

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0436CP

IN THE MATTER OF THE APPLICATION OF THE ORIGINAL GREEN STAR
EXCURSIONS LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE
FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING RACHEL K. GILLETTE
TO MAKE FILING; REQUIRING APPLICANT
TO MAKE FILING; NOTIFYING PARTIES THAT
APPLICATION HAS BEEN DEEMED COMPLETE;
VACATING PROCEDURAL SCHEDULE;
AND CONTAINING ADVISEMENTS**

Mailed Date: June 26, 2014

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I. STATEMENT

1. On May 8, 2014, The Original Green Star Excursions LLC (TOGSE or Applicant) filed an Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On May 13, 2014, TOGSE filed amendments to the May 8, 2014 filing and filed a supplement to the May 8, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the May 8, 2014 filing as amended and supplemented on May 13, 2014.

3. On May 19, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5-7); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

4. On June 18, 2014, Colorado Cab Company LLC, doing business as Denver Yellow Cab (Denver Cab), 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, Denver Cab establishes that it is an intervenor by right; thus, it is a party in this Proceeding. Denver Cab opposes the Application and is represented by legal counsel.

5. On June 18, 2014, SuperShuttle International Denver, Inc. (SuperShuttle), 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, SuperShuttle establishes that it is an intervenor by right; thus, it is a party in this Proceeding. SuperShuttle opposes the Application and is represented by legal counsel.

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. Denver Cab and SuperShuttle, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

8. On June 25, 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 June 25, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, TOGSE 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.

10. 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 **January 21, 2015**.

B. Rachel K. Gillette, Esquire, to Make Filing.

11. With certain exceptions, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² requires a party in an adjudicatory proceeding before the Commission to be

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.

represented by an attorney. 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 it is 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.

12. This is an adjudication before the Commission.

13. Applicant is a limited liability company and is a party in this matter

14. In the May 13, 2014 supplement at 1, TOGSE states that it is represented in this Proceeding by Rachel K. Gillette, Esquire. Both the May 8, 2014 filing and the May 13, 2014 supplement, however, are signed by Justin Meals as Member of Applicant.

15. As of the date of this Interim Decision, neither Ms. Rachel K. Gillette nor any other attorney has entered an appearance in this matter as counsel for Applicant.

16. The ALJ will order Ms. Gillette to make, not later than **July 15, 2014**, a filing that *either* enters her appearance as counsel for Applicant in this Proceeding *or* states that she is not counsel for Applicant in this Proceeding.

17. If Ms. Gillette states that she is not counsel for TOGSE in this matter, the ALJ will issue a subsequent Interim Decision that addresses TOGSE's representation in this Proceeding.

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

18. The Intervenor's oppose 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 Applicant to consult with Intervenor and then to make, on or before **July 18, 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.

19. 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, 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;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 as to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

20. 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 January 21, 2015. To allow time for a recommended decision,

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).

exceptions, response to exceptions, and a Commission decision on exceptions, the **hearing in this matter must be concluded no later than November 5, 2014.**

21. Unless modified, Rule 4 CCR 723-1-1405 governs discovery. The July 18, 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.

22. 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 July 18, 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.

23. When the July 18, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

24. **The Parties are advised, and are on notice, that** if Applicant fails to make the July 18, 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.

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

26. **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.

27. **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.

28. **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.

29. **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, is a party in this Proceeding.

2. SuperShuttle International Denver, Inc., is a party in this Proceeding.
3. Consistent with the discussion above, not later than July 15, 2014, Rachel K. Gillette, Esquire, either shall enter her appearance in this Proceeding as counsel for The Original Green Star Excursions LLC or shall make a filing that states that she is not counsel for The Original Green Star Excursions LLC in this Proceeding.
4. The procedural schedule established in the Notice of Application Filed dated May 19, 2014 is vacated.
5. Not later than July 18, 2014, The Original Green Star Excursions LLC shall make a filing that complies with the requirements of ¶¶ 18-22, above.
6. The Intervenors shall cooperate with The Original Green Star Excursions LLC in the preparation of the filing required by Ordering Paragraph No. 5.
7. Consistent with the discussion above, if The Original Green Star Excursions LLC fails to make the filing required by Ordering Paragraph No. 5, the Administrative Law Judge, without input from the parties, shall schedule the evidentiary hearing and shall establish the procedural schedule.
8. The Parties are held to the advisements in this Interim Decision.

9. This Interim Decision is effective immediately.



Doug Dean

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge