

Service Date: December 23, 2008

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Complaint of)	TRANSPORTATION DIVISION
Rumble, Inc., d/b/a Classic Limo and)	
Motion for Emergency Relief and Request)	DOCKET NO. T-08.40.COM
For Order that Montana Mountain Express,)	
LLC Cease Operations as an Unlicensed)	ORDER NO. 6962a
Montana Motor Carrier.)	

PROCEDURAL ORDER

FINDINGS OF FACT

Background

1. On November 7, 2008, as amended on November 10, 2008, Rumble, Inc., d/b/a Classic Limo (Rumble) filed its formal complaint against Montana Mountain Express, LLC (MME) docketed as T-8.40.COM.

2. On December 2, 2008 the Commission issued its Notice of Prehearing Conference to convene at 9:30 am on December 22, 2008 at the Commission offices, 1701 Prospect, Helena, Montana.

3. At the December 22, 2008 Prehearing Conference appearances were entered by Michael J. Uda on behalf of Complainant-Rumble and by Messrs. Jerome Anderson and Cory Swanson on behalf of Defendant-MME.

(a) Complainant and Defendant agreed to the following at the Prehearing Conference:

Schedule

January 16, 2009	Final Day for discovery amongst the parties
February 26, 2009	Filing of Prehearing Memoranda by the parties
March 5, 2009	Hearing at Commission's Helena offices

Service and Filing

(b) For purposes of discovery in this proceeding, all discovery (including, but not limited to requests for admission, requests for production, interrogatories/data requests, and objections to discovery should be served via overnight delivery. All discovery-related documents are therefore assumed to be received the day after shipping (the "receipt date"). The term "discovery" includes all forms of discovery authorized by rules of the Commission. The term "written discovery" as used in this Procedural Schedule includes data requests. The Commission urges all parties to conduct discovery through the use of data requests as the preferred method of discovery. There is no specific limit on the number of data requests on the parties, but any and all discovery requests must be relevant or must be likely to lead to admissible evidence in order to be proper. The Commission does not anticipate voluminous discovery in this matter as the scope of this proceeding is not exceptionally broad; specifically, is the business of Defendant-MME a federally-exempt charter operation.

(c) Responses to discovery are due 14 days after the receipt date. Responses are considered timely if they are sent via overnight delivery no later than the 14th day after the receipt date.

(d) Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel, must, within five (5) business days after the receipt date of such response, file before the Commission and serve all parties, the objection or motion and identify the relief requested. Replies to objections should be filed as expeditiously as possible to avoid jeopardizing the procedural schedule. The Commission may dispose of such objection by prompt ruling or may schedule argument. The Commission will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

(e) Submission of written discovery after the period established will be allowed either by agreement of the responding party, or by leave of the Commission. Requests will not be permitted by the Commission unless the party making the request shows good cause as to why the request was not submitted within the time period

allowed. Nevertheless, parties are encouraged to agree to reasonable requests that can be accommodated while maintaining the schedule.

(f) Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in: (i) action refusing to allow the failing party to support or oppose related claims; (ii) action prohibiting introduction of related matters in evidence; (iii) action striking pleadings, testimony, or parts thereof; (iv) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

(g) Copies of all pleadings, motions, discovery requests, discovery responses, briefs, and other documents shall be filed with the Commission and served on all parties. In the case of a filing directed to the Commission, such as motions, testimony, and briefs, the original and ten (10) copies shall be filed. Service upon the parties shall be upon each party's attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the Commission, and parties specifically requesting service of discovery responses.

(h) Service and filing by means of facsimile transmission is prohibited.

Procedure

4. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) title 2, Chapter 4, MCA, MAPA; (c) ARM title 38, Chapter 2, procedural rules of the Commission; (d) tariffed procedures; and (e) previous Orders of the Commission bearing specifically on the procedure and issues in this docket, if any.

Intervention

5. This is a formal complaint and the Commission does not anticipate additional parties. Any requests for intervention will be addressed when filed.

Ex Parte Communications

6. This proceeding is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited. An *ex parte* communication is one between (i.e., to or from) a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in

the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. Commission receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. *Id.* Any oral, written, electronic, or other form of communication of any kind, between (i.e., to or from) a Commissioner and any person associated with any party to a contested case pending before the Commission may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners being ever alert to this possibility, the prohibition applicable, and the corrective action necessary is extremely important in regard to any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

Testimony and Hearing

7. When cross-examination is based on a document, not previously filed with the Commission, copies of the document must be made available to each Commissioner, each party and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

8. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

9. The Parties agreed at the December 22, 2008 prehearing conference that they will present live, as opposed to prefiled written testimony at the March 5, 2009 hearing. Defendant-MME will proceed with its case first, followed by Complainant-Rumble, followed by Defendant's rebuttal, if any.

10. Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

11. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination or upon stipulation approved by the Commission.

Prehearing Motions and Conferences

12. Motions by any party shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission.

Prehearing Memorandum

13. The Prehearing Memorandum shall be from each party. It shall contain a list of issues determined to be uncontested, all issues determined to be contested, witnesses intended to be called to testify or stand cross-examination, exhibits intended to be introduced, and discovery, to date, intended to be introduced at hearing. Identified responses to data requests to be introduced at hearing will be accompanied by a proper identification of the request, the witness responsible for the response, and the issue to which it relates. Any special needs to accommodate witness sequence or scheduling should be identified in the Prehearing Memorandum.

Open Meetings

14. All Commission meetings regarding this docket are open meetings except as otherwise required or permitted by law. Parties will not routinely be notified of Commission business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of Commission work sessions concerning this docket will be provided to all persons requesting notification through the Commission's weekly agenda mailing list.

Done and dated this 22nd day of December, 2008, by delegation to Commission staff.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman
DOUG MOOD, Vice Chairman
BRAD MOLNAR, Commissioner
ROBERT H. RANEY, Commissioner
KEN TOOLE, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Procedural Order issued in Docket T-08.40.COM in the matter of the Complaint of Rumble, Inc. dba Classic Limo and Motion for Emergency Relief and Request for Order that Montana Mountain Express LLC Cease Operations as an Unlicensed Montana Motor Carrier has today been sent to all parties listed.

MAILING DATE: December 23, 2008

FOR THE COMMISSION

FIRST CLASS MAIL

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dba Classic Limo
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AS ITS INTERESTS MAY APPEAR:

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