

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0872CP-TRANSFER

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO TRANSFER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55797 FROM
SPRING CAB, LLC, TO SPRING CABS, LLC.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADDRESSING INTERVENTION; REQUIRING
APPLICANT SPRING CABS, LLC, TO RETAIN
LEGAL COUNSEL IN THIS MATTER; REQUIRING
R. GREGORY HALLER, ESQUIRE, TO MAKE FILING;
REQUIRING APPLICANTS TO MAKE FILING;
NOTIFYING PARTIES THAT APPLICATION HAS BEEN
DEEMED COMPLETE; VACATING PROCEDURAL
SCHEDULE; AND CONTAINING ADVISEMENTS**

Mailed Date: October 2, 2014

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I. STATEMENT

1. On August 19, 2014, Spring Cab, LLC, doing business as Spring Cab, and Springs Cab, LLC (collectively, Applicants), filed a verified Application for Authority to Transfer Certificate of Public Convenience and Necessity No. 55797 from Spring Cab, LLC, to Springs Cab, LLC. Appended to that filing is the Purchase of Business Agreement.¹ That filing commenced this Proceeding.

2. On September 9, 2014, Applicants filed a supplement to the August 19, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the August 19, 2014 filing as supplemented on September 9, 2014.

3. On August 25, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On October 1, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Parties.

5. On September 24, 2014, Colorado Springs Transportation LLC, doing business as Yellow Cab of Colorado Springs (Yellow Cab), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Request for Hearing. By that filing, Yellow Cab establishes that it is an intervenor by right;² thus, it is a party in this Proceeding. Yellow Cab is the Intervenor, opposes the Application, and is represented by legal counsel.

¹ This document is filed under seal as the Applicants assert that it contains confidential information.

² By that filing, Yellow Cab also meets the requirements for intervention by permission.

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. Applicants and Intervenor, collectively, are the Parties.

B. Application Deemed Complete and Time for Commission Decision.

8. On October 1, 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.

9. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission³ 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 **April 28, 2015**.

C. Applicant Spring Cabs, LLC, to Retain Counsel.

10. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)⁴ 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 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.

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.

11. The Commission has held that, if the exception in Rule 4CCR 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 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.

12. This is an adjudication before the Commission.

13. Applicant Springs Cab, LLC, is a limited liability company and is a party in this matter.

14. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply in this Proceeding because, as demonstrated by the confidential Purchase of Business Agreement, the value of the transfer at issue in this Proceeding exceeds \$ 15,000. Thus, pursuant to Rule 4CCR 723-1-1201(a), the ALJ finds that Applicant Springs Cab, LLC, must be represented by an attorney in this case.

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

16. Applicant Springs Cab, LLC's attorney must enter an appearance in this Proceeding no later than **October 14, 2014**.

17. **Applicant Springs Cab, LLC, is advised and is on notice that it will not be permitted to participate in this Proceeding without an attorney.**

18. **Applicant Springs Cab, LLC, is advised and is on notice that the ALJ will dismiss Applicant Springs Cab, LLC, as a party *unless* Applicant Springs Cab, LLC's attorney enters an appearance in accordance with this Interim Decision.**

D. R. Gregory Haller, Esquire, to Make Filing.

19. On September 18, 2014, R. Gregory Haller, Esquire, entered his appearance in this Proceeding "on behalf of Spring Cab, LLC, Lessor." Entry of Appearance at 1. In addition, the caption of the September 18, 2014 filing is: "In the Matter of the Application of Spring Cab, LLC, Lessor, and Springs Cab, LLC, Lessee, for Approval of the Lease of CPCN No. 55797."

20. Based on this filing, it appears that Mr. Haller has entered his appearance in this transfer Proceeding on behalf of Applicant Spring Cab, LLC. There is enough uncertainty, however, to warrant requiring Mr. Haller to refile his entry of appearance in this Proceeding.

