

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0035CP

IN THE MATTER OF THE APPLICATION OF GC OUTDOOR, LLC, FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER
BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PERMITTING APPLICANT TO APPEAR
WITHOUT LEGAL COUNSEL; REQUIRING
FILINGS; VACATING PROCEDURAL
SCHEDULE; NOTIFYING PARTIES THAT
APPLICATION HAS BEEN DEEMED COMPLETE;
AND CONTAINING ADVISEMENTS**

Mailed Date: February 20, 2014

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I. STATEMENT

1. On January 8, 2014, GC Outdoor, LLC (GCO or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). Appended to the filing are several documents.¹ That filing commenced this Proceeding.

2. On January 13, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 7); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

3. On January 21, 2014, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely filed (in one document) its Entry of Appearance and Intervention by Right in Opposition to the Permanent Authority Application or Alternate Motion to Permissively Intervene.² By that filing, Metro Taxi establishes that it is an intervenor by right; thus, it is a party in this proceeding. Metro Taxi opposes the Application and is represented by legal counsel.

4. On February 6, 2014, Colorado Cruisers, doing business as Colorado Crewz-In (Colorado Cruisers), filed a document in this Proceeding. This document is discussed below.

5. On February 12, 2014, Colorado Cab Company, LLC, doing business as Denver Yellow Cab (Denver Yellow Cab), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing. By that filing, Denver Yellow Cab establishes that it is an

¹ One of the documents is filed under seal as it contains information that the Applicant claims is confidential.

² On the same date, Metro Taxi filed its Preliminary List of Witnesses. On the same date, Metro Taxi filed its Preliminary List of Exhibits, to which are attached copies of proposed exhibits.

intervenor by right; thus, it is a party in this proceeding. Denver Yellow Cab opposes the Application and is represented by legal counsel.

6. The intervention period has expired. No other person has filed an intervention of right or a motion for leave to intervene. In addition, as of the date of this Interim Decision, there is no pending motion for leave to intervene out-of-time.

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

A. Application Deemed Complete and Time for Commission Decision.

8. On February 19, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, GCO provided neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

9. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than 210 days from the date on which the Commission deemed the Application to be complete. The Commission should issue its decision on the Application on or before **September 17, 2014**.

B. Applicant to Appear without Legal Counsel.

10. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)⁴ requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to

³ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

⁴ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

Rule 4CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, provided the Commission grants permission. The Commission has held that, unless an exception applies, a party must be represented by counsel in an adjudicatory proceeding. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, any filing made on behalf of the party is void and of no legal effect if it is filed by an individual who is not an attorney; and second, the party must have an attorney in order to participate in a hearing, a prehearing conference, or an oral argument.

11. This is an adjudication before the Commission.

12. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

13. In order to be represented in this matter by an individual who is not an attorney, Applicant must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Applicant has authority to represent Applicant.

14. In the verified Application at 7, Applicant submitted its statement concerning self-representation (that is, representation by an individual who is not an attorney). Applicant states that: (a) GCO has three or fewer owners; (b) Mr. Gregory Carpenter is Applicant's owner; (c) the amount in controversy in this Proceeding is less than \$ 15,000; and (d) as owner, Mr. Gregory Carpenter has authority to represent Applicant in this Proceeding.

15. Review of the information provided in the Application establishes that Applicant is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., as Applicant has three or fewer owners.

16. Review of the information provided in the Application establishes that the amount in controversy likely is less than \$ 15,000.

17. Applicant states that, if the Commission permits, Mr. Gregory Carpenter will be Applicant's non-lawyer representative in this matter. Review of the information provided in the Application establishes that Mr. Carpenter is Applicant's owner. As owner, Mr. Carpenter is presumed to have the authority to appear on behalf of the closely-held entity.

18. Based on the information provided and the record in this matter, the ALJ finds that Applicant has met the requirements of Rule 4 CCR 723-1-1201(b)(II). Although he is not an attorney, Mr. Gregory Carpenter may represent Applicant in this matter.

