

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0409CP

IN THE MATTER OF THE APPLICATION OF DOCTOR PARK SHUTTLE 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
MANA L. JENNINGS-FADER
REQUIRING AARON HUCKSTEP TO MAKE
FILING; REQUIRING FILINGS; NOTIFYING
PARTIES THAT APPLICATION HAS BEEN
DEEMED COMPLETE; VACATING PROCEDURAL
SCHEDULE; AND CONTAINING ADVISEMENTS**

Mailed Date: June 23, 2014

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I. STATEMENT

1. On May 2, 2014, Doctor Park Shuttle Company, LLC (DPSC or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On May 5, 2014, DPSC filed two amendments to the May 2, 2014 filing and filed a supplement to the May 2, 2014. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the May 2, 2014 filing as amended and supplemented on May 5, 2014.

3. On May 5, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On May 30, 2014, as pertinent here, AEX, Inc., doing business as Alpine Express (Alpine Express), timely filed (in one document) its Entry of Appearance by Right or Alternate Motion to Permissively Intervene.¹ By that filing, Alpine Express establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Alpine Express opposes the Application and is not represented by legal counsel.²

5. On June 2, 2014, as pertinent here, Dolly's Mountain Shuttle, LLC, (DMS), timely filed (in one document) its Intervention and Entry of Appearance by Right or Alternate Motion to Permissively Intervene.³ By that filing, DMS establishes that it is an intervenor by

¹ In that same document, Alpine Express filed its Preliminary List of Witnesses and Exhibits.

² The issue of Alpine Express's legal representation is discussed *infra*.

³ In that same document, DMS filed its Preliminary List of Witnesses and Exhibits.

right; thus, it is a party in this Proceeding. DMS 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. Alpine Express and DMS, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

8. On June 11, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Application Deemed Complete and Time for Commission Decision.

9. On June 11, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, DPSC 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.

10. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission⁴ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not 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 **January 7, 2015**.

⁴ 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.

B. Aaron Huckstep, Esquire, to Make Filing.

11. With certain exceptions, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)⁵ requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney. 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.

12. This is an adjudication before the Commission.

13. Applicant is a limited liability company and is a party in this matter

14. In the May 2, 2014 filing at 1, DPSC states that it is represented in this Proceeding by Aaron Huckstep, Esquire. In addition, although provided the opportunity to do so in the May 2, 2014 filing at 7, DPSC does not state that it seeks to be represented in this matter by an individual who is not an attorney. The May 2, 2014 filing is signed by Bryan Mazaika as Managing Member of Applicant.

15. As of the date of this Interim Decision, neither Mr. Aaron Huckstep nor any other attorney has entered an appearance in this matter as counsel for Applicant.

16. The ALJ will order Mr. Huckstep to make, not later than **July 8, 2014**, a filing that *either* enters his appearance as counsel for Applicant in this Proceeding *or* states that he is not counsel for Applicant in this Proceeding.

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

17. In the event that Mr. Huckstep states that he is not counsel for DPSC in this matter, the ALJ will issue a subsequent Interim Decision that addresses DPSC's representation in this Proceeding.

C. Alpine Express to Retain Legal Counsel or to Make Show Cause Filing.

18. 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.

19. This is an adjudication before the Commission.

20. Alpine Express is a corporation, is a party in this matter, and is not represented by an attorney in this Proceeding.

21. If Alpine Express wishes to be represented in this matter by an individual who is not an attorney, then Alpine Express 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, Alpine Express must do the following: **First**, Alpine Express 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**, Alpine Express 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

22. **By this Interim Decision, the ALJ will order Alpine Express 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 Alpine Express to be represented in this Proceeding by a lawyer.**

23. *If Alpine Express chooses to retain an attorney to represent it in this matter, then its attorney must enter an appearance in this Proceeding no later than **July 8, 2014**.*

24. *If Alpine Express chooses to show cause, then, no later than **July 8, 2014**, Alpine Express 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, Alpine Express must file a verified statement: (a) that establishes that Alpine Express 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 Alpine Express in this matter; (d) that establishes that the identified individual is an officer of Alpine Express; and (e) that, if the identified individual is not an officer of Alpine Express, has appended to it a resolution from Alpine Express's Board of*

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[.]"

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

Directors that specifically authorizes the identified individual to represent Alpine Express in this matter.

25. Alpine Express is advised, and is on notice, that if Alpine Express 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 Alpine Express to retain legal counsel to represent it in this Proceeding.

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

27. Alpine Express is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits Alpine Express to proceed without an attorney in this matter, then Alpine Express's 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.

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

28. The Intervenors oppose the Application. Thus, it is necessary to establish a procedural schedule and to schedule 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 **July 11, 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.

29. 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, a corrected list of witnesses and complete copies of 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

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.

(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.

30. Applicant requests that the evidentiary hearing be held in Gunnison, Colorado. May 2, 2014 filing at 6. Unless Applicant withdraws this request, the Commission will hold the hearing in Gunnison, Colorado.

31. 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 January 7, 2015. 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 October 31, 2014.**

32. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. The July 11, 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.

33. Rules 4 CCR 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 July 11, 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.

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).

34. When the July 11, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

35. **The Parties are advised, and are on notice, that** if Applicant fails to make the July 11, 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.

36. **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 will be permitted to testify (except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

37. **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.

E. Additional Advisements.

38. **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.

39. **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.

40. **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. AEX, Inc., doing business as Alpine Express, is a party in this Proceeding.
2. Dolly's Mountain Shuttle, LLC, is a party in this Proceeding.
3. Consistent with the discussion above, not later than July 8, 2014, Aaron Huckstep, Esquire, either shall enter his appearance in this Proceeding as counsel for Doctor Park Shuttle Company, LLC, or shall make a filing that states that he is not counsel for Doctor Park Shuttle Company, LLC, in this Proceeding.
4. AEX, Inc., doing business as Alpine Express, 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.

5. If AEX, Inc., doing business as Alpine Express, chooses to retain an attorney, the attorney for AEX, Inc., doing business as Alpine Express, shall enter an appearance in this Proceeding notlater than July 8, 2014.

6. If AEX, Inc., doing business as Alpine Express, chooses to show cause, then, not later than July 8, 2014, AEX, Inc., doing business as Alpine Express, 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 ¶ 24, above.

7. The procedural schedule established in the Notice of Application Filed dated May 5, 2014 is vacated.

8. Not later than July 11, 2014, Doctor Park Shuttle Company, LLC, shall make a filing that complies with the requirements of ¶¶ 28-33, above.

9. The intervenors shall cooperate with Doctor Park Shuttle Company, LLC, in the preparation of the filing required by Ordering Paragraph No. 8.

10. Consistent with the discussion above, if Doctor Park Shuttle Company, LLC, fails to make the filing required by Ordering Paragraph No. 8, the Administrative Law Judge, without input from the parties, shall schedule the evidentiary hearing and shall establish the procedural schedule.

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

12. 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