

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF CAPACITY BUILDERS INC., D/B/A LOU GO'S)
FOR A CERTIFICATE TO PROVIDE NON-) Case No. 17-00270-TR-M
EMERGENCY MEDICAL TRANSPORT SERVICE)
_____)**

NOTICE OF APPLICATION FOR AN AMENDMENT TO A CERTIFICATE

The Transportation Division (“Staff”) of the New Mexico Public Regulation Commission (“Commission”) through this Notice of Application for an Amendment to a Certificate (“Notice”) hereby gives notice that Capacity Builders Inc., d/b/a Lou Go’s (“Applicant”) has applied to the Commission for an amendment to its certificate to provide specialized passenger service as a non-emergency medical transport service to and from points and places in the State of New Mexico and return, for the transportation of patients under a filed tariff, with equipment to be stationed at 210 N. Auburn, Farmington, NM 87401.

Any member of the general public desiring to view the application may do so at the Commission, 1120 Paseo de Peralta, Santa Fe, NM 87501.

Under the Motor Carrier Act¹, the Commission cannot act on an application for amendment to a certificate less than twenty days after the date notice was electronically published (“Notice Period”). NMSA 1978, § 65-2A-6 A. Electronic publication is accomplished by posting the Notice on the Commission’s web site and electronically sending the Notice to all motor carriers, public officials or agencies, or other persons or entities who have previously supplied electronic mail addresses to the Commission advising such persons or entities of the filing and posting. NMSA 1978, § 65-2A-6 A.

¹ NMSA 1978, § 65-2A-1 et seq.

Under the Motor Carrier Act, the requirements applicable to an application for an amendment to a certificate are the same requirements applicable to an application for an original certificate. NMSA 1978, § 65-2A-14 B(1)

The Motor Carrier Act states that a person may file an objection to an application for an amendment to a certificate during the Notice Period for the application. NMSA 1978, § 65-2A-13 A. The Commission may, but does not have to, hold a public hearing specific to an objection that is filed within the Notice Period. NMSA 1978, § 65-2A-5 B, and -13 A. The Commission may also on its own initiative decide to hold a public hearing. NMSA 1978, § 65-2A-5 B, and -13A. Further, if Staff requests a hearing, the Commission must hold a public hearing on the application. NMSA 1978, § 65-2A-5C, and -13 B.

The Motor Carrier Act defines a “*specialized passenger service.*” A *specialized passenger service* means the intrastate transportation for hire of passengers with special physical needs by specialized types of vehicles, or for specialized types of service to the public or community, as the Commission may by rule provide. NMSA 1978, § 65-2A-3 CCC. A “*non-emergency medical transport service*” is a specialized passenger service. 18.3.1.7 H NMAC, and 18.3.2.8 B(5) NMAC.

An additional change to the Motor Carrier Act that also took effect July 1, 2013, states:

Except as provided in this section and in [NMSA 1978, § 65-2A-13], the Commission shall issue a certificate allowing a person to provide passenger service after notice and public hearing requirements are met, if:

- (1) The applicant is fit and able to provide the transportation service to be authorized by the certificate;
- (2) The applicant is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the Commission and other applicable federal state laws and rules; and

*

*

*

- (4) The applicant has filed a tariff as provided in [NMSA 1978, § 65-2A-20].

NMSA 1978, § 65-2A-8 B.

For purposes of this application, the language of NMSA 1978, § 65-2A-8 stating; “except as provided in this section [NMSA 1978, § 65-2A-8], and in [NMSA 1978, § 65-2A-13]” for NMSA 1978, § 65-2A-8, requires one or more endorsements, each of which shall specify the nature of service to be rendered, territory authorized to be served, reasonable terms of service as the Commission may allow or require for the particular certificate, limits the territory sought to that which will be served in a reasonably continuous and adequate manner [within 30 days from issuance of the certificate or other date specified by the Commission], shall generally follow county or incorporated municipal boundaries, and shall authorize service between points and places within the specified territory, and from points and places in the specified territory to all points and places in the state and return, unless otherwise expressly allowed or specified in the terms of service in the endorsement to the certificate. NMSA 1978, § 65-2A-8 E and –F.

For purposes of this application, the language of NMSA 1978, § 65-2A-8 stating; “except as provided in this section [NMSA 1978, § 65-2A-8], and in [NMSA 1978, § 65-2A-13]” for NMSA 1978, § 65-2A-13, requires the Commission to hold a hearing if a *protest* is filed within the Notice Period or Staff files a request for hearing within the Notice Period. NMSA 1978, § 65-2A-13 B. A protesting carrier is allowed to proceed as an intervenor in the application proceeding. NMSA 1978, § 65-2A-13 B.

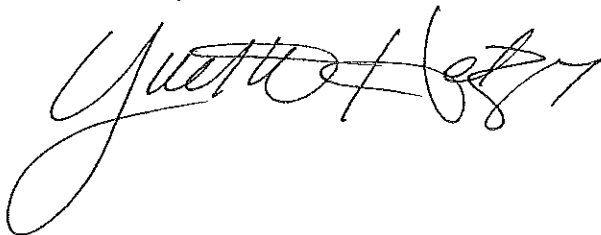
In any hearing held on an application, the protesting carrier has the burden of proving all matters of fact pertaining to its full-service operation within its certificated full-service territory, the burden of proving the potential impairment or adverse impact on its existing full-service operation by the transportation service proposed by the applicant and the burden of proving all other allegations and matters of public interest that it may raise. NMSA 1978, § 65-2A-13 C(2).

The protesting carrier's proof should include, without limitation, a demonstration with reasonable specificity of the nature of the existing full service being provided, the volume of passengers transported, economic analysis related to expenses and revenues of the full-service operation and the anticipated economic, business or functional effect of the proposed service on the existing provision of, or rates for, full-service transportation within the full-service territory. NMSA 1978, § 65-2A-13 C(2).

Even if no hearing is held, before granting the application, the Commission must consider any objections that were filed within the Notice Period. NMSA 1978, § 65-2A-10 B. If a person filing an objection to the application is ultimately allowed by the Commission to intervene in the case ("Permissive Intervenor"), that person must pay a fee of two hundred fifty dollars (\$250). NMSA 1978, § 65-2A-36 A(2). At the public hearing, the Permissive Intervenor will have the burden of proof for all factual matters and legal issues that it alleges and on which it is permitted to intervene. NMSA 1978, § 65-2A-13 C(3).

The Commission's Motor Transportation Rules are also available at the Commission's web site: www.nmprc.state.nm.us.

Filed By: Yvette Hetzer

A handwritten signature in black ink, appearing to read "Yvette Hetzer". The signature is written in a cursive, flowing style with a large loop at the beginning and end.