19. **Applicant is advised, and is on notice, that Mr. Gregory Carpenter is the only individual who is not an attorney who is authorized to be GCO's representative in this Proceeding.**

20. **Applicant and Mr. Gregory Carpenter are advised and are on notice that Mr. Gregory Carpenter will be bound by, and the ALJ will hold him to, the same procedural and evidentiary rules as those that bind attorneys.** The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A pro se defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard also applies in civil proceedings. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) ("If a litigant, for whatever reason, presents his own case to

the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard applies in Commission proceedings.

C. Colorado Cruisers to Make Supplemental Filing Regarding Intervention.

21. On February 6, 2014, Colorado Cruisers filed a document (Colorado Cruisers document) that has no caption, has no Proceeding number, has no title, contains no signature block, and has no signature. In addition, no certificate of service is attached to that document.

22. Rule 4CCR 723-1-1202 governs the form and content of filings made with the Commission. As pertinent here, Rule 4 CCR 723-1-1202(b)(II) provides:

Every pleading shall contain a caption that identifies the proceeding by title and proceeding number, that contains the heading “Before the Public Utilities Commission of the State of Colorado,” and that states the title of the pleading.

(Emphasis supplied.) The Colorado Cruisers document does not comply with Rule 4CCR 723-1-1202(b)(II).

23. In relevant part, Rule 4 CCR 723-1-1202(d) provides:

A pleading of a party not represented by an attorney shall be signed by a person with authority to bind the party, and shall state the person’s title, address, telephone number, and e-mail address.

(Emphasis supplied.) The Colorado Cruisers document does not comply with Rule 4CCR 723-1-1202(d).

24. Rule 4CCR 723-1-1205 governs service of documents that are filed with the Commission. As pertinent here, Rule 4 CCR 723-1-1205(a) states:

A person filing any pleading or other document *shall serve* a copy, including all supporting attachments or exhibits, on every other party ... in the proceeding[.]

(Emphasis supplied.) As provided in Rule 4CCR 723-1-1205(e), evidence of service is a certificate of service. Rule 4 CCR 723-1-1205(e) states, in pertinent part:

Proof of service *shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission.* ... For any filing for which there is no certificate of service ... the Commission will presume that the document has *not* been served[.] ... This presumption may be overcome by evidence of proper service.

(Emphasis supplied.) Rule 4CCR 723-1-1205(e) requires a certificate of service for a filing whether the document is filed through the Commission's E-Filings System or is filed by paper copy.

25. The Colorado Cruisers document does not have a certificate of service. Given the absence of a certificate of service, the ALJ presumes that the Colorado Cruisers document was not served on Applicant and was not served on counsel for Metro Taxi.⁵

26. Rule 4CCR 723-1-1401(e) governs intervention in transportation proceedings, such as the instant Proceeding. The Colorado Cruisers document appears to be an attempt to intervene as of right in this Proceeding. Rule 4 CCR 723-1-1401(e)(I) provides:

A notice of intervention as of right *must include* a copy of the common carrier's letter of authority, *must show* that the common carrier's authority is in good standing, *must identify* the specific parts of that authority that are in conflict

⁵ Denver Yellow Cab did not intervene until February 12, 2014, which is after Colorado Cruisers filed the February 6, 2014 document. Following its intervention, Denver Yellow Cab must receive all filings.

with the application, and *must explain* the consequences to the common carrier and the public interest if the application is granted.

(Emphasis supplied.) The Colorado Cruisers document does not comply with every requirement contained in Rule 4 CCR 723-1-1401(e).

27. The ALJ will order Colorado Cruisers to file, on or before **February 28, 2014**, a supplement to the Colorado Cruisers document. The supplementary filing: (a) must be a document that is substituted for the Colorado Cruisers document; (b) must conform to the requirements of Rule 4 CCR 723-1-1202(b)(II); (c) must conform to the requirements of Rule 4 CCR 723-1-1202(d); (d) must contain all the information required by Rule 4 CCR 723-1-1401(e)(I); and (e) must have a certificate of service as required by Rule 4 CCR 723-1-1205(e). In addition, the supplementary filing must conform to the requirements of the Rules of Practice and Procedure, irrespective of whether a particular rule is cited in this Interim Decision.

