

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1094CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MT ACQUISITIONS, LLC
D/B/A MOUNTAINS TAXI, P.O. BOX 694 CONIFER, CO 80433, FOR A
CERTIFICATE TO OPERATE AS A COMMON CARRIER BY MOTOR
VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING STIPULATION AND WITHDRAWAL
OF INTERVENTIONS; GRANTING PERMANENT
EXTENSION OF AUTHORITY WITH RESTRICTIVE
AMENDMENTS UNDER MODIFIED
PROCEDURES; AND CLOSING PROCEEDING**

Mailed Date: May 14, 2014

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I. STATEMENT

1. On October 11, 2013, MT Acquisitions, LLC, doing business as Mountains Taxi (Applicant or Mountains Taxi) filed an application for an extension of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55768 to provide additional taxi service in Jefferson and Park Counties, Colorado (Application).

2. On October 21, 2013, the Commission issued notice of the Application as follows:¹

Currently, CPCN No. 55768 authorizes the following:

Transportation of
passengers in taxi service

between all points in the following area: commencing at the intersection of Colorado State Highway 119 and U. S. Highway 6, near the boundaries of the Counties of Jefferson, Gilpin, and Clear Creek, State of Colorado, thence east along U.S. Highway 6 to its intersection with Jefferson County Parkway, thence east and south along Jefferson County Parkway to its intersection with Johnson Road, thence south along Johnson Road to its transition to Interstate C-470, thence south and east along Interstate C-470 to its intersection with the boundary of the County of Jefferson, thence south along the boundary of the County of Jefferson to a point one mile south of its intersection with Jefferson County Road 96 (South Platte River Road), thence west along an imaginary line to a point 8 miles west of the eastern boundary of the County of Park, thence north along an imaginary line for 28.25 miles thence east along an imaginary line to State Highway 119, thence southeast along State Highway 119 to the point of beginning, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

As extended, CPCN No. 55768 would authorize the following:

Transportation of
passengers in call-and-demand taxi service

between all points in the following area: commencing at the intersection of Colorado State Highway 119 and U. S. Highway 6, near the boundaries of the Counties of Jefferson, Gilpin, and Clear Creek, State of Colorado, thence North along the western border of the County of Jefferson to its intersection with Boulder County, thence easterly along the northern border of the County of Jefferson to its easternmost point, then southerly along the eastern border of the County of Jefferson to a point one mile south of its intersection with Jefferson County Road 96 (South Platte River Road), thence west along an imaginary line to a point 8 miles west of the eastern boundary of the County of Park, thence north along an imaginary line for 28.25 miles thence east along an imaginary line to State Highway 119, thence southeast along State Highway 119 to the point of beginning, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

¹ While the Commission's Notice indicates that the Application was filed on October 18, 2013, it appears that it was actually filed on October 11, 2013.

3. The Commission issued notice of the Application to all interested parties on October 21, 2013. Therefore, parties had until November 20, 2013 to intervene in this proceeding.

4. Fresh Tracks Transportation, LLC filed an Entry of Appearance and Notice of Intervention and Initial List of Witnesses and Exhibits, but later withdrew its intervention.

5. The remaining intervenors in this extension application were MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or Northwest Suburban Taxi (Metro Taxi) and Colorado Cab Company, LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab).

6. On November 26, 2013, 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.

7. By Interim Decision No. R14-0100-I, issued January 24, 2014 a procedural schedule was adopted, which among other things, set an evidentiary hearing on the Application for March 10 and 11, 2014.

8. By Interim Decision No. R14-0227-I, issued March 3, 2014, the evidentiary hearing was re-scheduled for April 9 and 10, 2014.

9. On April 4, 2014, Applicant and Colorado Cab filed a Stipulation, Motion for Approval of Restrictive Amendment and Approval of Conditional Withdrawal of Interventions, Motion to Vacate Hearing and if the Commission Desires, Set a Hearing on the Stipulation for April 10, 2014 and Notice of Waiver of 210-Day Deadline (Stipulation). According to the terms of the Stipulation, Applicant, Colorado Cab, and Metro Taxi agree to restrictively amend the

proposed authority to decrease the requested expansion of service territory and to limit the number of vehicles that may be used at one time.

10. Under the proposed amendment, generally the originally proposed eastern boundary is relocated from the Jefferson County/Denver County line to Kipling Street and the northern boundary is partially moved south to 64th Avenue and its extension into Ralston Road.

