

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0749CP-LEASE

IN THE MATTER OF THE APPLICATION OF HEART OF THE ROCKIES, LLC, LESSOR,
AND BROTHERS AIRPORT SHUTTLE EXPRESS, LLC, LESSEE, FOR APPROVAL OF
THE LEASE OF CPCN NO. 55779.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING 1ST ABC TRANSPORTATION
TO RETAIN LEGAL COUNSEL; REQUIRING
CHAJARI TO RETAIN LEGAL COUNSEL;
NOTIFYING PARTIES THAT APPLICATION HAS
BEEN DEEMED COMPLETE; VACATING
PROCEDURAL SCHEDULE; ENLARGING
RESPONSE TIME TO MOTION TO STRIKE
INTERVENTIONS; AND CONTAINING ADVISEMENTS**

Mailed Date: August 22, 2014

TABLE OF CONTENTS

I.	<u>STATEMENT</u>	2
A.	Application Deemed Complete and Time for Commission Decision.	3
B.	1st ABC Transportation, LLC, doing business as ABC Shuttle, to Retain Legal Counsel.	3
C.	Chajari LLC, doing business as Express Shuttle, to Retain Legal Counsel.	5
D.	Applicants' Motion to Strike Interventions.	6
E.	Additional Advisements.	6
II.	<u>ORDER</u>	7
A.	It Is Ordered That:	7

I. STATEMENT

1. On July 9, 2014, Heart of the Rockies Tours, LLC, and Brothers Airport Shuttle Express, LLC (collectively, Applicants), filed a verified Application for Lease Approval (Application). That filing commenced this Proceeding.

2. On July 14, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 6); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

3. On August 12, 2014, 1st ABC Transportation, LLC, doing business as ABC Shuttle (ABC Shuttle), filed a Notice of Intervention. ABC Shuttle is not represented in this case by legal counsel.

4. On August 12, 2014, Chajari LLC, doing business as Atlas Express Shuttle (Atlas Express Shuttle), filed a Notice of Intervention. Atlas Express Shuttle is not represented in this case by legal counsel.

5. The intervention period has expired. No other person has filed an intervention as 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.

6. On August 19, 2014, Applicant filed a Motion to Strike Interventions. Thus, as of the date of this Interim Decision, neither ABC Shuttle nor Atlas Express Shuttle is an intervenor in this Proceeding.

7. For purposes of this Interim Decision and for ease of reference only, reference to the Parties is to Applicants, ABC Shuttle, and Atlas Express Shuttle. Including ABC Shuttle and Atlas Express Shuttle indicates nothing, and is not intended to indicate anything, with respect to the ALJ's future ruling on the pending Motion to Strike Interventions.

8. On August 20, 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 August 20, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When they filed the Application, Applicants provided neither their supporting testimony and exhibits nor a detailed summary of their direct testimony and copies of their 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 Commission¹ or Applicants' 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 not later than **March 18, 2015**.

B. 1st ABC Transportation, LLC, doing business as ABC Shuttle, to Retain Legal Counsel.

11. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² 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 provided the requirements in § 13-1-127, C.R.S., are met.

12. The Commission has held that, if the exception in Rule 4 CCR 723-1-1201(b)(II) does not apply, an entity (such as a limited liability company) must be represented by counsel in

¹ Pursuant to § 40-6-109.5(4), C.R.S., the Commission may extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing (including, in this case, the Notice of Intervention) made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

13. This is an adjudication before the Commission.

14. ABC Shuttle is a limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply because the amount in controversy (*i.e.*, the value of the lease) in this Proceeding exceeds \$ 15,000. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that ABC Shuttle must be represented by an attorney in this case.

15. The ALJ will order ABC Shuttle to obtain legal counsel in this Proceeding. ABC Shuttle's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

16. ABC Shuttle's attorney must enter an appearance in this Proceeding not later than **close of business on September 4, 2014.**

17. **ABC Shuttle is advised, and is on notice, that it will not be permitted to participate in this Proceeding without an attorney.**

18. **ABC Shuttle is advised, and is on notice, that the ALJ will dismiss the Notice of Intervention filed on August 12, 2014 by ABC Shuttle *unless* ABC Shuttle's attorney enters an appearance in accordance with this Interim Decision.**

C. Chajari LLC, doing business as Express Shuttle, to Retain Legal Counsel.

19. Rule 4 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 provided the requirements in § 13-1-127, C.R.S., are met.

20. The Commission has held that, if the exception in Rule 4 CCR 723-1-1201(b)(II) does not apply, an entity (such as a limited liability company) must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing (including, in this case, the Notice of Intervention) made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

21. This is an adjudication before the Commission.

22. Atlas Express Shuttle is a limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply because the amount in controversy (*i.e.*, the value of the lease) in this Proceeding exceeds \$ 15,000. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that Atlas Express Shuttle must be represented by an attorney in this case.

23. The ALJ will order Atlas Express Shuttle to obtain legal counsel in this Proceeding. Atlas Express Shuttle's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

24. Atlas Express Shuttle's attorney must enter an appearance in this Proceeding not later than **close of business on September 4, 2014**.

25. Atlas Express Shuttle is advised, and is on notice, that it will not be permitted to participate in this matter without an attorney.

26. Atlas Express Shuttle is advised, and is on notice, that the ALJ will dismiss the Notice of Intervention filed on August 12, 2014 by Atlas Express Shuttle *unless* Atlas Express Shuttle's attorney enters an appearance in accordance with this Interim Decision

D. Applicants' Motion to Strike Interventions.

27. On August 19, 2014, Applicants filed a Motion to Strike Interventions. Unless otherwise ordered, response to the motion is to be filed not later than September 2, 2014.

28. The ALJ will enlarge, to and including **September 18, 2014**, the time within which a response to the Motion to Strike Interventions must be filed. This will permit counsel for ABC Shuttle and counsel for Atlas Express Shuttle time to file a response to the motion, assuming that counsel enter an appearance as required by this Interim Decision.

29. Neither ABC Shuttle nor Atlas Express Shuttle may file a response to the Motion to Strike Interventions unless the response is filed by counsel.

E. Additional Advisements.

30. **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.

31. **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.

32. **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. 1st ABC Transportation, LLC, doing business as ABC Shuttle, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

2. Not later than September 4, 2014, legal counsel for 1st ABC Transportation, LLC, doing business as ABC Shuttle, shall enter an appearance in this Proceeding.

3. Failure of 1st ABC Transportation, LLC, doing business as ABC Shuttle's legal counsel to enter an appearance as required by Ordering Paragraph No. 2 shall result in dismissal of the Notice of Intervention filed by 1st ABC Transportation, LLC, doing business as ABC Shuttle, on August 12, 2014.

4. Chajari LLC, doing business as Atlas Express Shuttle, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

5. Not later than September 4, 2014, legal counsel for Chajari LLC, doing business as Atlas Express Shuttle, shall enter an appearance in this Proceeding.

6. Failure of Chajari LLC, doing business as Atlas Express Shuttle's legal counsel to enter an appearance as required by Ordering Paragraph No. 5 shall result in dismissal of the

Notice of Intervention filed by Chajari LLC, doing business as Atlas Express Shuttle, on August 12, 2014.

7. The procedural schedule established in the Notice of Application Filed dated July 14, 2014 is vacated.

8. Response time to the Motion to Strike Interventions, which motion was filed on August 19, 2014, is enlarged to and including September 18, 2014.

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

10. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge