

Decision No. R09-0860-1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-390CP

IN THE MATTER OF THE APPLICATION OF CHERIE ADMASSU JEMBERIE, JR.,
DOING BUSINESS AS CHAD TRANSPORTATION, FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR
VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING AEX, INC., TO OBTAIN
COUNSEL; SETTING DATE FOR COUNSEL
TO ENTER APPEARANCE; AND
INFORMING AEX, INC., OF
CONSEQUENCES OF ITS FAILURE TO COMPLY**

Mailed Date: August 6, 2009

I. **STATEMENT**

1. On June 2, 2009, Cherie Admassu Jemberie, Jr., doing business as Chad Transportation, filed a Verified Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this docket.

2. The Commission issued its Notice of Applications Filed. The following intervened of right: Colorado Cab Company, LLC, doing business as Denver Yellow Cab; Home James Transportation Services, Ltd.; MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi; RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs; Shamrock Charters, Inc., doing business as Shamrock Airport Express, SuperShuttle of Northern Colorado, SuperShuttle of Ft. Collins, and/or SuperShuttle

NOCO; Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado; and SuperShuttle International Denver, Inc.

3. AEX, Inc., doing business as Alpine Express (Alpine Express), filed to intervene of right in this proceeding. The Administrative Law Judge (ALJ) postponed consideration of the intervention pending a determination of whether Alpine Express must be represented by counsel in this case. This Order addresses the representation issue.

4. The Commission referred this matter to an ALJ.

5. By Decision No. R09-0782-I, as relevant here, the ALJ ordered Alpine Express, on or before August 4, 2009, either to show cause why it did not need to be represented by an attorney or to have its attorney enter an appearance in this case.

6. On August 3, 2009, Alpine Express submitted in this docket a letter addressed to Commission Director Dean. The letter was not filed in accordance with the Commission's rules. The letter was not served on Parties in this proceeding. The letter is not in the form required for a filing with the Commission. Nonetheless, the ALJ *sua sponte* will waive the applicable rules and will accept the letter as a filing made in response to Decision No. R09-0782-I.¹

7. In the letter submitted on August 3, 2009, as pertinent here, Alpine Express states that it has four owners but notes that two of the owners "are married [to one another] and have been married since the formation of" Alpine Express. In addition, Alpine Express states that it

¹ In Decision No. R09-0782-I at ¶ 33, the ALJ advised the parties that they must be familiar with, and abide by, the Commission's Rules of Practice and Procedure, 4 CCR Part 1. This includes the requirements pertaining to service and to filing. **The Parties are advised that, and are on notice that,** future submissions and filings must be made in accordance with the Commission's rules. **The Parties are advised that, and are on notice that,** absent a waiver or variance, the ALJ will not consider submissions and filings that do not conform to the applicable rules.

has been represented by an officer in past proceedings before the Commission. Alpine Express requests permission to be represented by its officer.

8. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

9. Section 13-1-127(1)(a), C.R.S., defines a closely-held entity as one that has no more than three owners. Alpine Express admits that it has four owners.² Because it is not a closely-held entity as defined by statute, Alpine Express does not come within the exception contained in Rule 4 CCR 723-1-1201(b)(II). In addition, the fact that an officer may have represented Alpine Express in Commission proceedings in the past does not bring Alpine Express within the exception contained in Rule 4 CCR 723-1-1201(b)(II).

10. This is an adjudicative proceeding before the Commission. Alpine Express is a corporation and is a party in this matter. Because Alpine Express does not meet the requirements of Rule 4 CCR 723-1-1201(b)(II), the ALJ finds that the provisions of Rule 4 CCR 723-1-1201(a) apply to Alpine Express. The ALJ finds that Alpine Express must be represented by an attorney in order to participate as an intervenor in this case.

11. The ALJ will order Alpine Express to obtain an attorney to represent it in this case and will order the attorney for Alpine Express to enter an appearance at or before the August 13, 2009 prehearing conference in this case.

² The fact that two of Alpine Express's owners are married to one another is of no legal significance with respect to the definition of closely-held entity found in § 13-1-127(1)(a), C.R.S. Whatever their marital status, there are four individual owners.

12. **Alpine Express is advised that it cannot proceed in this case without an attorney.**

13. **Alpine Express is advised that, unless otherwise ordered, failure to obtain an attorney and failure to have the attorney enter an appearance as required by this Order will result in dismissal of the Alpine Express intervention.**

II. ORDER

A. It Is Ordered That:

1. The letter submitted in this docket by AEX, Inc., doing business as Alpine Express (Alpine Express), on August 3, 2009 is accepted as a filing made in response to Decision No. R09-0782-I. The applicable rules pertaining to form, filing, and service are waived with respect to the letter submitted in this docket by Alpine Express on August 3, 2009.

2. Alpine Express shall obtain counsel to represent it in this docket.

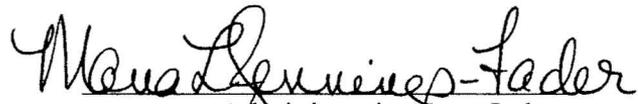
3. The attorney for Alpine Express must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

4. The attorney for Alpine Express shall enter an appearance in this proceeding at or before the prehearing conference in this case scheduled August 13, 2009.

5. Unless otherwise ordered, the failure of Alpine Express to comply with this Order shall result in dismissal of the Alpine Express intervention.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Administrative Law Judge