

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0507CP

IN THE MATTER OF THE APPLICATION OF WOODLAND PARK AIRPORT TAXI LLC,
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION GRANTING MOTION TO
DISMISS APPLICATION WITHOUT PREJUDICE AND
DENYING MOTION FOR ATTORNEY FEES AND COSTS**

Issued Date: April 3, 2025

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants Intervenor Tava Cab, LLC's ("Tava Cab") Motion to Dismiss Applicant Woodland Park Airport Taxi LLC's ("Applicant") application without prejudice and vacates the April 8, 2025 evidentiary hearing. In addition, this Decision denies Tava Cab's request for attorney fees and costs.

B. Procedural History

2. On November 20, 2024, Applicant initiated this matter by filing the above-captioned Application ("Application").¹ Applicant seeks a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand taxi service between all points in Teller County, on the one hand, and all points in El Paso County, State of Colorado, on the other hand.

¹ Applicant filed an Amended Application on December 15, 2024. Applicant then withdrew the Amended Application on December 18, 2024.

3. On November 25, 2024, the Public Utilities Commission (“the Commission”) provided public notice of the Application per § 40-6-108(2), C.R.S.²

4. On December 6, 2024, Tava Cab filed a Notice of Intervention by Right and Entry of Appearance (“Intervention”), including a copy of its Letter of Authority.

5. On January 8, 2025, the Commission deemed the Application complete and referred the matter by minute entry to an Administrative Law Judge (“ALJ”) for disposition.

6. On January 14, 2025, by Decision No. R25-0025-I, the ALJ acknowledged Tava Cab’s intervention and set a remote prehearing conference for February 5, 2025.

7. On February 5, 2025, the parties appeared for the scheduled prehearing conference. The parties agreed to a procedural schedule and remote evidentiary hearing date. As part of the procedural schedule, the parties agreed to specific dates by which to exchange witness and exhibit lists and copies of exhibits.

8. On February 11, 2025, the ALJ issued Decision No. R25-0098-I, which memorialized the parties’ agreement from the February 5 prehearing conference. Relevant here, the decision set the evidentiary hearing for April 8, 2025, and required Applicant to file and disclose witness and exhibit lists and to file its exhibits by February 26, 2025.

9. On March 13, 2025, Tava Cab filed a Motion to Dismiss Application and For Rule 11 Attorney Fees and Costs (“Motion to Dismiss”).

10. Applicant has not filed any documents in this proceeding since its December 18, 2024 withdrawal of its amended application.

² See Notice at 1-2.

II. MOTION TO DISMISS

A. Request to dismiss Application and vacate hearing.

11. In its Motion to Dismiss, Tava Cab requests that the ALJ dismiss the Application and vacate the evidentiary hearing.

12. In support of these requests, Tava Cab claims that Applicant has not provided any witness or exhibit lists, nor any exhibits as required by Decision No. R25-0098-I.³ Tava Cab further claims that Applicant has not filed any public support for its Application, and that Tava Cab is materially adversely affected because it could not meaningfully prepare for the April 8, 2025 hearing without evidence.⁴ Tava Cab claims it has been materially adversely affected by Applicant's failure to provide information beyond what was in the initial Application.⁵

13. Tava Cab requests that the ALJ dismiss Applicant's Application because Applicant has failed to file the necessary documentation as required by Decision No. R25-0098-I.

B. Request for attorney's fees and costs.

14. Tava Cab also requests that Applicant be ordered to pay its legal costs and fees in pursuing its Intervention.

15. As the basis for its request for attorney's fees and costs, Tava Cab cites Colorado Rule of Civil Procedure 11(a), which provides that a signature on a pleading signifies that the filing is not interposed for any improper purpose, including needlessly increasing the cost of litigation.⁶

³ See Motion to Dismiss at 1-2.

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.* at 3.

16. Tava Cab claims that the Application was a “sham application filed with the intent to increase Tava [Cab’s] legal costs.”⁷ Tava Cab asserts it “cannot afford to expend financial resources opposing a ghost application.”⁸

III. DISCUSSION AND FINDINGS

A. Request for dismissal.

17. Applicant appeared for the February 5, 2025 prehearing conference and agreed to the prehearing procedural schedule as well as the hearing date.

18. The ALJ issued Decision No. R25-0098-I after the February 5, 2025 conference and required Applicant to file its witness and exhibit lists, as well as copies of its proposed exhibits, by February 26, 2025.

19. As of the date of this decision, Applicant: has not made the required filings concerning witnesses and exhibits; has not requested an extension of time to make the required filings; and has not responded to Tava Cab’s Motion to Dismiss.⁹

20. Pursuant to Rule 1400(d), 4 CCR 723-1, the Commission may deem a party’s failure to file a response to a motion as a confession of the motion. The ALJ finds that Applicant has conceded Tava Cab’s request for dismissal because Applicant did not file a response to the Motion to Dismiss.

21. In addition, Applicant has the burden to prove that its requested relief should be granted.¹⁰ Relevant here, an applicant carries the burden to prove that the Commission should

⁷ *Id.* at 2.

⁸ *Id.*

⁹ Under Rule 1400(b), 4 *Colorado Code of Regulations* (“CCR”) 723-1, Applicant had 14 days, or until March 27, 2025, to respond to the Motion to Dismiss.

