

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF BERNALILLO COUNTY HEALTH )  
CARE CORPORATIONS DBA )  
ALBUQUERQUE AMBULANCE )  
SERVICE FOR AN AMENDMENT )  
TO CERTIFICATE NO. 1168 )  
\_\_\_\_\_ )**

**Case No. 18-00216-TR-M**

**ORDER SETTING HEARING ON APPLICATION FOR TEMPORARY  
AUTHORITY**

**THIS MATTER** comes before the New Mexico Public Regulation Commission ("Commission") upon the Application for an Amendment to Certificate No. 1168 filed by Bernalillo County Health Care Corporation d/b/a Albuquerque Ambulance Service ("AAS" or "Applicant") on July 27, 2018 (the "Application for Permanent Authority") and upon the September 19, 2018 Application Temporary Authority filed by AAS ("Application for Temporary Authority"); and being otherwise duly advised in the premises,

**THE COMMISSION FINDS AND CONCLUDES:**

1. AAS currently holds certificate number 1168 from the Commission to provide the following transportation service:

An Ambulance Service Between all points and places in the State of New Mexico, with equipment stationed in Bernalillo County only, excluding transportation of persons declared legally dead and/or dead bodies.

2. On July 27, 2018, Applicant filed its Application for Permanent Authority, seeks to amend certificate number 1168 to also provide the following transportation service:

Amendment of existing Certificate No. 1168 to authorize inter-facility scheduled transport service over irregular routes; between points and places in Rio Arriba and Santa Fe Counties, and originating in Rio Arriba and Santa Fe Counties, on the one hand, and destination points and places in the State of New Mexico on the other; with equipment stationed in Santa Fe County only. All existing authority issued under Certificate No. 1168 is continuing, fully effective, and unaffected by the additional authority applied for in Commission Docket 18-00216-TR-M.

3. Also on July 27, 2018, Staff filed a Notice of Application for Amendment to a Certificate ("Notice of Application for Permanent Authority") which Notice was posted on the Commission's internet web site and sent by electronic mail to all motor carriers, public officials, agencies and all other persons or entities that provided electronic mail addresses to the Commission for the purpose of publication, advising such persons of the filing and posting. NMSA 1978, § 65-2A-6.

4. The Notice of Application for Permanent Authority was posted on the Commission's website for 20 days. The 20 day Notice Period on the Application for Permanent Authority expired on August 16, 2018.

5. On August 15, 2018, during the Notice Period on the Application for Permanent Authority, Running Bear Rescue, Inc. d/b/a Rocky Mountain EMS ("Running Bear"), a certificated carrier authorized to provide ambulance transportation services pursuant to a Certificate of Public Convenience and Necessity ("CCN"), moved the Commission for leave to intervene in this matter as a party under NMAC 1.2.2.23 of the Rules of Procedure of the New Mexico Regulation Commission. Running Bear, as the holder of a CCN operating in territory within the service area described in the Application, stated that it is an interested party to this proceeding and stated an objection to the granting of the Application since, according to Running

Bear, that would adversely impact its ability to continue to provide transportation in the future as authorized under its existing CCN.

6. On August 29, 2018, the Commission issued its Order on Intervention and Assignment of Hearing Examiner which found that Running Bear's objection was timely filed and that its Motion for Leave to Intervene is permitted in this matter as a party under NMAC 1.2.2.23 of the Rules of Procedure of the New Mexico Regulation Commission, subject to NMSA 1978, § 65-2A-13 C (2). The August 29<sup>th</sup> Order ordered, pursuant to NMSA 1978, § 65-2A-5 C and-13 B, a hearing on an application for amendment of a certificate to provide ambulance service and appointed Ashley Schannauer as Hearing Examiner to preside over this case, to conduct any necessary hearings, and to submit a Recommended Decision to the Commission.

