

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF BERNALILLO COUNTY HEALTH)
CARE CORPORATION DBA ALBUQUERQUE)
AMBULANCE SERVICE FOR AN)
AMENDMENT TO CERTIFICATE NO. 1168)
AND FOR TEMPORARY AUTHORITY)**

Case No. 18-00216-TR-M

FILED IN OFFICE OF

SEP 19 2018

NM PUBLIC REGULATION COMM
RECORDS MANAGEMENT BUREAU

**AMENDED NOTICE OF APPLICATION FOR AN AMENDMENT
TO A CERTIFICATE AND FOR TEMPORARY AUTHORITY**

The Transportation Division (“Staff”) of the New Mexico Public Regulation Commission (“Commission”) through this Amended Notice of Application for an Amendment to a Certificate (“Notice”) hereby gives notice that Albuquerque Ambulance Service (“Applicant”) has applied to the Commission for an amendment to its certificate and for temporary authority. Applicant 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.

Applicant in this docket 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.

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

On July 27, 2018, Applicant filed its Application for Amendment to a Certificate as described above. Also on July 27, 2018, Staff filed a Notice of Application for Amendment to a Certificate ("Notice") which Notice was posted on the Commission's website for 20 days. On September 19, 2018, Applicant filed an Application for Temporary Authority. Staff believes 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(1), and 18.3.2.25 D NMAC. For that reason, Staff is re-noticing the application for permanent authority in conjunction with this first-time notice pertaining to Applicant's application for temporary authority.¹

If the Commission grants the temporary authority, a protestor may request a hearing on the grant of temporary authority, provided the request is made after the expiration of the Notice Period, a hearing has not already been held, and the protestor includes written direct testimony specifically addressing the accuracy or veracity of information contained in the applicant's for temporary authority, or application for amendment of its certificate. 18.3.2.25 (D)(1) and (2) NMAC.

¹ Staff believes that Applicant does not dispute the legal interpretation of Staff contained in this paragraph. Staff would also state that the statute on temporary authority provides another means for granting temporary authority, namely, by the hearing examiner after a motion made by the applicant in the proceeding for permanent authority. NMSA 1978, § 65-2A-11 C.

Any member of the general public desiring to view the application may do so at the Commission on weekdays (not including state holidays) during the hours of 8:00 a.m. and 5:00 p.m. at: 1120 Paseo de Peralta, Santa Fe, NM 87501.

NMSA 1978, § 65-2A-8 B states that “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 and state laws and rules; 3) the transportation service to be provided under the certificate is or will serve a useful public purpose that is responsive to a public demand or need; and 4) the applicant has filed a tariff as provided in Section 65-2A-20 NMSA 1978.

The Motor Carrier Act also states that a person may file an objection to an application for an amendment of a certificate during the Notice Period for the application. NMSA 1978, § 65-2A-13 A. The Commission is required to consider any objections filed during the Notice Period in regard to determining whether to hold a hearing. NMSA 1978, § 65-2A-13 A. The Commission is not required to hold a hearing pursuant to any objection but may, in its discretion or on its own motion for any reason, hold a hearing on any application for an amendment of a certificate. NMSA 1978, § 65-2A-5 B and -13 A.

The Commission is required to hold a hearing on an application for amendment of a certificate to provide ambulance service whenever a protest is filed within the Notice Period or Staff files a request for hearing within the Notice Period. NMSA 1978, § 65-2A-5 C and -13 B. The Motor Carrier Act defines a “protest” to mean, among other things, a pleading filed with the Commission by a full-service carrier that expresses an objection to an application for amendment

of a certificate for ambulance service when the territory involved in the application includes all or a portion of the full-service territory of the protesting carrier. NMSA 1978, § 65-2A-3 UU.

The Motor Carrier Act defines “full service” to mean, among other things, a certificated ambulance service required to meet specific standards for the provision of service to or throughout a community. NMSA 1978, § 65-2A-3 T. It should be noted that since the definitions in the Motor Carrier Act of “protest” and “full service” became effective on July 1, 2013, the Commission has yet to adopt by rule or otherwise any specific standards applicable to the provision of certificated ambulance service.

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).

The Motor Carrier Act states that the Commission shall not grant an application for a certificate for ambulance service or for an amendment of a certificate for ambulance service if it finds after hearing that the existing ambulance service is provided on a reasonably continuous


and adequate basis in the territory in which the new service is sought or that the holder of the certificate providing the existing ambulance service in such territory is willing and able to provided, and does subsequently provide, reasonably continuous and adequate service within such territory, as specified by Commission order. NMSA 1978 § 65-2A-13 D(1).

The Commission may allow other interested persons to intervene, either generally or on the basis of specific facts or issues ("Permissive Intervenor"). A Permissive Intervenor has the burden of proof for its position on all factual matters and legal issues that it alleges and on which it is permitted to intervene. NMSA 1978, § 65-2A-13 C(3).

Any application for permissive intervention or protest is required to be accompanied by a fee of two hundred fifty dollars (\$250). NMSA 1978, § 65-2A-36 A(1).

The Commission's Motor Transportation Rules are also available at the Commission's web site.

Respectfully Submitted by:


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NM Public Regulation Commission