

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0964CP

IN THE MATTER OF THE APPLICATION OF LOONEY LOOP 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
AMENDING CAPTION OF PROCEEDING,
ADDRESSING INTERVENTION, REQUIRING
APPLICANT TO SHOW CAUSE OR TO RETAIN
LEGAL COUNSEL, REQUIRING INTERVENOR
TO SHOW CAUSE OR TO RETAIN LEGAL COUNSEL,
VACATING PROCEDURAL SCHEDULE, NOTIFYING
PARTIES THAT APPLICATION HAS BEEN
DEEMED COMPLETE, REQUIRING APPLICANT
TO MAKE FILING CONCERNING PROCEDURAL
SCHEDULE, AND CONTAINING ADVISEMENTS**

Mailed Date: November 13, 2014

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I. STATEMENT

1. On September 25, 2014, Looney Loop (Looney Loop or Applicant) filed an Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application). That filing commenced this Proceeding.

2. On October 6, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5); established an intervention period; and established a procedural schedule. This Interim Decision will vacate the procedural schedule.

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

A. Amendment of the Caption of this Proceeding.

4. In the Notice at 5, the caption of this Proceeding is: “In the Matter of an Application for Looney Loop.” This caption is incomplete. The correct and complete caption is as shown above in this Interim Decision.

5. The ALJ will amend the caption of this Proceeding to the caption set out above. The ALJ will order the Administrative Staff of the Commission to conform Commission records to the amended caption and will order the use of the amended caption in all filings made in this Proceeding.

B. Parties.

6. On November 5, 2014, Colorado Jitney, LLC, doing business as Colorado Jitney (Colorado Jitney or Intervenor), timely filed (in one document) its Entry of Appearance and Notice of Intervention by Right, Alternative Motion for Permissive Intervention, Opposition to Application, and Request for Hearing. By that filing, Colorado Jitney establishes that it is an

intervenor by right; thus, it is a party in this Proceeding. Colorado Jitney opposes the Application.

7. 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.

8. Applicant and Intervenor, collectively, are the Parties.

C. Application Deemed Complete and Time for Commission Decision.

9. 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.

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 **June 10, 2015**.

D. Applicant to Retain Legal Counsel or to Show Cause.

11. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)² requires a party in an adjudication 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

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.

appear to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has held that, unless an exception applies, a party must be represented by legal counsel in an adjudication and that the burden to prove that an exception applies is on the party that seeks to appear without legal counsel. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by an individual who is not an attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

12. This is an adjudication before the Commission.

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

14. If Applicant wishes to be represented in this matter by an individual who is not an attorney, then Applicant must prove that it meets the requirements to proceed in this case without an attorney. To prove that it may proceed without an attorney, Applicant must do the following: **First**, Applicant must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. **Second**, Applicant must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer³ may represent a closely-held entity before the Commission *only* if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the

³ 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.

Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.⁴

15. **By this Interim Decision, the ALJ will order Applicant to choose one of these options: either retain a lawyer to represent it in this Proceeding⁵ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by a lawyer.**

16. *If Applicant chooses to retain an attorney to represent it in this matter*, then its attorney must enter an appearance in this Proceeding no later than **November 24, 2014**.

17. *If Applicant chooses to show cause*, then, no later than **November 24, 2014**, Applicant must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by an attorney in this matter.⁶ To show cause, Applicant must file a verified statement: (a) that establishes that Applicant is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000; (c) that identifies the individual who will represent Applicant in this matter; (d) that establishes that the identified individual is an officer of Applicant; and (e) that, if the identified individual is not an officer of Applicant, has appended to it a resolution from Applicant's Board of Directors that specifically authorizes the identified individual to represent Applicant in this matter.

18. **Looney Loop is advised, and is on notice, that** if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will

⁴ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "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[.]"

⁵ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

⁶ In the Application at 7, Looney Loop filled out some of the self-representation information. Because that portion of the Application is missing critical information, the Application is insufficient to meet the requirements of the statute and the Rule.

issue a subsequent Interim Decision that requires Looney Loop to retain legal counsel to represent it in this Proceeding.

19. **Looney Loop is advised, and is on notice, that** if the ALJ issues a subsequent Decision that requires Looney Loop to retain legal counsel and if Looney Loop then fails to retain legal counsel, the ALJ will dismiss the Application.

20. **Looney Loop is advised, and is on notice, that** if the ALJ issues a subsequent Interim Decision that permits Looney Loop to proceed without legal counsel in this matter, then Looney Loop's non-attorney representative will be bound by, and will be held to, the same procedural and evidentiary rules as those to which attorneys are held. 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 in civil proceedings. *Cornelius v. River Ridge Ranch Landowners Association*, 202 P.3d 564 (Colo. 2009); *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 also applies in Commission proceedings.

E. Intervenor to Retain Legal Counsel or to Show Cause.

21. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication 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, as provided in § 13-1-127, C.R.S. The Commission has held that, unless an exception applies, a party must be represented by legal counsel in an adjudication and that the burden to prove that an exception applies is on the party that seeks to appear without legal counsel. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by an individual who is not an attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

22. This is an adjudication before the Commission.

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

24. If Intervenor wishes to be represented in this matter by an individual who is not an attorney, then Intervenor must prove that it meets the requirements to proceed in this case without an attorney. To prove that it may proceed without an attorney, Intervenor must do the following: **First**, Intervenor must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. **Second**, Intervenor must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁷ may represent a closely-held entity before the Commission *only* if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the

⁷ 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.

Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.⁸

25. **By this Interim Decision, the ALJ will order Intervenor to choose one of these options: either retain a lawyer to represent it in this Proceeding⁹ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by a lawyer.**

26. *If Intervenor chooses to retain an attorney to represent it in this matter, then its attorney must enter an appearance in this Proceeding no later than **November 24, 2014**.*

27. *If Intervenor chooses to show cause, then, no later than **November 24, 2014**, Intervenor must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented by an attorney in this matter. To show cause, Intervenor must file a verified statement: (a) that establishes that Intervenor is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000; (c) that identifies the individual who will represent Intervenor in this matter; (d) that establishes that the identified individual is an officer of Intervenor; and (e) that, if the identified individual is not an officer of Intervenor, has appended to it a resolution from Intervenor's Board of Directors that specifically authorizes the identified individual to represent Intervenor in this matter.*

28. **Colorado Jitney is advised, and is on notice, that** if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires Colorado Jitney to retain legal counsel to represent it in this Proceeding.

⁸ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "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[.]"

⁹ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

29. **Colorado Jitney is advised, and is on notice, that** if the ALJ issues a subsequent Decision that requires Colorado Jitney to retain legal counsel, then Colorado Jitney will not be permitted to participate in this matter without an attorney. This means, among other things, that Colorado Jitney will not be able to participate in the evidentiary hearing in this matter.

30. **Colorado Jitney is advised, and is on notice, that** if the ALJ issues a subsequent Interim Decision that permits Colorado Jitney to proceed without an attorney in this matter, then Colorado Jitney's non-attorney representative will be bound by, and will be held to, the same procedural and evidentiary rules as those to which attorneys are held. 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 in civil proceedings. *Cornelius v. River Ridge Ranch Landowners Association*, 202 P.3d 564 (Colo. 2009); *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 also applies in Commission proceedings.

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

31. 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 **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.

32. 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 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;¹⁰ (e) the date by which the Parties will file any stipulation or settlement agreement reached;¹¹ (f) *three* proposed evidentiary hearing dates;¹² and (g) a statement with respect to whether the Parties wish to make oral closing statements at the conclusion of the evidentiary hearing.

33. 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,

¹⁰ This date can be no later than ten calendar days before the first day of hearing.

¹¹ This date can be no later than three business days before the first day of hearing.

¹² 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).

response to exceptions, and a Commission decision on exceptions, the **hearing in this matter must be concluded no later than March 14, 2015.**

34. 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.

35. 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.

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

37. **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.

38. **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.

39. **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.

G. Additional Advisements.

40. **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.

41. The filing made by Colorado Jitney on November 5, 2014 does not comply with Rule 4 CCR 723-1-1202(a). **The Parties are advised, and are on notice, that** future filings must comply with that Rule, as well as all other pertinent rules, if the filing party wishes the filing to be considered by the ALJ.

42. **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.

43. **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. Consistent with the discussion above, the caption of this Proceeding is amended to read: In the Matter of the Application of Looney Loop for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire.

2. Administrative Staff of the Commission shall change Commission records to reflect the amended caption of this Proceeding.

3. All filings made in this Proceeding shall use the amended caption as set out in this Interim Decision.

4. Colorado Jitney, LLC, doing business as Colorado Jitney, is a party in this Proceeding.

5. Looney Loop shall make the following choice: either retain an attorney to represent it in this Proceeding or show cause why it is not required to be represented by an attorney in this matter.

6. If Looney Loop chooses to retain an attorney, the attorney for Looney Loop shall enter an appearance in this Proceeding not later than November 24, 2014.

7. If Looney Loop chooses to show cause, then Looney Loop shall make, not later than November 24, 2014, a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 17, above.

8. Colorado Jitney, LLC, doing business as Colorado Jitney, shall make the following choice: either retain an attorney to represent it in this Proceeding or show cause why it is not required to be represented by an attorney in this matter.

9. If Colorado Jitney, LLC, doing business as Colorado Jitney, chooses to retain an attorney, the attorney for Colorado Jitney, LLC, doing business as Colorado Jitney, shall enter an appearance in this Proceeding not later than November 24, 2014.

10. If Colorado Jitney, LLC, doing business as Colorado Jitney, chooses to show cause, then Colorado Jitney, LLC, doing business as Colorado Jitney, shall make, not later than November 24, 2014, a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 27, above.

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

12. On or before November 28, 2014, Looney Loop shall make a filing that complies with the requirements of ¶¶ 31-35, above.

13. Colorado Jitney, LLC, doing business as Colorado Jitney, shall cooperate with Looney Loop in the preparation of the filing required by Ordering Paragraph No. 12.

14. Consistent with the discussion above, if Looney Loop fails to make the filing required by Ordering Paragraph No. 12, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and shall establish the procedural schedule.

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

16. 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