

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
ALBUQUERQUE INTERNATIONAL)
BALLOON FIESTA, INC. FOR) Case No. 18-00145-TRM
DECLARATION OF A TRANSPORTATION)
EMERGENCY PURSUANT TO THE)
EMERGENCY TRANSPORTATION ACT)

)

NOTICE OF APPLICATION AND PROCEDURAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon the *Application for Permit, for Expedited Hearing and to Waive Time* (the "Application"), filed by the Albuquerque International Balloon Fiesta, Inc. (the "AIBF" or the "Applicant") on May 22, 2018.

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. The Application was filed pursuant to NMSA 1978, §§ 22-17-1 through 22-17-4 (2004) (the "Emergency Transportation Act") for a permit to use school buses for general public transportation during the 2018 Albuquerque International Balloon Fiesta (the "2018 Balloon Fiesta"). *See* the Application, opening paragraph and ¶¶ 1 and 2.
2. Pursuant to the Emergency Transportation Act and other applicable law, the Commission has jurisdiction over this matter,
3. The Application stated that the 2018 Balloon Fiesta is scheduled to take place from October 6, 2018 to October 14, 2018. *Id.* at ¶ 3.
4. Pursuant to the Emergency Transportation Act, the Commission may approve a permit application of an independent operator who operates school buses under contract with a

school district for the operation of such buses for general public transportation if the Commission makes certain determinations regarding school bus operations and public or private public transportation systems,¹ and the Commission determines that a public transportation emergency exists.²

5. Addressing the requirements of NMSA 1978, § 22-17-2 (A) (1), § 22-17-2 (A) (2), and § 22-17-2 (A) (3), respectively, of the Emergency Transportation Act, the Application stated that:

a. Each of the school districts operating their own school buses, or the independent school bus operators which will provide the buses, have complied with all laws,

¹The Emergency Transportation Act provides:

22-17-2. Public regulation commission permits.

A. Subject to the Emergency Transportation Act, the public regulation commission may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district for the operation of such buses for general public transportation if the commission determines that:

- (1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;
- (2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and
- (3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.

²Defining a "public transportation emergency," the Emergency Transportation Act provides:

22-17-2. Public regulation commission permits.

* * *

C. As used in the Emergency Transportation Act, "public transportation emergency" includes an event:

- (1) that is open to the public;
- (2) that, if in a class A county, is expected to attract over fifty thousand visitors and residents;
- (3) that has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operation, maintenance or use of school buses or for loss of or damage to property of others; and
- (4) for which school buses are needed to transport the public to the event because:
 - (a) existing public transportation systems cannot adequately and timely transport the public to the event;
 - (b) private transportation systems are unavailable or prohibitively expensive; or
 - (c) the event and the surrounding area are likely to suffer economic hardship if school buses are not utilized pursuant to the Emergency Transportation Act.

regulations, and other requirements governing transportation of the general public (*see* the Application at ¶ 9, addressing § 22-17-2 (A) (1));

b. Existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation (*see* the Application at ¶ 8, addressing § 22-17-2 (A) (2)); and

c. A transportation emergency will exist during the 2018 Balloon Fiesta if sufficient public transportation is not available and if a permit for the use of school buses as emergency public transportation is not approved (*see* the Application at ¶ 4, addressing § 22-17-2 (A) (3)).

6. Addressing the requirements of NMSA 1978, § 22-17-2 (C) (1), § 22-17-2 (C) (2), § 22-17-2 (C) (3), § 22-17-2 (C) (4) (a), § 22-17-2 (C) (4) (b), and § 22-17-2 (C) (4) (c), the Application stated, respectively, that:

a. The 2018 Balloon Fiesta is an event that is open to the public (*see* the Application at ¶ 5, addressing NMSA 1978, § 22-17-2 (C) (1));

b. the 2018 Balloon Fiesta is being held in Bernalillo County, New Mexico, a Class A county, and the event is expected to attract over eight hundred thousand (800,000) visitors and residents (*see* the Application at ¶ 6, addressing NMSA 1978, § 22-17-2 (C) (2));

c. Each school bus, together with Albuquerque International Balloon Fiesta, Inc. has excess liability coverage or has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operator, maintenance or use of school buses or for loss of or damage to property of others (*see* the Application at ¶ 10, addressing NMSA 1978, § 22-17-2 (C) (3));

d. Existing public transportation systems cannot adequately and timely transport the public to the 2018 Balloon Fiesta, and for that reason a transportation emergency exists, and that the existing Albuquerque Transit public transportation system is not and has not been available during past international balloon fiestas, and that, even if available, the public transportation system cannot adequately and timely transport the public to the 2018 Balloon Fiesta (*see* the Application at ¶¶ 3 and 12, addressing NMSA 1978, § 22-17-2 (C) (4) (a));

