

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0940CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF HY-MOUNTAIN TRANSPORTATION
DOING BUSINESS AS HIGH MOUNTAIN TAXI, 214B AABC, ASPEN COLORADO, 61611
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
SETTING PREHEARING CONFERENCE**

Mailed Date: November 5, 2014

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I. STATEMENT

1. Hy-Mountain Transportation, doing business as High Mountain Taxi (Applicant), initiated the captioned proceeding on September 16, 2014, by filing an application seeking authority to extend their certificate of public convenience and necessity as a common carrier by motor vehicle for hire with the Colorado Public Utilities Commission (Commission).

2. On September 22, 2014, the Commission provided public notice of the application to extend the authority by publishing a summary of the same in its Notice of Applications Filed:

Currently, Certificate No. 14114 authorizes the following:

I. Transportation of

passengers, in taxi service,

between all points in [the] County of Eagle, State of Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand.

Item (I) is restricted against providing service which originates or terminates within a ten-mile radius of the intersection of Mill and Main Streets in Aspen, Colorado.

II. Transportation of

passengers, in taxi service,

between all points within a 55-mile radius of the intersection of I-70 and Colorado State Highway 82 in Glenwood Springs, Colorado.

Item (II) is restricted to the use of vehicles with a passenger capacity of 15 or less, excluding the driver.

III. Transportation of

passengers, in taxi service,

between all points within a 15-mile radius of the intersection of I-70 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the one hand, and all points within the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item (III) is restricted:

- (A) against the transportation of train crews which originates or terminates at actual train locations on rail siding;
- (B) to the use of vehicles with a passenger capacity of eight or less, including the driver; and
- (C) such that any taxi service between points within a 15-mile radius of I-70 and Colorado State Highway 82 at Glenwood Springs, Colorado, on the one hand, and on the other hand, all points (a) within a 15-mile radius of

Colfax Avenue and Broadway in Denver, Colorado; (b) all points within a 15-mile radius of North Avenue and 12th Street in Grand Junction, Colorado; (c) all points within a 15-mile radius of North Avenue and 12th Street in Grand Junction, Colorado; is restricted to a round-trip that both originates and terminates within a 15-mile radius of I-70 and Colorado State Highway 82 at Glenwood Springs, Colorado.

IV. Transportation of

passengers in taxi service between all points within a 15-mile radius of the intersection of Main Street and Galena Street in Aspen, Colorado, on the one hand, and all points within the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item (IV) is restricted

- (A) against the transportation of train crews which originates or terminates at actual train locations on rail siding; and
- (B) to the use of vehicles with a passenger capacity of eight or less, including the driver.

To the extent that Items (I), (II), (III), and (IV) overlap, only one operating right exists.

V. Transportation of

passengers, in charter service,

between all points:

- (A) within the area comprised of Aspen, Colorado and an 11-mile radius thereof, on the one hand, and all points within the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand; and
- (B) within a 55-mile radius of U. S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado.

Item V(A) is restricted:

- (1) against rendering service that originates and terminates from any point within an area comprised of Grand Junction, Colorado, and a 60-mile radius thereof;
- (2) against rendering service that originates from any points within an area comprised of Crested Butte, Colorado, and a 15-miles radius thereof;

- (3) against having an office outside of Aspen, Colorado or a 12-mile radius thereof; and
- (4) against rendering service from any point within a 15-mile radius of Colfax Avenue and Broadway in Denver Colorado.

VI. Transportation of

passengers, in call-and-demand limousine service,

between all points within a 15-mile radius of the intersection of Main Street and Galena Street in Aspen, Colorado, on the one hand, and all points in the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item (VI) is restricted:

- (A) to the use of vehicles having a maximum capacity of 12 persons, including the driver;
- (B) against establishing an office within a radius of 20 miles of the intersection of Colfax Avenue and Broadway in Denver, Colorado;
- (C) against establishing a branch office nor shall any agent or any other party be employed in Grand Junction, Colorado, or any point within 20 miles thereof, for the purpose of developing, operating, soliciting, or conducting business; and
- (D) against the employment of any agent or any other party in Grand Junction, Colorado, or any point within 20 miles thereof, for the purpose of developing, operating, soliciting, or conducting business; and
- (E) against any transportation that originates or terminates in Grand Junction or points within a 20-mile radius of Grand Junction, Colorado.

