

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1397CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MAGIC BUS, LLC, DOING BUSINESS AS MAGIC BUS TOURS, FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55833.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTIONS, PERMITTING
LATE-FILING, DENYING AS MOOT MOTION
IN LIMINE AND MOTION TO DISMISS, AND
MODIFYING PROCEDURAL SCHEDULE**

Mailed Date: May 14, 2014

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I. STATEMENT

1. On December 20, 2013, Magic Bus, LLC, doing business as Magic Bus Tours (Magic Bus or Applicant), filed an Application for Permanent Authority to Extend Operations under Certificate of Public Convenience and Necessity PUC No. 55833 (Application). That filing commenced this Proceeding.

2. On January 13, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. On February 20, 2014, Decision No. R14-0191-I vacated that procedural schedule.

3. On February 12, 2014, Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO (Shamrock Taxi or Intervenor), timely intervened as of right. Shamrock Taxi opposes the Application.

4. Magic Bus and Shamrock Taxi, collectively, are the Parties. As authorized by Decision No. R14-0191-I, Magic Bus is represented by Michael Murphy, who is not an attorney.¹ Shamrock Taxi is represented by legal counsel.

5. On February 19, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. On February 19, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than September 17, 2014.

7. On March 6, 2014, by Decision No. R14-0237-I, the ALJ scheduled a June 4, 2014 evidentiary hearing in this Proceeding and established the procedural schedule for this Proceeding. The June 4, 2014 hearing date permits the Commission to issue its decision in this Proceeding by September 17, 2014.

¹ That Interim Decision sets out the conditions under which Mr. Murphy represents Applicant.

8. Pursuant to the established procedural schedule, Magic Bus was to file its list of witnesses and complete copies of its exhibits not later than March 21, 2014. Magic Bus neither made the March 21, 2014 filing nor requested, prior to or on March 21, 2014, additional time within which to make that filing.

9. Pursuant to the established procedural schedule, Shamrock Taxi was to file its list of witnesses and complete copies of its exhibits not later than April 18, 2014. On April 18, 2014, in lieu of filing its list of witnesses and complete copies of its exhibits, Shamrock Taxi filed (in one document) a Motion *in Limine* and Motion to Dismiss (Intervenor April 18 Motion).

10. On April 23, 2014, Applicant filed an untitled document (Applicant April 23 Filing) in which, among other things, Applicant “kindly requests an extension for the time allowed to submit an initial evidence and witness list due on March 21st.” Applicant April 23 Filing at 1. Thus, the Applicant April 23 Filing contains a motion for leave to late-file Applicant’s list of witnesses and exhibits.

11. There is no separate certificate of service attached to the Applicant April 23 Filing. Instead, in the first paragraph on 1, that filing states:

[o]n this Wednesday[,] April 23rd 2014 Magic Bus LLC serves to all concerned parties set up to receive E-filings in conjunction with [P]roceeding Number 13A-1397CP-EXT the following list of witnesses and exhibits it will offer in its direct case.

From this statement and given that the certificate of service generated by the Commission shows that Intervenor participates in the Commission’s E-Filings System, it appears that the Applicant April 23 Filing was served on Intervenor on April 23, 2014. In addition, on April 29, 2014, by Decision No. R14-0441-I, the ALJ notified Intervenor of the Applicant April 23 Filing and noted that response to the Applicant April 23 Filing was due not later than May 7, 2014.

A. Applicant Request to Enlarge Time.

12. Pursuant to the established procedural schedule, Applicant was to file its list of witnesses and complete copies of its exhibits not later than March 21, 2014. Applicant neither made the March 21, 2014 filing nor requested, prior to or on March 21, 2014, additional time within which to make that filing.

13. The Applicant April 23 Filing requests additional time within which to file Applicant's list of witnesses and its exhibits. As good cause for granting the request, Applicant states that its representative "has been mired down in personal family matters and as a one man band we were unable to meet [the filing] deadline." Applicant April 23 Filing at 1. The Applicant April 23 Filing does not state the date by which Applicant will file its list of witnesses and copies of the exhibits it will offer in its direct case, if the request is granted. Incorporated into the Applicant April 23 Filing, however, are a list of witnesses that Applicant may call at hearing and a list of exhibits. Thus, it appears that Applicant seeks an enlargement of time, to and including April 23, 2014, within which to make its filing.

14. As discussed above, Intervenor had actual knowledge of the Applicant April 23 Filing and of the date by which to file a response. The time for filing a response has expired, and no response was filed. The Applicant April 23 Filing is unopposed.