e. There is insufficient public transportation available to meet the needs of the public during the 2018 Balloon Fiesta, and for that reason a transportation emergency exists, and that local private transportation systems are unavailable or prohibitively expensive (*see* the Application at ¶¶ 3 and 13, addressing NMSA 1978, § 22-17-2 (C) (4) (b)); and

f. The 2018 Balloon Fiesta would be jeopardized unless there are assurances of adequate public transportation to the event (*see* the Application at ¶ 11, addressing NMSA 1978, § 22-17-2 (C) (4) (c)).

7. The Application stated that AIBF arranged reliable and excellent public transportation during last year's 2017 Balloon Fiesta using school buses. *See* the Application at ¶ 7.

8. The Application stated that AIBF is ready, willing, and able to provide the necessary public transportation services for the 2018 Balloon Fiesta using available school buses from New Mexico school districts and independent bus operators. *See* the Application at ¶ 14.

9. The Applicant states that any private transportation company that is willing to provide services during the 2018 Balloon Fiesta will be utilized on the same terms and conditions as those agreed upon by school districts for the use of school buses. *See* the Application at ¶ 8.

10. The Application states that each of the school districts operating its own school buses, or the independent school bus operators that will provide school buses, have complied with all laws, regulations, and other requirements governing transportation of the general public. *See* the Application at ¶ 9.

11. The Applicant states that each school bus provided, together with the AIBF, has excess liability coverage or has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from negligent operat[ion], maintenance, or use of school buses, or for loss of or damage to property of others. *See* the Application at ¶ 10.

12. The Applicant states that a determination by the Commission that there is a public transportation emergency, requiring a permit, should be made in a short time in this case no later than June 15, 2018. *See* the Application at ¶ 15.

13. The Application indicates that this shortened time request is necessary to ensure that the State Transportation Director of the State Department of Education has sufficient time to make an independent determination that school bus service to students will not be adversely affected, and that there will not be unnecessary duplication of a general public transportation service. *See* the Application at ¶ 18.

14. As allowed by Commission Rule 1.2.2.8 (D) NMAC,³ the Application represented that there is sufficient good cause alleged to shorten the time for mailing, to shorten the publication date, and to shorten the intervention date. *See* the Application at ¶ 19.

³ This portion of the Commission's "General Provisions" Rule, Rule 1.2.2.8 (D) NMAC, states:

D. Waiver of rules: Upon . . . motion . . . by . . . any party showing good cause. . . , the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

15. The Application states that, upon information and belief, Staff of the Commission supports the Application. *See* the Application at ¶ 21.

16. Although, for Motor Carrier Act cases in general, and pursuant to NMSA 1978, § 65-2A-6 (A) of the Motor Carrier Act, the Commission normally may not act on an application until the expiration of a twenty (20) calendar day notice period with such notice period starting on the date of publication of the notice in a newspaper of general circulation, pursuant to NMSA 1978, § 65-2A-38 (A), the Motor Carrier Act does not apply to school buses, provided that school buses shall be subject to all applicable school bus safety provisions established by the State Transportation Director.⁴

17. Upon a motion by a party showing of good cause, the Commission may waive the application of any of its procedural rules, except where precluded by law. 1.2.2.8 (D) NMAC.

18. The Application states, at paragraph 19, that there exists sufficient good cause, pursuant to 1.2.2.8 (D) NMAC of the Commission's Rules of Procedure, to shorten the time for mailing notice, to shorten the time for publication, and to shorten the intervention period (*see* ¶ 20 of the Application), prior to any Commission action on this Motor Carrier Act *Application*.⁵

19. The Commission is informed that the Executive Director of AIBF had represented to Staff that the person who regularly files the annual application for a declaration of a

⁴ NMSA 1978, § 65-2A-38 (A) provides:

65-2A-38. Exemptions.

The Motor Carrier Act shall not apply to:

A. school buses, provided that school buses shall be subject to applicable school bus safety provisions established by the state transportation director[.]

* * *

⁵ For Motor Carrier Act cases in general, and in this case, the Commission is required to wait at least twenty days after the date a notice of an application is published before acting on the application. *See* NMSA 1978, §65-2A-6 of the Motor Carrier Act. However, pursuant to NMSA 1978, § 65-2A-38 (A), the Motor Carrier Act does not apply to school buses, provided that school buses are subject to all applicable school bus safety provisions established by the State Transportation Director.

transportation emergency has retired from AIBF. For that reason, the Executive Director of AIBF only recently became aware that the 2018 AIBF Emergency Transportation Act application was not filed in accord with AIBF's normal filing date schedule. Given that circumstance, the Commission finds that good cause exists to shorten the time for mailing, publication, and intervention in this case.