(VII) Transportation in call-and-demand of

train crews

between all points within a 15-mile radius of the intersection of Main Street and Galena Street in Aspen, Colorado, and between said area, on the one hand, and all points within a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item (VII) is restricted to the use of vehicles having a maximum capacity of 15 persons, excluding the driver.

(VIII) Transportation of
passengers, in sightseeing service,
between points and places in the following Counties of the State of
Colorado: Garfield, Rio Blanco, Eagle, Mesa, Delta, Gunnison, Pitkin and
Lake.

Item VIII is restricted:

- (A) to the use of only vehicles having a capacity not to exceed 15 passengers, including the driver;
- (B) to having offices for the solicitation of business located within a 12-mile radius of Aspen, Colorado; and
- (C) against trips which originate and terminate within a 12-mile radius of Glenwood Springs, Colorado, and within a 12-mile radius of Vail, Colorado.

As extended, CPCN No. 14114 would authorize the following:

(I) Transportation of
passengers in taxi service,
between all points in [the] County of Eagle, State of Colorado, and
between said points, on the one hand, and all points in the State of
Colorado, on the other hand.

Item (I) is restricted against providing service which originates or terminates within a ten mile radius of the intersection of Mill and Main Streets in Aspen, Colorado.

(II) Transportation of
passengers in taxi service
between all points within a 55-mile radius of the intersection of I-70 and
Colorado State Highway 82 in Glenwood Springs, Colorado.

(III) Transportation of
passengers in taxi service,
between all points within a 15-mile radius of the intersection of I-70 and
Colorado State Highway 82 in Glenwood Springs, Colorado, on the one
hand, and all points within the State of Colorado outside of a 55- mile
radius of the intersection of U.S. Highway 6 and Colorado State
Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item III is restricted:

- (A) to the use of vehicles with a passenger capacity of eight or less, including the driver; and
- (B) such that any taxi service between points within a 15-mile radius of I-70 and Colorado State Highway 82 at Glenwood Springs, Colorado, on the one hand, and on the other hand, (a) all point within a 15-mile radius of Colfax Avenue and Broadway in Denver, Colorado; (b) all points within a 15-mile radius of North Avenue and 12th Street in Grand Junction, Colorado; (c) all points within a 15-mile radius of North Avenue and 12th Street in Grand Junction, Colorado; is restricted to a round-trip that both originates and terminates within a 15-mile radius of I-70 and Colorado State Highway 82 at Glenwood Springs, Colorado.

- (IV) Transportation of passengers in taxi service

between all points within a 55-mile radius of the intersection of Main Street and Galena Street in Aspen, Colorado, on the one hand, and all points within the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item IV is restricted: (A) to the use of vehicles with a passenger capacity of eight or less, including the driver.

To the extent that Items (I), (II), (III), and (IV) overlap, only one operating right exists.

- (V) Transportation of passengers in charter service, between all points:

- (A) within the area comprised of Aspen, Colorado and an 11-mile radius thereof, on the one hand, and all points within the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the one hand; and
- (B) within a 55-mile radius of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado.

Item V is restricted to the use of vehicles with a passenger seating capacity of 15 [or] less, excluding the driver.

Item (V)(A) is restricted:

- (1) against rendering service that originates and terminates from any point within an area comprised of Grand Junction, Colorado, and a 60-mile radius thereof;
- (2) against rendering service that originates from any points within an area comprised of Crested Butte, Colorado, and a 15-mile radius thereof; and
- (3) against rendering service from any point within a 15-mile radius of Colfax Avenue and Broadway in Denver, Colorado.

VI. Transportation of

passengers in call-and-demand shuttle service,

between all points within a 15-mile radius of the intersection of Main Street and Galena Street in Aspen, Colorado, on the one hand, and all points in the State of Colorado outside of a 55-mile radius of the intersection of U.S. Highway 6 and Colorado State Highway 82 in Glenwood Springs, Colorado, on the other hand.