7. On September 19, 2018, AAS filed an Application for Temporary Authority.

8. In the Application for Temporary Authority, Mr. Scott Kasper Chief of Bernalillo County Health Care Corporation d/b/a Albuquerque Ambulance Service ("AAS") filed a sworn statement which stated that AAS is requesting Temporary Authority to establish a stationing point in Santa Fe County pending the determination of AAS's application for an amendment to its certificate in this matter. Mr. Kasper stated the reason for the temporary authority is that Presbyterian Healthcare Services ("PHS") full service hospital located in the City of Santa Fe is nearing completion and is slated to open in the next few weeks. PHS anticipates patients admitted to the new hospital in Santa Fe will require advanced levels of diagnostic and therapeutic treatment which can only be obtained in Albuquerque and that patients admitted to Presbyterian Espanola Hospital New Mexico will require treatment at levels available at the new

full service hospital in Santa Fe. For this reason, PHS has requested that AAS obtain authority to permanently station ambulance units in Santa Fe County to address the anticipated need for scheduled transport service. According to MR. Kasper, the only existing ambulance provider which has Intervened in Case No. 18-00216-TR-M is Running Bear, Inc. d/b/a Rocky Mountain EMS ("Running Bear") and he testified that, to the best of his knowledge and belief, the dismissal of the Running Bear's bankruptcy without an order of discharge has left Running Bear in an insolvent financial condition and without the resources necessary to meet the Increased call volumes that will occur when the new PHS hospital in Santa Fe opens. Mr. Kasper testified there will be an urgent need for additional scheduled transport capacity to satisfy the increased calls for scheduled transport service which Running Bear is financially and operationally unable to meet. Mr. Kasper testified that the public safety is put at risk when local resources are overwhelmed by increased ambulance call volume. Mr. Kasper concluded that the Commission, by granting temporary authority to AAS, and allowing AAS to commence operations when the PHS hospital opens, will avoid any possibility of a precipitous calamity due to the lack of local scheduled transport resources.

9. On September 19, 2018, Staff filed an Amended Notice of Application for an Amendment to Certificate and for Temporary Authority ("Amended Notice"). Staff stated that it believed that both the Motor Carrier Act statute and Motor Carrier rule pertaining to temporary authority, NMSA 1978 § 65-2A-11, and 18.3.2.25 NMAC, respectively, require that notice for both applications, permanent and temporary authority, be noticed in order to give the Commission the opportunity to decide the application for temporary authority during the pendency of the Notice Period. *See*, NMSA 1978, § 65-2A-11 A (i), and 18.3.2.25 D NMAC.

For that reason, Staff, by its Amended Notice stated that it was re-noticing the Application for Permanent Authority in conjunction with this first-time notice pertaining to Applicant's Application for Temporary Authority.

10. The Amended Notice was posted, on September 20, 2018, on the Commission's internet web site and sent by electronic mail to all motor carriers, public officials, agencies and all other persons or entities that provided electronic mail addresses to the Commission for the purpose of publication, advising such persons of the filing and posting. NMSA 1978, § 65-2A-6.

11. The 20 day notice period for the Amended Notice expires on October 10, 2018.

12. Also on September 20, 2018, the Hearing Examiner issued a Procedural Order and Notice of Hearing which ruled that Running Bear qualified as a protesting carrier pursuant to NMSA 1978 §65-2A-3.UU and 18.3.2.16.B NMAC and scheduled a public hearing to be held on November 28, 2018 because good cause existed to schedule the hearing beyond the 90-day period established in 18.3.2.16.B NMAC.

13. Pursuant to **18.3.2.25 NMAC TEMPORARY AUTHORITY:**

**A. Grant discretionary.** Pursuant to Section 65-2A-11 NMSA 1978 the commission may, in its discretion, but is not required to, grant temporary authority to a person applying for a certificate or permit, amendment of a certificate or permit or for lease or transfer of all or part of a certificate if it finds that the applicant meets the requirements of Section 65-2A-11 NMSA 1978. An application for temporary authority shall be made on the form prescribed by the director.

**B. Original or amended authority.** If the application for temporary authority is made in connection with an application for an original certificate or permit, lease or transfer of all or part of a certificate or permit or for amendment of a certificate or permit, the commission shall not grant temporary authority unless:

(1) the director has certified that the application for permanent operating authority contains all of the information and documents required by 18.3.2.13 NMAC; and

(2) the applicant has shown that the public has an urgent and immediate need for the proposed transportation service by filing affidavits from one or more persons having need of the service; and either:

(a) stating that no other motor carrier is providing the transportation service in the territory the applicant seeks to serve; or  
(b) stating that another motor carrier is providing such transportation service, but that such transportation service is inadequate in rates, routes, or service...; and

(3) the applicant submits the fee required by Section 65-2A-36 NMSA 1978.