The proposed restrictively amended authority is as follows:

Transportation of

passengers in call-and-demand taxi service

between all points in the following area: commencing at the intersection of Colorado State Highway 119 and U. S. Highway 6, near the boundaries of the Counties of Jefferson, Gilpin, and Clear Creek, State of Colorado, thence North along the western border of the County of Jefferson to its intersection with Boulder County; thence easterly along the northern border of the County of Jefferson to its intersection with Colorado Highway 93, then south along Colorado Highway 93 to its intersection with 64th Avenue, as extended; thence easterly along 64th Avenue and southeasterly along its extension named Ralston Road to Ralston Road's intersection with Kipling Street; thence south along Kipling Street, as extended, to its intersection with C-470; thence east along C-470 to its intersection with the eastern boundary of the County of Jefferson; thence south along the boundary of the County of Jefferson to a point one mile south of its intersection with Jefferson County Road 96 (South Platte River Road); thence west along an imaginary line to a point 8 miles west of the eastern boundary of the County of Park, thence north along an imaginary line for 28.25 miles thence east along an imaginary line to State Highway 119, thence southeast along State Highway 119 to the point of beginning, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS: The authority is restricted as follows:

- A.) to the use of no more than twenty (20) taxicabs at one time through April 30, 2015;
- B.) to the use of no more than thirty (30) taxicabs at one time from and after May 1, 2015;

11. In addition, Applicant agreed to waive the 210-day deadline pursuant to § 40-6-109.5(2), C.R.S., for the Commission to issue a final decision in this matter.

12. A hearing was held on April 10, 2014 to take testimony regarding the terms of the Stipulation.

13. Appearances were entered by Applicant, Colorado Cab, and Metro Taxi. Hearing Exhibit No. 1, the Stipulation executed among the parties, was entered into evidence. Testimony was given by Mr. Donald Bosch, owner of Mountains Taxi, and by Mr. Randy Jensen, Manager of Colorado Cab.

14. Mr. Bosch testified that he is the principal owner of Mountains Taxi since its inception in 2010. Mountains Taxi currently operates from C-470 to the east through Golden on 6th Avenue to Blackhawk, the eastern half of Gilpin County, Park County, and parts of Jefferson County. Mountains Taxi now seeks to expand into the western area of the Denver metropolitan area.

15. Mr. Bosch testified that Mountains Taxi currently operates seven taxicabs, including a Toyota Prius and several Crown Victorias as standby vehicles. Mr. Bosch intends to increase the fleet size as service grows. Mountains Taxi currently employs 11 drivers and intends to serve all of the proposed service territory immediately.

16. Mountains Taxi utilizes a cloud-based dispatch system with a Voice over Internet Protocol phone system. The dispatch system utilizes a Global Positioning System, and communications with drivers is through a wireless system. With the proposed expansion, Mr. Bosch represented that the dispatch system is capable of meeting the additional demand and will not need to be expanded.

17. In order to finance the proposed expansion, Mr. Bosch projects that the cost will be approximately \$30,000.00 to initially expand the fleet to 11 vehicles. He intends to finance half of that amount and use current assets to pay the other half. Mr. Bosch stated that between

company assets and access to significant personal assets, he will be able to meet all expenses related to the proposed expansion including vehicle acquisition, insurance, and maintenance. Mr. Bosch also testified that the company's vehicle maintenance agreement is approximately \$5,000.00 per vehicle per year. Mountains Taxi will be able to cover the increase in maintenance costs as its fleet size is increased.

18. Mr. Jensen of Colorado Cab, testifying in support of the Stipulation, stated that he negotiated the terms of the Stipulation on behalf of Colorado Cab. Mr. Jensen testified that he agreed to the proposed expansion of Mountains Taxi in order to grow the market for taxi service in the west metropolitan area. According to Mr. Jensen, response times for service are longer in that area than other metropolitan areas. Agreeing to Mountains Taxi's expansion as proposed in the Stipulation expands awareness of taxi service in the area and will benefit incumbent taxi companies, including Yellow Taxi, according to Mr. Jensen. Mr. Jensen represented that any risk to Colorado Cab was mitigated by the terms of the proposed Stipulation.

19. No witness testified on behalf of Metro Taxi.

20. 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 AND CONCLUSIONS

21. A proposed restrictive amendment to an application for a CPCN to operate as a common carrier by motor vehicle for hire must be restrictive in nature, clear and understandable, and administratively enforceable. The proposed restriction and authority must be unambiguous and must be contained entirely within the authority granted.

22. The intent of the Stipulation between the parties is clear that Applicant agrees to restrict the area of its proposed service territory as set out in the terms of the Stipulation.