Item (VI) is restricted:

- (A) to the use of vehicles having a maximum capacity of 12 persons, including the driver;
- (B) against establishing an office within a radius of 20 miles of the intersection of Colfax Avenue and Broadway in Denver, Colorado;
- (C) against establishing a branch office nor shall any agent or any other party be employed in Grand Junction, Colorado, or any point within 20 miles thereof, for the purpose of developing, operating, soliciting, or conducting business; and
- (D) against the employment of any agent or any other party in Grand Junction, Colorado, or any point within 20 miles thereof, for the purpose of developing, operating, soliciting, or conducting business; and
- (E) against any transportation that originates or terminates in Grand Junction, Colorado or points within a 20-mile radius of Grand Junction, Colorado.

(VII) Transportation of

passengers, in sightseeing service,

between all points in the following Counties of the State of Colorado: Garfield, Rio Blanco, Eagle, Mesa, Delta, Gunnison, Pitkin and Lake.

Item (VII) is restricted:

- (A) to the use of vehicles having a maximum capacity of 15 persons, including the driver;
- (B) against trips which originate and terminate within a 12-mile radius of Glenwood Springs, Colorado, and within a 12-mile radius of Vail, Colorado.

3. On October 22, 2014, San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours (Telluride or Intervenor) filed its Entry of Appearance and Notice of Intervention. The filing included Telluride's Authority No. 1648.

4. On October 29, 2014, the Commission deemed the application complete and it was referred to an Administrative Law Judge (ALJ).

II. LEGAL REPRESENTATION OF INTERVENOR

5. The undersigned ALJ notes that the intervention of Telluride Express was executed by Mr. Mark Rovito. The Interventions do not state that Mr. Rovito is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. Currently, it is unknown who intends to represent the interests of the Intervenor.

6. The Intervenor is not an individual and has not entered an appearance through counsel, it is appropriate to provide the Intervenor with advisements concerning certain Commission rules regarding legal representation. Intervenor is advised that *Rule 1201(b) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723- 1*, requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney *unless* the party is an **individual** appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a **closely-held entity** pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party

does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

7. Since the Intervenor is not an individual, if it wishes to proceed in this matter without an attorney, it must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See, Rule 1201(b)(II)*, 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S. It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer¹ may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.²

8. The Intervenor shall be ordered either to obtain counsel or to show cause why *Rule 1201, 4 CCR 723-1* does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

9. If the Intervenor elects to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on November 19, 2014.

10. If the Intervenor elects to show cause, then, on or before close of business on, November 19, 2014, it must show cause why *Rule 1201, 4 CCR 723-1* does not require it to be

¹ Section 13-1-127(1)(i), C.R.S., defines “officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

² As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom management of a limited liability company is vested or reserved “shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status[.]”

represented by legal counsel in this matter. To show cause, each party must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, has appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

11. The Intervenor is advised, and is on notice, that if it fails either to show cause or to have legal counsel file an entry of appearance on or before close of business on November 19, 2014, then the ALJ may dismiss the Intervention.

12. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as 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 applies as well to civil proceedings.

Negron v. Golder, 111 P.3d 538, 541 (Colo. App. 2004).

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.

Loomis v. Seely, 677 P.2d 400, 402 (Colo. App. 1983).

A judge may not become a surrogate attorney for a *pro se* litigant.

Id.

III. PREHEARING CONFERENCE

13. Given the procedural posture of the case at this point, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including deadlines for witness lists, exhibits and supplements to witness lists and exhibits, any amendments to the Application, and a date for a hearing on the Application.

14. All parties are expected to appear at the hearing. However, any party may appear by telephone by calling (303) 869-0599 a few minutes prior to the scheduled start of the hearing.

15. A prehearing conference in this matter will be scheduled as ordered below.

IV. ORDER

A. It Is Ordered That:

1. A prehearing conference is scheduled in this matter as follows:

DATE: November 25, 2014

TIME: 9:00 a.m.

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

2. Any party may appear by telephone. A few minutes prior to the scheduled start of the conference, parties shall join the conference by telephoning (303) 869-0599.

3. Any party failing to appear in person or join the telephone call when placed by the Administrative Law Judge, will waive participation in the conference.

4. Intervenor, San Miguel Mountain Ventures, LLC, doing business as Telluride Express and/or Montrose Express and/or Wild West Tours shall make the filing concerning legal representation described in ¶ 10 above on or before November 19, 2014

5. Alternatively, in the event, Intervenor San Miguel Mountain Ventures, LLC doing business as Telluride Express and/or Montrose Express and/or Wild West Tours elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before November 19, 2014.

6. This Decision shall be effective immediately

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director