15. The ALJ finds that the Applicant April 23 Filing states good cause. The ALJ finds that no party will be prejudiced if the Applicant April 23 Filing is granted because: (a) Intervenor did not oppose the requested relief; (b) the procedural schedule can be, and will be, modified to take into account Applicant's late-filed list of witnesses and list of exhibits; and (c) Applicant provided its list of witnesses and list of exhibits on April 23, 2014. The ALJ will grant Applicant's request for additional time within which to file its list of witnesses and

its exhibits and will permit Applicant to file, not later than April 23, 2014, its list of witnesses and its exhibits.

16. On May 2, 2014, Applicant filed (in one document) a response to the Intervenor April 18 Motion and a Motion to Proceed. That filing is a reformatted version of the Applicant April 23 Filing and contains a certificate of service. Because the substance of the May 2, 2014 filing is the same as the substance of the Applicant April 23 Filing and because Intervenor has had ample opportunity to respond to the substance of the April 23 Filing, the ALJ finds that the Applicant April 23 Filing, although it is the earlier filing, subsumes the May 2, 2014 filing. Thus, the ruling granting the Applicant April 23 Filing also grants the May 2, 2014 filing.

B. Intervenor Motion *in Limine* and Motion to Dismiss.

17. On April 18, 2014, Intervenor filed (in one document) a Motion *in Limine* and Motion to Dismiss (Intervenor April 18 Motion). The basis for that filing is Applicant's failure to file its list of the witnesses and copies of the exhibits Applicant will offer in its direct case.

18. Granting Applicant additional time within which to file its list of witnesses and its exhibits renders the Intervenor April 18 Motion moot. The ALJ will deny as moot the Intervenor April 18 Motion.

C. Modification of Procedural Schedule.

19. By Decision No. R14-0237-I, the ALJ established the following procedural schedule in this Proceeding: (a) not later than March 21, 2014, Applicant will file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) not later than April 18, 2014, Intervenor will file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than May 9, 2014, each party will file, if necessary, an updated and corrected list of witnesses and complete copies of the updated or

corrected exhibits that it will offer in its case; (d) not later than May 23, 2014, each party will file its prehearing motions, including dispositive motions and motions *in limine*; (e) not later than May 29, 2014, the Parties will file any settlement agreement or stipulation that they have reached; and (f) the evidentiary hearing will be held on June 4, 2014.

20. Given the late-filed list of Applicant witnesses and exhibits, the ALJ finds that the procedural schedule must be modified. The ALJ will modify the procedural schedule as follows: (a) not later than **May 21, 2014**, Intervenor will file its list of witnesses and complete copies of the exhibits that it will offer in its case; (b) not later than **May 27, 2014**, each party will file, if necessary, a corrected list of witnesses and complete copies of the corrected exhibits that it will offer in its case; (c) not later than **noon on May 30, 2014**, each party will file its prehearing motions, including dispositive motions and motions *in limine*;² and (d) not later than **noon on June 2, 2014**, the Parties will file any settlement agreement or stipulation that they have reached.

21. Absent further order, the evidentiary hearing will be held on June 4, 2014, as scheduled by Decision No. R14-0237-I.

22. Except as modified by this Interim Decision, Decision No. R14-0237-I remains in effect.

II. ORDER

A. It Is Ordered That:

1. The request for an enlargement of time within which to file list of witnesses and exhibits, which filing was made on April 23, 2014 by Magic Bus, LLC, doing business as Magic Bus Tours, is granted.

² As a preliminary matter at the evidentiary hearing, the ALJ will hear argument on any pending prehearing motion.

2. The Motion to Proceed filed on May 2, 2014 by Magic Bus, LLC, doing business as Magic Bus Tours, is granted.

3. Not later than April 23, 2014, Magic Bus, LLC, doing business as Magic Bus Tours, shall file its list of witnesses and copies of the exhibits that it will offer in its direct case in this Proceeding.

4. The Motion *in Limine* and Motion to Dismiss filed by Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, on April 18, 2014, is denied as moot.

5. The procedural schedule established in Decision No. R14-0237-I is modified as follows: (a) not later than May 21, 2014, Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, shall file its list of witnesses and complete copies of the exhibits that it will offer in its case; (b) not later than May 27, 2014, each party shall file, if necessary, a corrected list of witnesses and complete copies of the corrected exhibits that it will offer in its case; (c) not later than noon on May 30, 2014, each party shall file its prehearing motions, including dispositive motions and motions *in limine*; and (d) not later than noon on June 2, 2014, the Parties shall file any settlement agreement or stipulation that they have reached.

6. Absent further order, the evidentiary hearing will be held on June 4, 2014.

7. Except as modified by this Interim Decision, Decision No. R14-0237-I remains in effect.

8. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

9. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director