

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0479CP

IN THE MATTER OF THE APPLICATION OF STARRY NIGHTS 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
MELODY MIRBABA
ADDRESSING PARTIES' REPRESENTATION
AND ACCEPTING AMENDMENT**

Mailed Date: July 24, 2014

I. STATEMENT

1. On May 14, 2014, Starry Nights LLC (Applicant) filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Contract Carrier by Motor Vehicle for Hire (Application). Applicant amended its Application on May 22, 2014 (amended Application).

2. The Commission provided public notice of the amended Application on June 2, 2014. As originally noticed, the amended Application seeks, "authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand shuttle service and call-and-demand sightseeing service between all points within a 1.5 mile radius of the intersection of West 1st Street and Main Street in Palisade, Colorado."

3. GISDHO Shuttle, Inc., doing business as American Spirit Shuttle (American Spirit), and Tazco, Inc., doing business as Sunshine Tax (Sunshine) timely intervened of right objecting to the Application.

4. During the Commission's weekly meeting held July 9, 2014, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

A. The Parties' Representation.

5. This is an adjudicative proceeding before the Commission.

6. Applicant is a limited liability company. American Spirit and Sunshine are corporations. None of the parties are represented by an attorney licensed to practice law before the Colorado Supreme Court. All of the parties seek permission to be represented by non-attorneys in this proceeding.

7. Generally, a party in a proceeding before the Commission must be represented by an attorney authorized to practice law in the State of Colorado. Rule 1201(a), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

8. The Commission has emphasized that this requirement is mandatory, that a filing made by non-attorneys on behalf of that party is void and of no legal effect, and that a non-attorney may not represent a party in Commission adjudicative proceedings. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W; Decision No. C04-1119, Proceeding No. 04G-101CP; and Decision No. C04-0884, Proceeding No. 04G-101CP.

9. There are few exceptions to Rule 1201(a). The applicable exception is found in Rule 1201(b)(II), 4 CCR 723-1. Under that Rule, a non-attorney may represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. In addition to establishing the party is a closely-held entity, a party must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer 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.¹

10. The parties each made statements in separate filings to establish that they are entitled to be represented by non-attorneys in this proceeding. See the Application, American Spirit's "Statements of Unrepresented Intervening Party," and Sunshine's "Self Representation" filing. The ALJ finds that the parties have met the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., to be represented by a non-attorney. The ALJ will permit the parties to be represented by their non-attorney representatives. In particular, Applicant may be represented by Starr Martinez, American Spirit may be represented by Bonnie Richards, and Sunshine may be represented by Kelly Milan, *nunc pro tunc* May 14, 2014.² The parties may only be represented by these designated non-attorneys.³

B. Second Amendment to Application.

11. On July 8, 2014, Applicant filed a second amendment to the Application. The second amendment seeks to remove the following language from the authority sought, "and call-and-demand sightseeing service." In other words, the amendment seeks to eliminate Applicant's original request for authority to operate in call-and-demand sightseeing service. All other language remains. Thus, if accepted the second amended Application would seek the following: "authority to operate as a common carrier by motor vehicle for hire for the

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. As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation "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[.]"

² Permitting representation by non-attorneys *nunc pro tunc* means that all filings made by the parties' non-attorney representative as of the date identified are accepted. This is notable because otherwise, filings made by non-attorneys are void and of no legal effect. *Supra*, ¶8.

³ Of course, the parties may obtain and be represented by legal counsel at any time.

transportation of passengers in call-and demand shuttle service between all points within a 1.5 mile radius of the intersection of West 1st Street and Main Street in Palisade, Colorado.”

12. On July 9, 2014, American Spirit filed a “Motion for Acceptance of Amendment to Application and Withdrawal of Intervention” (Motion). The Motion seeks the Commission to accept the second amendment to the Application; if the Commission accepts that amendment, American Spirit withdraws its intervention and objection to the Application.

13. The time to respond or object to the second amendment to the Application has expired. *See* Rule 1400(b), 4 CCR 723-1, providing that a party may respond to a motion within 14 days of the date of service of the motion.

14. Sunshine has filed no objection to the second amendment to the Application.

15. To be acceptable, the proposed amendment must be restrictive in nature, must be clear and understandable, and must be administratively enforceable. Both the permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

16. The ALJ finds and concludes that Applicant’s requested amendment is restrictive in nature, clear, unambiguous, and administratively enforceable. The restrictive amendment will be accepted.

17. Because the ALJ is accepting the second amendment to the Application, American Spirit’s withdrawal of its intervention is deemed effectuated. In other words, American Spirit

seeks to withdraw its intervention and objection to the Application because it has been amended. *See* American Spirit's Motion. As American Spirit's intervention is withdrawn, it is dismissed as a party from this proceeding.

C. Other Procedural Matters.

18. In anticipation of the hearing on the Application, the undersigned ALJ has informally contacted the parties to clear hearing dates, for a hearing to be held in Grand Junction, Colorado, as requested by Applicant in the Application. The ALJ will schedule a hearing and provide a procedural schedule for the parties to disclose the evidence they intend to present at hearing by August 4, 2014⁴.

19. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1 and the Rules Regulating Transportation by Motor Vehicle found at 4 CCR 723-6, which are available on the Commission's website at www.dora.colorado.gov/puc, and in hard copy from the Commission, and the relevant statutory authority and case law. This proceeding is also governed by the Colorado Rules of Evidence, which can be found at the following link, under the "Colorado Court Rules" tab: <http://www.lexisnexis.com/hottopics/colorado/>.

20. Non-attorneys will be held to the same standards as attorneys.

⁴ If the ALJ does not hear from the parties by that date, she shall select hearing dates without their input. In addition, at the time the ALJ contacted the parties informally, no decision had been issued dismissing American Spirit as a party. Now that this Decision dismisses American Spirit, it is not necessary for American Spirit to be involved with selecting hearing dates. Instead, only Applicant and Sunshine should be involved with selecting hearing dates.

II. ORDER

A. It Is Ordered That:

1. Applicant Starry Nights LLC may be represented in this proceeding by Starr Martinez, a non-attorney, *nunc pro tunc* May 14, 2014.

2. GISDHO Shuttle, Inc., doing business as American Spirit Shuttle (American Spirit), may be represented in this proceeding by Bonnie Richards, a non-attorney, *nunc pro tunc* May 14, 2014. Because American Spirit is being dismissed as a party by this Decision, the impact of permitting American Spirit to be represented by its designated non-attorney is to accept all filings made by its non-attorney representative since May 14, 2014.

3. Tazco, Inc., doing business as Sunshine Taxi may be represented in this proceeding by Kelly Milan, a non-attorney, *nunc pro tunc* May 14, 2014.

4. American Spirit's "Motion for Acceptance of Amendment to Application and Withdrawal of Intervention" (Motion) is granted. The second amendment to the Application filed by Applicant on July 8, 2014 is accepted.

5. The Application is hereby amended to seek the following: "authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service between all points within a 1.5 mile radius of the intersection of West 1st Street and Main Street in Palisade, Colorado."

6. American Spirit's "Entry of Appearance and Notice of Intervention" is withdrawn as requested by American Spirit in its Motion. As a result, American Spirit is dismissed as a party to this proceeding.

7. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge