

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0014CP

IN THE MATTER OF THE APPLICATION OF GUNNISON TAXI COMPANY, 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
ROBERT I. GARVEY
SETTING PREHEARING CONFERENCE;
AND REQUIRING FILING REGARDING
LEGAL COUNSEL OR TO SHOW CAUSE
WHY LEGAL COUNSEL IS NOT REQUIRED**

Mailed Date: February 21, 2014

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I. STATEMENT

1. Gunnison Taxi Company LLC (Gunnison Taxi or Applicant), initiated the captioned proceeding on January 3, 2014, by filing an application seeking authority for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire with the Colorado Public Utilities Commission (Commission).

2. On January 13, 2014, the Commission provided public notice of the application by publishing a summary of the same in its Notice of Applications Filed as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in:

- (I) call-and-demand taxi service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points within a 20-mile radius of the intersection of Main Street and Tomichi Avenue, Gunnison, Colorado on the other hand: and
- (II) call-and demand shuttle service between all points in the City of Gunnison, Colorado, and between said points, on the one hand, and all points in the Cities of Crested Butte, Delta, Grand Junction, Lake City, Montrose, Mt. Crested Butte, and Salida, State of Colorado, on the other hand.

3. On January 17, 2014, AEX, Inc., doing business as Alpine Express (Alpine Express) filed its Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 12750 held by Alpine Express and a preliminary list of witnesses and exhibits.

4. On February 11, 2014, Tazco Inc., doing business as Sunshine Taxi (Sunshine Taxi) filed its Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 19429 held by Sunshine Taxi and a preliminary list of witnesses and exhibits.

5. Also on February 11, 2014, San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours (Telluride Express) filed their Entry of Appearance and Notice of Intervention. This filing attached Commission Authorities No. 1648 and No. 55679 held by Telluride Express.

6. On February 19, 2014, the Commission deemed the application complete and it was referred to an Administrative Law Judge (ALJ) for disposition.

II. LEGAL REPRESENTATION OF APPLICANT

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

8. The ALJ notes that the application was executed by Scott Boomershine who wishes to represent the interests of Gunnison Taxi in the above captioned proceeding. The application does not identify Mr. Boomershine as an attorney. 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.

9. In the Application, Mr. Boomershine attests that he is an owner of Gunnison Taxi, there are three or fewer owners of Gunnison Taxi, and that the amount in controversy does not exceed \$15,000.

10. Having met the requirements of *Rule 1201(b)*, 4 CCR 723-1, Mr. Boomershine shall be allowed to represent Gunnison Taxi.

11. Applicant is advised, and is on notice, that Mr. Boomershine is the only non-attorney who is authorized to be Gunnison Taxi's representative in this proceeding.

12. Mr. Boomershine is advised, and is on notice, that he shall be bound by the same procedural and evidentiary rules as 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 applies as well to civil proceedings.

Negron v. Golder, 111 P.3d 538, 541 (Colo. App. 2004).

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.

Loomis v. Seely, 677 P.2d 400, 402 (Colo. App. 1983).

A judge may not become a surrogate attorney for a *pro se* litigant. *Id.*

III. LEGAL REPRESENTATION OF INTERVENORS

13. The undersigned ALJ notes that the intervention of Alpine Express was executed by Mr. Stewart Johnson, the intervention of Sunshine Taxi was executed by Mr. Kelly Milan and the intervention of Telluride Express was executed by Mr. Mark Rovito. The Interventions do not state that Mr. Johnson, Mr. Milan, or Mr. Rovito is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. Currently, it is unknown who intends to represent the interests of any of the Intervenors.

14. The Intervenors are not individuals and have not entered an appearance through counsel, it is appropriate to provide the Intervenors with advisements concerning certain Commission rules regarding legal representation. Intervenors are advised that *Rule 1201(b) of the Rules of Practice and Procedure*, 4 CCR 723-1, requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney *unless* the party is

an **individual** appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a **closely-held entity** pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

15. Since the Intervenor is not an individual, if they wish to proceed in this matter without an attorney, it must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See, Rule 1201(b)(II)*, 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S. It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer¹ may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.²

16. Each of the Intervenor is shall be ordered **either** to obtain counsel **or** to show cause why *Rule 1201*, 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

17. If an Intervenor elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **close of business on March 7, 2014**.

¹ 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.

² As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom management of a limited liability company is vested or reserved “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[.]”

18. If an Intervenor elects to show cause, then, on or before **close of business on, March 7, 2014**, it must show cause why *Rule 1201*, 4 CCR 723-1 does not require it to be represented by legal counsel in this matter. To show cause, each party must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, has appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

19. Each Intervenor is advised, and is on notice, that if they fail either to show cause or to have legal counsel file an entry of appearance on or before close of business on March 7, 2014, then the ALJ may dismiss the Intervention.

20. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as attorneys. Please refer to ¶ 12.

21. Parties should also be aware of recent changes to the Commission's Rules of Practice and Procedure that went into effect on July 1, 2013. Under the new *Rule 1201(b)(II)*, 4 CCR 723-1, individuals are now required to demonstrate eligibility to represent the interests of a closely-held entity in the entity's initial application, or motion for intervention. Parties are advised and on notice that failure to make the required filing in a future application or motion to intervene may result in the dismissal of the application or the striking of an intervention.

A. Prehearing Conference

22. Given the procedural posture of the case at this point, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including deadlines for witness lists, exhibits and supplements to witness lists and exhibits, any amendments to the Application, and a date for a hearing on the Application.

23. All parties³ are expected to appear at the hearing. However, any party may appear by telephone by calling (303) 869-0599 a few minutes prior to the scheduled start of the hearing.

24. A prehearing conference in this matter will be scheduled as ordered below.

IV. ORDER**A. It Is Ordered That:**

1. A prehearing conference is scheduled in this matter as follows:

DATE:	March 14, 2013
TIME:	9:00 a.m.
PLACE:	Hearing Room Colorado Public Utilities Commission 1560 Broadway, Suite 250 Denver, Colorado

³ A party will not be allowed to participate in the prehearing conference if it has been ordered to make a filing concerning representation and fails to make the filing. A party that engages counsel prior to the prehearing conference may be represented by counsel.

2. Any party may appear by telephone. A few minutes prior to the scheduled start of the conference, parties shall join the conference by telephoning (303) 869-0599.

3. Any party failing to appear in person or join the telephone call when placed by the Administrative Law Judge, will waive participation in the conference.

4. Intervenor, AEX, Inc. doing business as Alpine Express; Intervenor Tazco Inc., doing business as Sunshine Taxi; and Intervenor San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours shall make the filing concerning legal representation described in ¶ 18 above on or before March 7, 2014

5. Alternatively, in the event, AEX, Inc., doing business as Alpine Express; Intervenor Tazco Inc., doing business as Sunshine Taxi; and Intervenor San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before March 7, 2014.

6. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director