28. The ALJ will hold consideration of the Colorado Cruisers intervention pending receipt of the supplemental filing. If Colorado Cruisers timely makes the supplemental filing, the ALJ will determine Colorado Cruisers' status on the basis of the supplemental filing. If Colorado Cruisers does not timely make the supplemental filing, the ALJ will determine Colorado Cruisers' status in this Proceeding on the basis of the Colorado Cruisers document.

29. Except where the context indicates otherwise and *for purposes of this Interim Decision only*, Colorado Cruisers, Denver Yellow Cab, and Metro Taxi, collectively, are the Intervenors; and Applicant and Intervenors, collectively, are the Parties.

D. Colorado Cruisers to Retain Legal Counsel or to Make Show Cause Filing.

30. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication 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 who is not an attorney may appear to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, any filing made on behalf of the party is void and of no legal effect if it is filed by an individual who is not an attorney; and second, the party must have an attorney in order to participate in a hearing, a prehearing conference, or an oral argument.

31. This is an adjudication before the Commission.

32. Colorado Cruisers is a Colorado corporation, is a party in this matter, and is not represented by an attorney in this Proceeding.

33. If the ALJ finds that Colorado Cruisers is an intervenor and if Colorado Cruisers wishes to be represented in this matter by an individual who is not an attorney, then Colorado Cruisers must prove to the Commission that it is entitled to proceed in this case without an attorney. To prove that it may proceed without an attorney, Colorado Cruisers must do the following: **First**, Colorado Cruisers must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. **Second**, Colorado Cruisers must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁶ may represent a closely-held entity before the Commission *only* if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.⁷

⁶ Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

⁷ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

34. **By this Interim Decision, the ALJ will order Colorado Cruisers to choose one of these options: either retain a lawyer to represent it in this Proceeding⁸ or show cause why Rule 4 CCR 723-1-1201 does not require Colorado Cruisers to be represented in this Proceeding by a lawyer.**

35. *If Colorado Cruisers chooses to retain an attorney to represent it in this matter, then its attorney must enter an appearance in this Proceeding no later than **March 7, 2014**.*

36. *If Colorado Cruisers chooses to show cause, then, no later than **March 7, 2014**, Colorado Cruisers must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by an attorney in this matter. To show cause, Colorado Cruisers must file a verified statement: (a) that establishes that Colorado Cruisers is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000; (c) that identifies the individual who will represent Colorado Cruisers in this matter; (d) that establishes that the identified individual is an officer of Colorado Cruisers; and (e) that, if the identified individual is not an officer of Colorado Cruisers, has appended to it a resolution from Colorado Cruisers' Board of Directors that specifically authorizes the identified individual to represent Colorado Cruisers in this matter.*

37. **Colorado Cruisers is advised, and is on notice, that if the ALJ determines that Colorado Cruisers is an intervenor in this Proceeding and if Colorado Cruisers fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires Colorado Cruisers to retain legal counsel to represent it in this Proceeding.**

⁸ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

38. **Colorado Cruisers is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that requires Colorado Cruisers to retain legal counsel in this Proceeding, then Colorado Cruisers will not be permitted to participate in this matter without an attorney.** This means, among other things, that Colorado Cruisers will not be able to participate in the evidentiary hearing in this matter.

39. **Colorado Cruisers is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits Colorado Cruisers to proceed without an attorney (that is, *pro se*) in this matter, then Colorado Cruisers' representative will be bound by, and the ALJ will hold that individual to, the same procedural and evidentiary rules as those to which attorneys are held.** The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A *pro se* defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings. *Cornelius v. River Ridge Ranch Landowners Association*, 202 P.3d 564 (Colo. 2009); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) (“If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard also applies in Commission proceedings.

E. Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

40. The Intervenors oppose the Application and request an evidentiary hearing in this Proceeding. Accordingly, it is necessary to establish a procedural schedule and an evidentiary hearing date in this matter. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to be confidential. To accomplish this, the ALJ will order Applicant to consult with Intervenors and then to make, on or before **March 14, 2014**, a filing that: (a) contains a procedural schedule, including hearing date, that is satisfactory to the Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenors to cooperate with Applicant with respect to this filing.

