

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1397CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MAGIC BUS, LLC, DOING BUSINESS AS MAGIC BUS TOURS, FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55833.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
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: February 20, 2014

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I. STATEMENT

1. On December 20, 2013, Magic Bus, LLC, doing business as Magic Bus Tours (Magic Bus or Applicant), filed an Application for Permanent Authority to Extend Operations

under Certificate of Public Convenience and Necessity No. 55833 (Application). Appended to the filing are several documents. That filing commenced this Proceeding.

2. On January 13, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

3. On February 12, 2014, Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO (Shamrock Taxi), 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, Shamrock Taxi establishes that it is an intervenor by right; thus, it is a party in this proceeding. Shamrock Taxi opposes the Application and is represented by legal counsel.

4. 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.

5. Shamrock Taxi is the Intervenor. Applicant and Intervenor, collectively, are the Parties.

6. On February 19, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Application Deemed Complete and Time for Commission Decision.

7. On February 19, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Magic Bus 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.

8. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ 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 **September 17, 2014**.

B. Applicant to Appear without Legal Counsel.

9. 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 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.

10. This is an adjudication before the Commission.

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

¹ 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.

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

12. 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.

13. In the verified Application at 7, Applicant submitted its statement concerning self-representation (that is, having a representative who is not an attorney). 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 Managing Member, Mr. Michael Murphy has authority to represent Applicant.

14. 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.

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

16. Applicant states that Mr. Michael Murphy will be its representative in this matter. Review of the information provided in the Application establishes that Mr. Murphy is Applicant's Managing Member. Based on his title, Mr. Murphy is presumed to be an officer of Applicant and to have the authority to appear on behalf of the closely-held entity.

17. 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 he is not an attorney, Mr. Michael Murphy may represent Applicant in this matter.

18. **Applicant is advised, and is on notice, that Mr. Michael Murphy is the only individual who is not an attorney who is authorized to be Magic Bus’s representative in this Proceeding.**

19. **Applicant and Mr. Michael Murphy are advised and are on notice that Mr. Michael Murphy will be bound by, and the ALJ will hold Mr. Murphy 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.

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

20. The Intervenor opposes the Application and requests 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 Intervenor and then to make, on or before

March 3, 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.

21. 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 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, 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;³ (e) the date by which the Parties will file any stipulation or settlement agreement reached;⁴ (f) *three* proposed evidentiary hearing dates;⁵ and (g) a statement with respect to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

22. 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 September 17, 2014. 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 June 13, 2014.**

23. In the Application at 6, Applicant requests that the Commission hold the evidentiary hearing in this Proceeding in Fort Collins, Colorado. The March 3, 2014 filing must

³ This date can be no later than ten calendar days before the first day of hearing.

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

⁵ 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).

address whether the Commission should hold the evidentiary hearing in Fort Collins, Colorado and, if the Parties request a hearing in Fort Collins, the basis for that request.

24. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. The March 3, 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.

25. 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 March 3, 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.

26. When the March 3, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

27. **The Parties are advised, and are on notice, that** if Applicant fails to make the March 3, 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.

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

29. **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.

D. Additional Advisements.

30. **The Parties are advised, and are on notice, that** they must be familiar with, and 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. Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, is a party in this Proceeding.

2. Magic Bus, LLC, doing business as Magic Bus Tours, is authorized to proceed with Mr. Michael Murphy, an individual who is not an attorney, as its representative in this Proceeding. Mr. Michael Murphy is the only individual who is not an attorney who is authorized to represent Magic Bus, LLC, doing business as Magic Bus Tours, in this Proceeding.

3. The procedural schedule established in the Notice of Application Filed dated January 13, 2014 is vacated.

4. On or before March 3, 2014, Magic Bus, LLC, doing business as Magic Bus Tours, shall make a filing that complies with the requirements of ¶¶ 20-25, above.

5. Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, shall cooperate with Magic Bus, LLC, doing business as Magic Bus Tours, in the preparation of the filing required by Ordering Paragraph No. 4.

6. Consistent with the discussion above, if Magic Bus, LLC, doing business as Magic Bus Tours, fails to make the filing required by Ordering Paragraph No. 4, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and shall establish the procedural schedule.

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

8. 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