¹⁰ Rule 1500, 4 CCR 723-1 (proponent of an order carries the burden of proof; party commencing proceeding is the proponent of the order).

approve its application.¹¹ As such, an applicant has the duty to prosecute, or pursue, its application without unnecessary or unreasonable delay.¹²

22. When determining whether to dismiss for failure to prosecute, the tribunal should “consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits,” including the length of delay, the reason for the delay, and any prejudice that may result to other parties based on the delay, and the extent to which the applicant has renewed efforts to prosecute the application.”¹³

23. Applicant missed the filing deadline it agreed to at the February 5, 2025 prehearing conference and as required by Decision No. R25-0098-I. Applicant also failed to respond to the Motion to Dismiss. In addition, Applicant did not engage in any renewed efforts to prosecute its application after Tava Cab filed its Motion to Dismiss. The ALJ finds that Applicant’s delay in prosecuting its Application is unreasonable.

24. Therefore, the ALJ will dismiss the Application without prejudice and vacate the April 8, 2025 evidentiary hearing, as ordered below.

B. Request for attorney’s fees.

25. The Commission has broad constitutional and statutory discretion to determine when attorney’s fees should be awarded in its own proceedings.¹⁴

¹¹ *Id.*

¹² *See People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

¹³ *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010).

¹⁴ *Colo. UTE Electric Ass’n. v. Pub. Utils. Comm.*, 602 P.2d 861, 868 (Colo. 1979); *see* Colo. Const. art. XXV.

26. Although § 13-17-102, C.R.S. is applicable to “any court of record,” rather than Commission proceedings¹⁵, the Commission has used §13-17-102 to guide its decisions when addressing awards of attorney’s fees and costs.¹⁶

27. Section 13-17-102(4), C.R.S., provides:

The court shall assess attorney fees or licensed legal paraprofessional fees if, upon the motion of any party or the court itself, the court finds that an attorney, licensed legal paraprofessional, or party brought or defended an action, or any part of an action, that lacked substantial justification or that the action, or any part of the action, was interposed for delay or harassment or if the court finds that an attorney, licensed legal paraprofessional, or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party pursuant to section 13-21-111.5 (3) that lacked substantial justification.

28. Section 13-17-102 (9)(a), C.R.S. states: “As used in this article 17, unless the context otherwise requires: (a) ‘Lacked substantial justification’ means substantially frivolous, substantially groundless, or substantially vexatious.”

29. The ALJ must review the factual and legal bases in Tava Cab’s Motion to Dismiss to determine whether the Application lacked substantial justification.¹⁷

30. Tava Cab asserts that Applicant filed the Application with the intent to increase Tava Cab’s legal costs.¹⁸ However, Tava Cab did not provide any factual bases for this conclusion.¹⁹ Instead, Tava Cab stated, “In support of this opinion [that Applicant filed the

¹⁵ See § 13-1-111, C.R.S. (defines courts of record).

¹⁶ See, e.g., Decision No. R24-0036 at p. 20, issued in Proceeding No. 23A-0078CP on January 19, 2024; Decision No. R12-0641 at p. 4, mailed June 13, 2012 in Proceeding No. 12A-152CP-EXT; and Decision No. C08-0552 at p. 2, mailed August 19, 2008 in Proceeding No. 07F-036W.

¹⁷ As the proponent of an order for attorney’s fees and costs, Tava Cab bears the burden of proof. See, e.g., Rule 1500, 4 CCR 723-1.

¹⁸ It appears that Tava Cab argues that Applicant’s Application is substantially vexatious, and that Applicant brought or maintained its claim in bad faith to annoy or harass Tava Cab. See, e.g., *Mitchell v. Ryder*, 104 P.3d 316 (Colo. App. 2004).

¹⁹ Tava Cab also did not provide a conferral statement in its Motion to Dismiss. While the outcome of any hypothetical conferral would be conjecture, the ALJ notes that Tava Cab’s lack of attempt to confer with Applicant does not strengthen its position.

Application with the intent to increase Tava Cab's legal costs], Tava [Cab] points out that this application was filed by Marcos Griego who is also one of the principals in Pikes Peak Transport, Tava's sole Intervenor in Tava's application case, 24A-0446CP-EXT."²⁰

31. Because Tava Cab did not set forth factual bases for its request for attorney's fees, the ALJ cannot make any findings related to Applicant's motivations for filing the Application.

32. Similarly, the ALJ cannot conclude that the Application was substantially groundless, frivolous, or vexatious, and will therefore deny Tava Cab's request for attorney's fees and costs, as ordered below.

IV. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Applicant Woodland Park Airport Taxi LLC's Application for a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire, filed on November 20, 2024, is dismissed without prejudice.

2. Consistent with the discussion above, the Motion to Dismiss Application and For Rule 11 Attorney Fees and Costs, filed by Tava Cab, LLC ("Tava Cab") on March 13, 2025 is granted, in part and denied, in part. Tava Cab's request for to dismiss the Application and vacate the evidentiary hearing is granted. Tava Cab's request for attorney's fees and costs is denied.

3. The April 8, 2025 evidentiary hearing for this proceeding is vacated.

4. Proceeding No. 24A-0507CP is closed.

5. The 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.

²⁰ Motion to Dismiss at 2.

6. 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.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded. Responses to exceptions are due within seven days of the date exceptions are served.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

Administrative Law Judge