

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF ANTHONY R. ULIBARRI D/B/A )  
ALBUQUERQUE BUS TOURS FOR A ) Docket No. 18-00148-TR-M  
CERTIFICATE TO PROVIDE TOUR AND )  
SIGHTSEEING SERVICE )  
\_\_\_\_\_ )

FILED IN OFFICE OF

MAY 25 2018

NM PUBLIC REGULATION COMM  
RECORDS MANAGEMENT BUREAU

NOTICE OF APPLICATION FOR A CERTIFICATE

The Transportation Division (“Staff”) of the New Mexico Public Regulation Commission (“Commission”) through this Notice of Application for a Certificate (“Notice”) hereby gives notice that Anthony R. Ulibarri d/b/a Albuquerque Bus Tours (“Applicant”) has applied to the Commission for a certificate to provide *tour and sightseeing service* to points and places in the State of New Mexico and return with equipment to be stationed at 1127 Boddy Road, SW, Albuquerque, NM 87121.

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 Act, NMSA 1978, § 65-2A-1, et seq., the Commission cannot act on an application for 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.

The Motor Carrier Act states that a person may file an objection to an application for 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 classifies tour and sightseeing services as a *specialized passenger service*. NMSA 1978, § 65-2A-41 B. 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.

The Motor Carrier Act 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

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

NMSA 1978, § 65-2A-8 B.

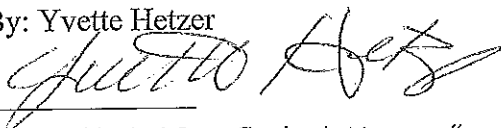
For purposes of this application, the language of NMSA 1978, § 65-2A-8 B stating; “except as provided in this section [NMSA 1978, § 65-2A-8], and in [NMSA 1978, § 65-2A-13]” for NMSA 1978, § 65-2A-8, requires one or more endorsements, each of which shall specify the nature of service to be rendered, 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. 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. However, the Motor Carrier Act allows a protest to be filed by a motor carrier only when the territory involved in the application includes all or a portion of the full-service territory of the protesting carrier and when the grant of the application will, or presents a reasonable potential to, impair, diminish or otherwise adversely affect its existing provision of full-service<sup>1</sup> passenger service to the public within its full-service territory. NMSA 1978, § 65-2A-3 UU. Since *specialized passenger service* does not involve full-service, protests are not allowed in the present case.

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).

Filed By: Yvette Hetzer



<sup>1</sup> “Full service” is defined in the Motor Carrier Act to mean “. . . an ambulance service, a scheduled shuttle service; or a municipal taxicab service.”