**D. Procedure and notice.** During the notice period, in ruling on an application for temporary authority, the commission shall not consider any objections, protests or other filings made by any protestor or third party. The notice period for any application for a temporary authority shall last until the commission appoints a hearing examiner or 20 days, whichever is longer. If the commission does not rule on an application for temporary authority before the expiration of the notice period, the application shall be deemed denied. After the expiration of the notice period, and provided a hearing has not already been held, the applicant or any protestor may request a hearing on either the grant or denial of the application for temporary authority by complying with all of the following procedures.

(1) The request for hearing must be filed within five days of the expiration of the notice period.

(2) If the commission granted a temporary authority during the notice period, staff or any other party requesting a hearing on the grant of temporary authority must include written direct testimony specifically addressing the accuracy or veracity of information contained in the applicant's application for temporary authority, application for an original certificate or permit, application for lease or transfer of all or part of a certificate or permit or application for amendment of a certificate or permit. Within five days of receipt of the written direct testimony, staff or any other party supporting the grant of temporary authority may file written rebuttal testimony addressing only matters raised in the written direct testimony.

(3) If the commission denied the application for temporary authority during the notice period, staff or any party requesting a hearing on the denial of temporary authority must include written direct testimony containing information addressing any of the Section 65-2A-11 NMSA 1978 criteria for granting a temporary authority. Within five days of receipt of the written direct testimony, staff or any other party supporting the denial of temporary authority may file written rebuttal testimony addressing only matters raised in the written direct testimony.

(4) Provided a hearing on the merits of the application for temporary authority has been held, once the commission has rendered its decision, no further legal proceedings involving the temporary authority other than extensions of the temporary authority will be considered by the commission.

14. The Commission finds that it should hold a public hearing on whether or not the

Application for Temporary Authority should be granted for the purpose of having the Applicant

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testify and submit direct written testimony and other documentation containing information addressing all of the Section 65-2A-11 NMSA 1978<sup>1</sup> criteria for granting a temporary authority. Staff or any other party supporting the denial of temporary authority shall be permitted to testify at the public hearing and submit written rebuttal testimony addressing only matters raised in the written direct testimony.

**IT IS THEREFORE ORDERED:**

A. A public hearing before a quorum of the Commission in this case will be held beginning at **9:30 a.m. on October 3, 2018 at the Commission's 4th Floor Hearing Room, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501**, for the purpose of receiving evidence, arguments and any possible action relating to other appropriate matters related to this the Application for Temporary Authority.

B. Persons who desire to intervene to become a party to this case may file a written motion to intervene in Case No. 18-00216-TRM with the Commission at any time during the twenty day notice period for the Application for Permanent and/or Temporary Authority which expires on October 10, 2018. Further, persons who desire to protest the Application for

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<sup>1</sup>**65-2A-11 Temporary authority.** A. The commission may without notice grant temporary authority to an applicant for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit for a period not to exceed the duration of the application process, if it finds that:

(1) the notice period for such application has not yet expired, the application is one directly involving public safety, a governmental program or a specific public event, there is an urgent and immediate public need for such service and the public may be harmed by waiting for the notice period to expire;

(2) the applicant for temporary authority has a complete application for a certificate or permit or for amendment, lease or transfer of all or part of a certificate or permit, pending before the commission;

(3) the applicant is fit to provide the transportation service requested, is able to provide any certificated service requested and is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act and the rules of the commission; and

(4) satisfactory proof of urgent and immediate need has been made by verified proof as the commission shall by rule prescribe.

Permanent and/or Temporary Authority to may file a written protest in Case No. 18-00216-TRM with the Commission at any time during the twenty day notice period which expires on October 10, 2018. In addition, persons who desire to intervene to become a party to this case may request leave of the Commission by oral motion at the beginning of the hearing on this matter.

C. The Commission's Rules of Procedure, 1.2.2 NMAC, shall apply to this case except as modified by order of the Commission. A copy of such rules may be obtained from the offices of the Commission, which address is stated below, and are also available at the official site of the New Mexico Administrative Code, <http://www.nmcpr.state.nm.us/nmac/>.

D. Any person may examine the pleadings, testimony, exhibits and other documents filed in the public record for this case at the Commission's offices at 1120 Paseo de Peralta, Santa Fe, NM 87501 (telephone: (505) 827-6947 or (505) 827-4501), through the Commission's website, <http://www.nmprc.state.nm.us>.

