.

17. **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 ¶¶ 13 and 16 of this Interim Decision.

18. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405³ will govern discovery.

² As a preliminary matter at the hearing, the ALJ will hear argument on pending prehearing motions.

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

19. Subject to Rules 4 CCR 723-1-1100 and 723-1-1101,⁴ discovery requests and responses to discovery will be served on all Parties.

20. 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*.⁵ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

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

22. **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.⁶ **The Parties are advised and are on notice that** prefilings the exhibits in accordance with ¶¶ 13 and 16 of this Interim Decision does *not* alter the requirement set out in this paragraph.

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

⁴ Among other things, these two Rules govern access to information claimed to be confidential.

⁵ By this Interim Decision, the ALJ will shorten response time with respect to discovery-related motions.

⁶ This means that, at the hearing, a party must have the number of copies of each document necessary to provide: (a) one copy to be marked and retained by the Commission as the hearing exhibit; (b) one copy to be given to each of the other parties; (c) one copy to be given to the ALJ; and (d) one copy to be retained by the party offering the exhibit.

II. ORDER

A. It Is Ordered That:

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

DATE: March 25, 2015
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The following procedural schedule is adopted: (a) not later than January 16, 2015, Applicant TM Medical Transportation LLC shall file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than February 20, 2015, MKBS, LLC, doing business as Metro Taxi, shall file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than March 12, 2015, each party shall file, but only as necessary to correct a previously-filed list of witnesses and copies of exhibits, a corrected list of witnesses and complete copies of corrected exhibits; (d) not later than March 17, 2015, each party shall file its prehearing motions; (e) not later than noon on March 20, 2015, the Parties shall file any stipulation or settlement agreement reached; and (f) the Parties may 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 ¶¶ 13 and 14 of 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 ¶¶ 13 and 16 of 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