

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0936BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF ABENEZER HOLDINGS LLC FOR
AUTHORITY TO EXTEND OPERATIONS UNDER CONTRACT CARRIER
PERMIT NO. B-10018.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADDRESSING INTERVENTIONS, PERMITTING
APPLICANT TO APPEAR WITHOUT LEGAL
COUNSEL, REQUIRING APPLICANT TO MAKE FILING,
VACATING PROCEDURAL SCHEDULE, NOTIFYING
PARTIES THAT APPLICATION HAS BEEN DEEMED
COMPLETE, AND CONTAINING ADVISEMENTS**

Mailed Date: November 13, 2014

TABLE OF CONTENTS

I.	<u>STATEMENT</u>	2
A.	Parties.	2
B.	Application Deemed Complete and Time for Commission Decision.	3
C.	Applicant to Appear without Legal Counsel.	4
D.	Applicant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.....	6
E.	Additional Advisements.	9
II.	ORDER.....	9
A.	It Is Ordered That:	9

I. STATEMENT

1. On September 16, 2014, Abenezer Holdings LLC (Applicant) filed an Application for Permanent Authority to Extend Current Operations under Permit No. B-10018. That filing commenced this Proceeding.

2. On September 24, 2014, Applicant filed an amendment to the September 16, 2014 filing and filed a supplement to the September 16, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the September 16, 2014 filing as amended and supplemented on September 24, 2014.

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

4. On November 12, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Parties.

5. On October 31, 2014, MKBS, LLC, doing business as Metro Taxi (Metro Taxi), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right in Opposition to Permanent Authority or Alternative Motion to Permissively Intervene.¹ By that filing, Metro Taxi establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Metro Taxi opposes the Application and is represented by legal counsel in this matter.

6. On November 5, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), timely filed (in one document) its Entry of

¹ On October 31, 2014, Metro Taxi also filed its Preliminary List of Witnesses and its Preliminary List of Exhibits with copies of its exhibits.

Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Opposition to Application. By that filing, Colorado Cab establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Colorado Cab opposes the Application, is represented by legal counsel in this matter, and requests an evidentiary hearing in this case.

7. On November 5, 2014, Colorado Springs Transportation, LLC (CST), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, and Opposition to Application. By that filing, CST establishes that it is an intervenor by right; thus, it is a party in this Proceeding. CST opposes the Application, is represented by legal counsel in this matter, and requests an evidentiary hearing in this case.

8. 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.

9. Colorado Cab, CST, and Metro Taxi, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

B. Application Deemed Complete and Time for Commission Decision.

10. On November 12, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Applicant 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.

11. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission² 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 **June 10, 2015**.

C. Applicant to Appear without Legal Counsel.

12. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)³ 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 who is not an attorney may appear to represent the interests of a closely-held entity, provided the Commission grants permission. 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 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.

13. This is an adjudication before the Commission.

14. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

² 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.

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

15. 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.

16. In the verified Application at 7, Applicant submitted its statement concerning its choice to have a representative who is not an attorney (that is, to self-represent). Applicant states: (a) Applicant has three or fewer owners; (b) Mr. Michael Murphy is Applicant's Managing Member; (c) the amount in controversy in this Proceeding is less than \$ 15,000; and (d) as owner, Wondemneh Deresse has authority to represent Applicant.

17. Review of the information provided in the Application establishes that Applicant is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., as Applicant has three or fewer owners.

18. Review of the information provided in the Application establishes that the amount in controversy likely is less than \$ 15,000.

19. Applicant states that Wondemneh Deresse will be its representative in this matter. Review of the information provided in the Application establishes that Wondemneh Deresse is Applicant's owner. Based on being the owner of Applicant, Wondemneh Deresse is presumed to be an officer of Applicant and to have the authority to appear on behalf of the closely-held entity.

20. Based on the information provided and the record in this matter, the ALJ finds that Applicant has met the requirements of Rule 4 CCR 723-1-1201(b)(II). Although not an attorney, Wondemneh Deresse may represent Applicant in this matter.

21. **Applicant is advised, and is on notice, that Wondemneh Deresse is the only individual who is not an attorney who is authorized to be Applicant's representative in this Proceeding.**

22. **Applicant and Wondemneh Deresse are advised and are on notice that Wondemneh Deresse will be bound by, and the ALJ will hold Wondemneh Deresse to, the same procedural and evidentiary rules as those that bind 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 also applies in civil proceedings. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *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 applies in Commission proceedings.

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

23. The Intervenors oppose the Application and request an evidentiary hearing in this Proceeding. Accordingly, it is necessary to establish a procedural schedule and 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

November 28, 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 Intervenor to cooperate with Applicant with respect to this filing.

24. 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 to correct an error in the previously-filed list of witnesses or copies of exhibits, an updated and corrected list of witnesses and complete copies of updated or corrected exhibits; (d) the date by which each party will file prehearing motions, including dispositive motions;⁴ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁵ (f) *three* proposed evidentiary hearing dates;⁶ and (g) a statement with respect to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

25. 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 June 10, 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 March 14, 2015.**

⁴ This date can be no later than ten calendar days before the first day of hearing.

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

⁶ 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, Rule 4 CCR 723-1-1405 governs discovery. The November 28, 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.

27. 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 November 28, 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.

28. When the November 28, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

29. **The Parties are advised, and are on notice, that** if Applicant fails to make the November 28, 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.

30. **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, *including Wondemneh Deresse*, will be permitted to testify

(except in Applicant's rebuttal case) unless that person is identified as required on the list of witnesses.

31. **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.

32. **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.

33. **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.

34. **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. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, is a party in this Proceeding.

2. Colorado Springs Transportation, LLC, is a party in this Proceeding.

3. MKBS, LLC, doing business as Metro Taxi, is a party in this Proceeding.

4. Abenezer Holdings LLC is authorized to proceed with Wondemneh Deresse, an individual who is not an attorney, as its representative in this Proceeding. Wondemneh Deresse is the only individual who is not an attorney who is authorized to represent Abenezer Holdings LLC in this Proceeding.

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

6. On or before November 28, 2014, Abenezer Holdings LLC shall make a filing that complies with the requirements of ¶¶ 23-28, above.

7. Intervenors shall cooperate with Abenezer Holdings LLC in the preparation of the filing required by Ordering Paragraph No. 6.

8. Consistent with the discussion above, if Abenezer Holdings LLC fails to make the filing required by Ordering Paragraph No. 6, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and shall establish the procedural schedule.

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

10. 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