21. The ALJ will order Mr. Haller to file, not later than **October 14, 2014**, his entry of appearance in this matter. The entry of appearance must identify the party that Mr. Haller represents and must have the correct caption for this Proceeding.

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

22. The Intervenor opposes 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 Applicants to consult with Intervenor and then to make, not later than **October 17, 2014**, a filing that: (a) contains a procedural schedule, including hearing date(s), that is satisfactory to the Parties; and (b) addresses the issues discussed below. The ALJ will order Intervenor to cooperate with Applicants with respect to this filing.

23. The procedural schedule filing must contain at least the following: (a) the date by which each 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 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, only if necessary to correct the previously-filed list of witnesses or the previously-filed exhibits (or both), 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;⁵ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁶ (f) *three* proposed evidentiary hearing dates;⁷ and (g) the date by which each party will file its post-hearing statement of position, to which no response will be permitted.

24. 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 not later than April 28, 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 January 16, 2015.**

25. Unless modified, Rule 4CCR 723-1-1405 governs discovery. The October 17, 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.

⁵ This date can be no later than ten calendar days before the first day of hearing.

⁶ This date can be no later than three business days before the first day of hearing.

⁷ 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).

26. Unless modified, 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 October 17, 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.

27. When the October 17, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

28. **The Parties are advised and are on notice that**, if Applicants fail to make the October 17, 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.

29. **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 Applicants' 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 Applicants' rebuttal case) unless that person is identified as required on the list of witnesses.

30. **The Parties are advised and are on notice that** complete copies of all exhibits (except an exhibit offered in Applicants' 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 Applicants' 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.

31. **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.⁸

32. **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 document is *not* timely filed.

33. **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.

34. The ALJ calls counsel's attention to Rule 4 CCR 723-1-1202(d), which requires that

[e]very pleading of a party represented by an attorney shall be signed by the attorney, and *shall state* the attorney's address, telephone number, *e-mail address*, and attorney registration number.

⁸ In this regard, the ALJ notes that Mr. Haller's September 18, 2014 filing is single-spaced. This does not comply with the rules applicable to filings with the Commission. The ALJ expects all filings to comply with the applicable Commission rules.

(Emphasis supplied.) **The Parties are advised and are on notice that** filings must comply with this requirement.⁹

II. ORDER

A. It Is Ordered That:

1. Colorado Springs Transportation LLC, doing business as Yellow Cab of Colorado Springs, is a party in this Proceeding.

2. Consistent with the discussion above, Applicant Springs Cab, LLC, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

3. Not later than October 14, 2014, legal counsel for Applicant Springs Cab, LLC, shall enter an appearance in this Proceeding.

4. Failure of Applicant Springs Cab, LLC's legal counsel to enter an appearance as required by Ordering Paragraph No. 3 shall result in dismissal of Applicant Springs Cab, LLC, from this Proceeding.

5. Consistent with the discussion above, not later than October 14, 2014, R. Gregory Haller, Esquire, shall make a filing that complies with ¶ 21, above.

6. The procedural schedule established in the Notice of Application Filed dated August 25, 2014 is vacated.

⁹ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks for the appropriate e-mail addresses. Thus, if no e-mail address is provided, counsel may not receive notice of rulings.

7. Not later than October 17, 2014, Spring Cab, LLC, doing business as Spring Cab, and Springs Cab, LLC (collectively, Applicants), shall make a filing that complies ¶¶ 22-26, above.

8. Intervenor Colorado Springs Transportation LLC, doing business as Yellow Cab of Colorado Springs, shall cooperate with Applicants in the preparation of the filing required by Ordering Paragraph No. 7.

9. Consistent with the discussion above, if Applicants fail to make the filing required by Ordering Paragraph No. 7, the Administrative Law Judge, without input from the parties, shall schedule the evidentiary hearing and shall establish the procedural schedule.

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

11. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

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

Doug Dean,
Director