E. Any interested person may appear at the time and place of hearing and make written or oral comment pursuant to 1.2.2.32(A)(2) NMAC without becoming an intervenor. Interested persons may also send written comments, which shall reference Case No. 18-00216-TRM, to the Commission at the address set out below. Such comments shall not be considered as evidence in this case.

New Mexico Public Regulation Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269

F. Interested persons should contact the Commission for confirmation of the hearing date, time and place, since hearings are occasionally rescheduled.



G. The procedures, dates and requirements provided herein are subject to modification by further order of the Commission or any hearing examiner that may be designated by the Commission in this matter.

H. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-6947 at least 48 hours prior to the commencement of the hearing.

I. All procedural dates and requirements of this case are subject to further order of the Commission and any persons interested in attending the hearing must monitor the Commission's e-docket case filing system and website or contact the Commission for confirmation of the hearing date, time, and place, since procedural orders and hearings are occasionally changed or rescheduled.

J. This Order is effective immediately.

K. A copy of this Order shall be served upon all parties listed on the attached certificate of service via email, if the email addresses are known, and if not known, by regular mail. Further, a copy of this Order shall be posted, no later than September 27, 2018, on the Commission's internet web site and sent by electronic mail to all motor carriers, public officials, agencies and all other persons or entities that provided electronic mail addresses to the Commission for the purpose of publication, advising such persons of the filing and posting.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 26<sup>th</sup> day of  
September, 2018.

NEW MEXICO PUBLIC REGULATION COMMISSION

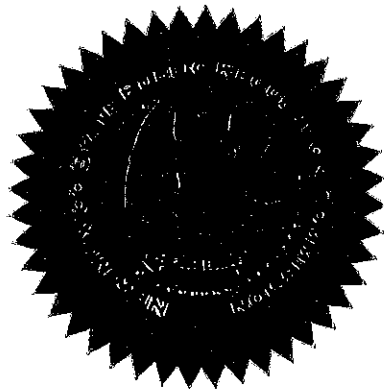
  
SANDY JONES, CHAIR

  
CYNTHIA HALL, VICE CHAIR

  
PATRICK H. LYONS, COMMISSIONER

  
LYNDA LOVEJOY, COMMISSIONER

VOTED YES  
VALERIE ESPINOZA, COMMISSIONER



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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OF BERNALILLO COUNTY HEALTH ) Case No. 18-00216-TR-M  
CARE CORPORATIONS, DBA ALBUQUERQUE )  
AMBULANCE SERVICE, FOR AN )  
AMENDMENT TO CERTIFICATE NO. 1168 )**

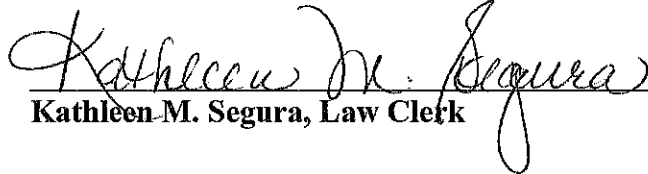
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Setting Hearing on Application for Temporary Authority** issued by the New Mexico Public Regulation Commission on September 26, 2018, was sent via email on September 26, 2018 to the parties indicated below:

|                   |  |
|-------------------|--|
| Randy Bartell     | <a href="mailto:rbartell@montand.com">rbartell@montand.com</a> ;                   |
| Scott Kasper      | <a href="mailto:skasper@phs.org">skasper@phs.org</a> ;                             |
| Ray A. Padilla    | <a href="mailto:rayapadilla1@gmail.com">rayapadilla1@gmail.com</a> ;               |
| Avelino Gutierrez | <a href="mailto:Avelino.gutierrez@state.nm.us">Avelino.gutierrez@state.nm.us</a> ; |
| Cydney Beadles    | <a href="mailto:Cydney.beadles@state.nm.us">Cydney.beadles@state.nm.us</a> ;       |
| Amanda Gray       | <a href="mailto:Amanda.gray@state.nm.us">Amanda.gray@state.nm.us</a> ;             |
| Sarah Becker      | <a href="mailto:Sarah.Becker@state.nm.us">Sarah.Becker@state.nm.us</a> ;           |
| Judith Amer       | <a href="mailto:Judith.amer@state.nm.us">Judith.amer@state.nm.us</a> ;             |

**DATED** this September 26, 2018.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
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Kathleen M. Segura, Law Clerk