Further, Applicant agrees to initially restrict the number of vehicles it will operate to the use of not more than 20 taxicabs, and after May 1, 2015, to no more than 30 taxicabs.

23. The undersigned ALJ finds that the proposed restrictions contained in the Stipulation between Applicant, Colorado Cab, and Metro Taxi will not hamper the ability of the Applicant to provide its proposed service. Therefore, the ALJ finds that the proposed restrictions meet the criteria described above. The proposed restrictive amendments to the Application contained in the Stipulation are restrictive in nature, clearly stated, and capable of enforcement. The restrictive language achieves the purposes sought by Metro Taxi, Colorado Cab, and Applicant. It provides protection to Colorado Cab's and Metro Taxi's operating authorities, while allowing Applicant to provide the substance of the service it seeks. As a result, the restrictive amendments which restrict Applicant as indicated above will be accepted. Therefore, good cause is found to adopt the proposed restrictions. The interventions of Colorado Cab and Metro Taxi will therefore be deemed withdrawn.

24. Since the Application as amended is now unopposed, the matter will be considered pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-1403.

25. The restrictive amendments to the Application which state that Applicant's proposed service territory will be defined as set out in the Stipulation, and that Applicant will be limited to no more than 20 taxicabs initially, then no more than 30 taxicabs after May 1, 2015 will be adopted. It is found that the restrictions are unambiguous, are clear, and are administratively enforceable.

26. The Application as restrictively amended by the terms of the Stipulation is as set forth above in Paragraph No. 10.

27. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to comply with those Rules to the extent applicable to Applicant.

28. Additionally, the information provided by Applicant provides that Applicant possesses or will possess sufficient equipment to provide the proposed service and is financially able to conduct operations under the authority requested. The Application and the supporting information attached to it demonstrate that a need exists for the extension of service.

29. It is found that Applicant is fit to provide the proposed extension of transportation service as restrictively amended and the Application with the proposed restrictive amendments is reasonable, in the public interest, and should be granted.

30. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulation, Motion for Approval of Restrictive Amendment and Approval of Conditional Withdrawal of Interventions, Motion to Vacate Hearing and if the Commission Desires, Set a Hearing on the Stipulation for April 10, 2014 and Notice of Waiver of 210-Day Deadline (Stipulation) filed by MT Acquisitions, LLC, doing business as Mountains Taxi (Applicant); MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or Northwest Suburban Taxi; and Colorado Cab Company, LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab is granted consistent with the discussion above.

2. The Intervention of MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi is deemed withdrawn.

3. The Intervention of Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab is deemed withdrawn.

4. The Application for Authority to Extend Certificate of Public Convenience and Necessity (CPCN) PUC No. 55768 is restrictively amended by the Stipulation and as described in Paragraph No. 10 above.

5. Applicant is granted an extension under CPCN PUC No. 55768 to operate as a common carrier by motor vehicle for hire, as follows:

Transportation of

passengers in call-and-demand taxi service

between all points in the following area: commencing at the intersection of Colorado State Highway 119 and U. S. Highway 6, near the boundaries of the Counties of Jefferson, Gilpin, and Clear Creek, State of Colorado, thence North along the western border of the County of Jefferson to its intersection with Boulder County; thence easterly along the northern border of the County of Jefferson to its intersection with Colorado Highway 93, then south along Colorado Highway 93 to its intersection with 64th Avenue, as extended; thence easterly along 64th Avenue and southeasterly along its extension named Ralston Road to Ralston Road's intersection with Kipling Street; thence south along Kipling Street, as extended, to its intersection with C-470; thence east along C-470 to its intersection with the eastern boundary of the County of Jefferson; thence south along the boundary of the County of Jefferson to a point one mile south of its intersection with Jefferson County Road 96 (South Platte River Road); thence west along an imaginary line to a point 8 miles west of the eastern boundary of the County of Park, thence north along an imaginary line for 28.25 miles thence east along an imaginary line to State Highway 119, thence southeast along State Highway 119 to the point of beginning, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS: The authority is restricted as follows:

A.) to the use of no more than twenty (20) taxicabs at one time through April 30, 2015;

B.) to the use of no more than thirty (30) taxicabs at one time from and after May 1, 2015;

6. Applicant shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the extended permit granted shall be strictly contract carrier operations.

7. Applicant shall not commence the operations under the extended permit until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and
- (d) paying the applicable issuance fee (\$5).

8. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the extended operations under the CPCN shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

9. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph 7.

10. This Proceeding is now closed.

11. 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.

12. As provided by § 40-6-106, 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.

13. 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

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director