

Decision No. R14-1422-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0936BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF ABENEZER HOLDINGS LLC
FOR AUTHORITY TO EXTEND OPERATIONS UNDER CONTRACT CARRIER
PERMIT NO. B-10018.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO MOTIONS
AS STATED IN THE INTERIM DECISION,
AND CONTAINING ADVISEMENTS**

Mailed Date: December 1, 2014

I. STATEMENT

1. On September 16, 2014, Abenezer Holdings LLC (Abenezer or Applicant) filed an Application for Permanent Authority to Extend Current Operations under Permit No. B-10018. That filing commenced this Proceeding.

2. On September 24, 2014, Abenezer filed an amendment to the September 16, 2014 filing and filed a supplement to the September 16, 2014 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the September 16, 2014 filing as amended and supplemented on September 24, 2014.

3. On October 6, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 2); established an intervention period; and established a procedural schedule. On November 13, 2014, Decision No. R14-1360-I vacated the procedural schedule.

4. The following intervened as of right: Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Colorado Springs Transportation, LLC (CST); and MKBS, LLC, doing business as Metro Taxi (Metro Taxi). Each opposes the Application.

5. Colorado Cab, CST, and Metro Taxi, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Pursuant to Decision No. R14-1360-I, Applicant is represented by an individual who is not an attorney.¹ Each intervenor is represented by legal counsel.

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

7. On November 12, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue no later than June 10, 2015.

8. In Decision No. R14-1360-I, the ALJ ordered Applicant to consult with Intervenors and to make, not later than November 28, 2014, a filing that: (a) contained a procedural schedule, including hearing date, that was satisfactory to all Parties; and (b) addressed the issues discussed in that Interim Decision.

9. Review of the Commission file in this Proceeding establishes that, as of the date of this Interim Decision, Applicant has not made the filing required by Decision No. R14-1360-I.

¹ In Decision No. R14-1360-I at ¶ 22, the ALJ advised Abenezer and its representative that Abenezer's non-attorney representative is held, and will be held, to the same procedural and evidentiary rules and standards as those to which attorneys are held.

Review of the Commission file in this Proceeding establishes that, as of the date of this Interim Decision, Applicant has not requested additional time within which to comply with Decision No. R14-1360-I.

10. Applicant has not complied with the Decision No. R14-1360-I requirement that it make, not later than November 28, 2014, a filing that contains an agreed-upon procedural schedule and that addresses additional issues. This failure to comply is unexcused and unexplained.

11. In Decision No. R14-1360-I, the ALJ stated:

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.

Decision No. R14-0101-I at ¶ 29 (bolding in original). Pursuant to that advisement and by this Interim Decision, the ALJ will schedule the evidentiary hearing; will establish the procedural schedule; and will address other issues without input from Applicant and Intervenors.

12. The ALJ will order the following procedural schedule, including hearing dates: (a) not later than **December 19, 2014**, Applicant will file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than **January 16, 2015**, each intervenor will file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than **February 6, 2015**, each party will file, but only if necessary to correct a previously-filed list of witnesses or a previously-filed exhibit, a corrected list of witnesses and complete copies of corrected exhibits; (d) not later than **February 20, 2015**, each party will file its prehearing motions, including (without limitation) motions to strike, motions *in limine*, and

dispositive motions;² (e) not later than **noon on February 27, 2015**, the Parties will file any stipulation or settlement agreement reached; (f) the evidentiary hearing will be held on **March 4 and 5, 2015**; and (g) the Parties may make oral closing statements at the conclusion of the hearing.

13. This procedural schedule will permit the Commission to issue, not later than June 10, 2015, its decision on the Application. In addition, scheduling the evidentiary hearing for two days will help to assure that the hearing will be completed within the scheduled time and will allow time for the Parties to make oral closing arguments.

14. 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 following information must be provided for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

15. **The Parties are advised and are on notice that** no person -- including *Mr. Wondemneh Deresse*³ -- 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 ¶¶ 12 and 14 of this Interim Decision.

16. **The Parties are advised and are on notice that**, absent an order, no witness may present testimony by telephone. If a party desires to have a witness testify by telephone,

² As a preliminary matter on the first day of hearing, the ALJ will hear argument on pending prehearing motions.

³ In Decision No. R14-1360-I at ¶ 16, the ALJ identified Mr. Michael Murphy as Applicant's Managing Member; this is incorrect. Mr. Murphy is not associated with Applicant. Mr. Deresse is Applicant's owner and is the individual authorized to appear to represent Applicant in this Proceeding.

the party must file an appropriate motion not later than the date for filing prehearing motions. Unless otherwise ordered, responses to such a motion must be written and must be filed within *two business days of service of the motion*.⁴ The ALJ will rule, as soon as practicable, on a motion for leave to present testimony by telephone.

17. Complete copies of all exhibits (except an exhibit offered in Applicant's rebuttal case or to be used in cross-examination) must be filed as required in ¶ 12.

18. **The Parties are advised and are on notice that** no document -- including the Application and its attachments -- 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 ¶¶ 12 and 17 of this Interim Decision.

19. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405⁵ will govern discovery.

20. Subject to rules governing access to information claimed to be confidential, discovery requests and responses to discovery must be served on all Parties.

21. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to motions pertaining to discovery must be written and must be filed within *three business days of service of the motion*.⁶ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion and response are filed.

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

⁴ By this Interim Decision, the ALJ will shorten the response time to this type of motion.

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

⁶ By this Interim Decision, the ALJ will shorten response time with respect to discovery-related motions.

23. **The Parties are advised and are on notice that** it is the responsibility of each party to bring to the evidentiary hearing a sufficient number of copies of each document that it wishes to offer as an exhibit.⁷ The fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

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

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this Proceeding shall be held on the following dates, at the following times, and in the following location:

DATES: March 4 and 5, 2015
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The following procedural schedule is adopted: (a) not later than December 19, 2014, Applicant Abenezer Holdings LLC shall file its list of witnesses and complete copies of the exhibits it will offer in its direct case; (b) not later than January 16, 2015, each intervenor shall file its list of witnesses and complete copies of the exhibits it will offer in its case; (c) not later than February 6, 2015, each party shall file, but only if necessary to correct a previously-filed list of witnesses or a previously-filed exhibit, a corrected list of witnesses and complete copies of corrected exhibits; (d) not later than February 20, 2015, each party shall file its prehearing

⁷ This means that, at the hearing, a party must have the number of copies of each document necessary to provide: (a) one to be marked and retained by the Commission as the hearing exhibit; (b) one to be given to each of the other parties; (c) one to be given to the ALJ; and (d) one to be retained by the party offering the exhibit.

motions; (e) not later than noon on February 27, 2015, the Parties shall file any stipulation or settlement agreement reached; and (f) the Parties may make oral closing statements at the conclusion of the hearing.

3. No person 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 ¶¶ 12 and 14 of this Interim Decision.

4. Absent an order, no person shall be permitted to present testimony by telephone. If a party desires to have a witness testify by telephone, the party shall file an appropriate motion not later than the date for filing prehearing motions.

5. Response to a motion to present testimony by telephone shall be made in writing.

6. Response time to a motion to present testimony by telephone is shortened to two business days from the date of service.

7. No document 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 ¶ 12 and 17 of this Interim Decision.

8. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 governs discovery.

9. Subject to rules governing access to information claimed to be confidential, discovery requests and responses to discovery shall be served on all Parties.

10. Response to a motion pertaining to discovery shall be made in writing.

11. Response time to a motion pertaining to discovery is shortened to three business days from the date of service.

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

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

14. 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