41. The procedural schedule filing must contain at least the following: (a) the date by which Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) the date by which each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) the date by which each party will file, if necessary, an updated and corrected list of witnesses and complete copies of updated or corrected exhibits; (d) the date by which each party will file prehearing motions, including dispositive motions;⁹ (e) the date by which the Parties will file any stipulation or settlement agreement reached;¹⁰ (f) *three* proposed evidentiary hearing dates;¹¹ and (g) a statement as to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

⁹ This date can be no later than ten calendar days before the first day of hearing.

¹⁰ This date can be no later than three business days before the first day of hearing.

¹¹ If possible, the ALJ will choose one of the proposed hearing dates. If the Parties are of the opinion that more than one hearing day will be necessary, Applicant must propose three “sets” of hearing dates. Within each proposed “set,” the hearing days must be consecutive within the same week (*i.e.*, no intervening weekends and no intervening State holidays).

42. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue on or before September 17, 2014. To allow time for a recommended decision, exceptions, response to exceptions, and a Commission decision on exceptions, the **hearing in this matter must be concluded no later than June 13, 2014.**

43. Unless modified, Rule 4CCR 723-1-1405 governs discovery. The March 14, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the ALJ to order with respect to discovery; and (b) an explanation of the need for the proposed modifications or special provisions.

44. Rules 4CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the March 14, 2014 filing must contain: (a) any special provisions that the Parties wish the ALJ to order with respect to treatment of information claimed to be confidential; and (b) an explanation of the need for the proposed special provisions.

45. When the March 14, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

46. **The Parties are advised, and are on notice, that** if Applicant fails to make the March 14, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

47. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness

(except a witness offered in Applicant's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information will be contained in the list of witnesses to be filed in accordance with the procedural schedule. No person, *including Mr. Gregory Carpenter*, will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

48. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or an exhibit to be used in cross-examination) will be filed in advance of the hearing. The exhibits will be filed in accordance with the procedural schedule. No document -- *including the Application and its attachments* -- will be admitted as an exhibit (except in Applicant's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

F. Additional Advisements.

49. **The Parties are advised, and are on notice, that** they must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at dora.colorado.gov/puc.

50. **The Parties are advised, and are on notice, that** a document is filed with the Commission on the date that the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the filing is *not* timely.

51. **The Parties are advised that** the Commission has an E-Filings System available. One may learn about, and -- if one chooses to do so -- may register to use, the E-Filings System at dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is a party in this Proceeding.

2. Colorado Cab Company, LLC, doing business as Denver Yellow Cab, is a party in this Proceeding.

3. GC Outdoor, LLC, is authorized to proceed with Mr. Gregory Carpenter, an individual who is not an attorney, as its representative in this Proceeding. Mr. Gregory Carpenter is the only individual who is not an attorney who is authorized to represent GC Outdoor, LLC, in this Proceeding.

4. Consistent with the discussion above, not later than February 28, 2014, Colorado Cruisers, doing business as Colorado Crewz-In, shall make a filing that conforms to the requirements of ¶ 27, above.

5. Colorado Cruisers, doing business as Colorado Crewz-In, shall make the following choice: *either* retain an attorney in this matter *or* show cause why it is not required to be represented by an attorney in this matter.

6. If Colorado Cruisers, doing business as Colorado Crewz-In, chooses to retain an attorney, the attorney for Colorado Cruisers, doing business as Colorado Crewz-In, shall enter an appearance in this Proceeding not later than March 7, 2014.

7. If Colorado Cruisers, doing business as Colorado Crewz-In, chooses to show cause, then, not later than March 7, 2014, Colorado Cruisers, doing business as Colorado Crewz-In, shall make a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 36, above.

8. The procedural schedule established in the Notice of Application Filed dated January 13, 2014 is vacated.

9. Not later than March 14, 2014, GC Outdoor, LLC, shall make a filing that complies with the requirements of ¶¶ 40-44, above.

10. The intervenors shall cooperate with GC Outdoor, LLC, in the preparation of the filing required by Ordering Paragraph No. 9.

11. Consistent with the discussion above, if GC Outdoor, LLC, fails to make the filing required by Ordering Paragraph No. 9, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and shall establish the procedural schedule.

12. The Parties are held to the advisements in this Interim Decision.

13. 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

Doug Dean,
Director