IT IS THEREFORE ORDERED:

A. The AIBF shall mail copies of this Notice of Application and Procedural Order as soon as possible and in no event later than **Friday, June 8, 2018**, to all persons listed on the attached mailing list, which includes all persons on the Commission's Charter, Shuttle, and Van/Bus lists, and shall file a certificate of mailing.

B. The AIBF shall cause this Notice of Application and Procedural Order to be published, as soon as possible and in no event later than **Friday, June 8, 2018**, one time in the Albuquerque Journal and shall file proof of publication in the Docket as soon as available thereafter, but no later than **Thursday, June 14, 2018**, unless good cause can be shown. AIBF shall also confirm with the Director of the Commission's Transportation Division that this Notice of Application and Procedural Order is posted as soon as possible on the Commission's official website (www.nmprc.state.nm.us).

C. Any person wishing to file an objection to this Notice of Application and Procedural Order may do so by filing such objection in the form of a motion for intervention, pursuant to the Commission's Rules of Practice and Procedure. A copy of these rules may be obtained from the offices of the Commission, whose address is PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504-1269. All objections and motions for intervention must be filed with the Commission **no later than Thursday, June 14, 2018**.

D. The AIBF is directed to file in the Docket and with the Commission's Transportation Division Director documents tending to support findings on the matters discussed herein and more specifically identified in Paragraphs 4, 5, and 6 of this Notice of Application and Procedural Order herein above, and the Applicant is directed to provide to the Commission's Transportation Division Director copies of the applicable current insurance policies relating to usage of buses for the 2018 Balloon Fiesta.

E. An Affidavit, signed by an officer or duly appointed representative of the AIBF, shall be filed in this Docket attesting to the accuracy and completeness of each and every document that is required to be filed in the preceding paragraph. The Affidavit shall describe how the documents support the findings that AIBF has requested of the Commission under the Emergency Transportation Act.

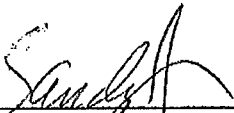
F. The AIBF is directed to make all required filings in this matter as soon as possible but no later than **Friday, June 15, 2017**, unless good cause is shown for the delay.

G. The AIBF is directed to cooperate fully with the Commission's Transportation Division Staff and its counsel in the filing of all required documents in support of the Application.

H. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day
of May 2018.

NEW MEXICO PUBLIC REGULATION COMMISSION



SANDY JONES, CHAIR



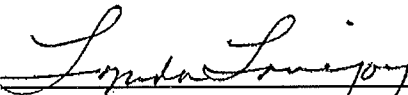
CYNTHIA B. HALL, VICE CHAIR



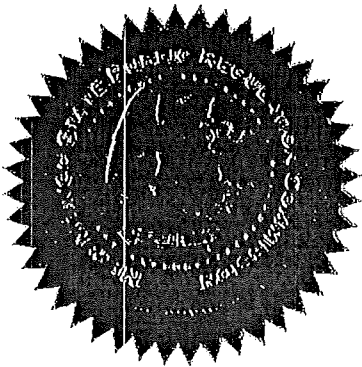
PATRICK H. LYONS, COMMISSIONER

EXCUSED

VALERIE ESPINOZA, COMMISSIONER



LYNDA LOVEJOY, COMMISSIONER



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Case No. 18-00145-TR-M

CERTIFICATE OF SERVICE

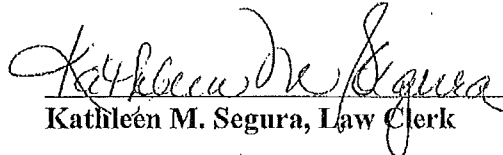
I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Application and Procedural Order issued on May 30, 2018, was sent on May 30, 2018, via email to the following:

Via Email:

| | |
|-----------------------|--|
| Elaine Nelson | enelson@balloonfiesta.com ; |
| Paul R. Smith | prsmith@balloonfiesta.com ; |
| Antonio Ortiz | Antonio.ortiz1@state.nm.us ; |
| Avelino Gutierrez-PRC | Avelino.Gutierrez@state.nm.us ; |
| David Black-PRC | David.black@state.nm.us ; |

DATED this 30th day of May, 2018.

NEW MEXICO PUBLIC REGULATION COMMISSION



Kathleen M. Segura, Law Clerk