

Decision No. R14-0237-I

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
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: March 6, 2014

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). 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. On February 20, 2014, Decision No. R14-0191-I vacated that 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 intervened as of right. Shamrock Taxi opposes the Application.

4. Shamrock Taxi is the Intervenor. Applicant and Intervenor, collectively, are the Parties. As authorized by Decision No. R14-0191-I, Applicant is represented by Michael Murphy, who is not an attorney.¹ Intervenor is represented by legal counsel.

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

6. On February 19, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later September 17, 2014.

7. In Decision No. R14-0191-I at ¶ 20 and Ordering Paragraph No. 4, the ALJ required Applicant to consult with Intervenor and to make, not later than 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 in that Interim Decision.

8. Review of the Commission file in this Proceeding reveals that, as of the date of this Interim Decision, Magic Bus has not made the filing required by Decision No. R14-0191-I. Review of the Commission file in this Proceeding reveals that, as of the date of this Interim Decision, Magic Bus has not requested additional time within which to make the filing required by Decision No. R14-0191-I. Magic Bus's failure to comply with the requirements of Decision No. R14-0191-I is unexplained and is unexcused.

9. In Decision No. R14-0191-I at ¶ 27, the ALJ informed the Parties that, in the absence of the required March 3, 2014 filing, the ALJ "will schedule the evidentiary hearing and

¹ In that Interim Decision, the ALJ set out the conditions under which Mr. Florey represents Respondent.

will establish the procedural schedule without input from the Parties.” *See also id.* at Ordering Paragraph No. 6 (same). By this Interim Decision, the ALJ will schedule the evidentiary hearing and will establish a procedural schedule.

10. The ALJ will schedule the evidentiary hearing in this matter for **June 4, 2014**. This will allow the Commission to issue its decision in this Proceeding not later than September 17, 2014.

11. The hearing will be held in a Commission hearing room in Denver, Colorado.

12. The ALJ will order the following procedural schedule: (a) not later than **March 21, 2014**, Applicant will file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) not later than **April 18, 2014**, Intervenor will file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than **May 9, 2014**, each party will file, if necessary, an updated and corrected list of witnesses and complete copies of the updated or corrected exhibits that it will offer in its case; (d) not later than **May 23, 2014**, each party will file its prehearing motions, including dispositive motions and motions *in limine*;² and (e) not later than **May 29, 2014**, the Parties will file any settlement agreement or stipulation that they have reached.

13. Each witness who will be called to testify (except a witness called in Applicant’s rebuttal case) must be identified on the list of witnesses that ¶ 12 requires each party to file. The list of witnesses must contain the following information for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or daytime

² As a preliminary matter at the evidentiary hearing, the ALJ will hear argument on any pending prehearing motion.

telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

14. **The Parties are advised, and are on notice, that** no person -- *including Mr. Michael Murphy, Applicant's representative* -- will be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

15. Complete copies of all exhibits (except an exhibit offered in rebuttal or an exhibit to be used in cross-examination) will be filed as required in ¶ 12.

16. **The Parties are advised, and are on notice, that** no document -- *including the Application and its supporting documents* -- will be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

17. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405³ will govern discovery in this Proceeding.

18. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to such motions must be written and must be filed within *three business days of service of the motion*.⁴ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

19. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

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

⁴ By this Interim Decision, the ALJ will shorten the response time to discovery-related motions.

20. **The Parties are advised, and are on notice, that** it is the responsibility of each party to have, at the evidentiary hearing, a sufficient number of copies of each document that it wishes to offer as an exhibit.⁵ **The Parties are advised, and are on notice, that** the fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

21. **The Parties are advised, and are on notice, that the Commission will *not* make copies of documents that are offered as exhibits.**

22. The Parties are reminded that, in Decision No. R14-0191-I, the ALJ advised the Parties that the ALJ will hold the Parties to the requirements of the Rules of Practice and Procedure, Part 1 of 4 CCR 723.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this matter shall be held on the following date, at the following time, and in the following location:

DATE: June 4, 2014

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The following procedural schedule is adopted: (a) not later than March 21, 2014, Applicant Magic Bus, LLC, doing business as Magic Bus Tours, shall file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case;

⁵ This means that, at the hearing, a party must have at least four copies of each document: one to be marked and retained by the Commission as the hearing exhibit; one to be given to the opposing party; one to be given to the ALJ; and one to be retained by the party offering the exhibit.

(b) not later than April 18, 2014, Intervenor Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, shall file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than May 9, 2014, each party shall file, if necessary, an updated and corrected list of witnesses and complete copies of the updated or corrected exhibits that it will offer in its case; (d) not later than May 23, 2014, each party shall file its prehearing motions; and (e) not later than May 29, 2014, the Parties shall file any settlement agreement or stipulation that they have reached

3. No person -- including Applicant's representative Mr. Michael Murphy -- shall be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

4. No document -- including the Application and appended documents -- shall be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

5. Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery.

6. Response time to a motion pertaining to discovery is shortened to three business days.

7. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern the treatment of information claimed to be confidential.

8. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

9. 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