

Service Date: December 2, 2008

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

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

ORDER DENYING COMPLAINANT'S MOTION TO BAR STAFF FROM PARTICIPATION AS ADVISORY STAFF

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.

Motion

2. Accompanying its formal complaint was a Motion to Bar Specified Commission Staff From Participation As Advisory Staff and Memorandum in Support Thereof (Motion). In its Motion, Rumble moves to bar Commission employees Wayne Budt, Nickie Eck, and Robin McHugh as advisory staff in this matter. Complainant Rumble submits its Motion pursuant to the Montana Administrative Procedures Act, specifically § 2-4-611(4). Submitted with the Rumble Motion was an affidavit of Jesse Rumble, President of Rumble.

Analysis/Ruling

3. Rumble's Motion sets forth a number of allegations regarding the activities of the three named Commission representatives including the following:

"In recent dealings regarding MME's commencement of an airport shuttle service between the Bozeman airport and Big Sky Resort, Mr. Budt, Ms. Eck and Mr. McHugh have advised MME on how

to avoid being subject to Commission jurisdiction as a Montana motor carrier." Motion, pp.1-2.

"In a number of conversations between Petitioner Classic Limo and the aforementioned Commission staff in recent weeks, the Commission staff have shown an unwillingness to enforce Montana law and have evinced a bias toward permitting MME to operate as an uncertified Class B Montana Motor Carrier, and have in fact provided legal advice and counseling to MME in regarding how to avoid regulation by the Commission as a motor carrier." Motion, p. 2.

4. The Commission notes that its staff frequently receives queries from the general public, some involving the scope and degree of regulation over described activities. The Commission is satisfied that its staff does attempt to respond to such queries by describing what Montana statutes require and what precedent or previous actions of the Commission may be relevant to respond to the query. In fact, the public would be inconvenienced to a marked degree if they could not secure such responses from Commission staff. The Commission finds that Complainant has not shown bias or prejudice on the part of staff due to staff's attempts to respond to queries from members of the public. The Commission is not persuaded by bald allegations that Staff has proactively advised someone on how to avoid regulation. Moreover, when a party secures responses from Commission staff, they may only place limited reliance on such responses for it is Montana statutes, case law interpreting such statutes and Commission regulations and decisions that provide specific information upon which a person may place a greater degree of reliance than responses to queries from staff personnel. Rumble's Motion should be denied for failure to show the presence of bias or prejudice on the part of the named employees.

5. The Commission is not pre-judging the merits of Rumble's complaint by denying Rumble's Motion. This Commission will, as usual, call for the advice and counsel of its staff in this matter, including the three named individuals.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Title 69, MCA, addressing Commission jurisdiction over public utilities and carriers and Sections 2-4-601, *et seq.*, MCA, the Montana Administrative Procedure Act.

2. The Motion to bar specifically identified Commission employees from advising the Commission in this matter should be denied for failure of Complainant Rumble to prove the presence of bias or prejudice on the part of the named employees.

ORDER

For the reasons set forth in the Findings of Fact and Conclusions of Law set forth above, Ramble, Inc., d/b/a Classic Limo's Motion Motion to Bar Specified Commission Staff From Participation As Advisory Staff is hereby DENIED.

Done and dated this 24th day of November 2008 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

DOUG MOOD, Vice Chairman

BRAD MOLNAR, Commissioner

ROBERT H. RANEY, Commissioner

KEN TOOLE, Commissioner

ATTEST:

Verna Stewart
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Order Denying Complainant's Motion to Bar Staff From Participation as Advisory Staff 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 2, 2008

FOR THE COMMISSION

FIRST CLASS MAIL

Rumble, Inc.
dba Classic Limo
3942 John Deere
Bozeman, MT 59715

Mr. Michael J. Uda
Attorney at Law
PO Box 1185
Helena, MT 59624-1185

Mr. Jerome Anderson
Attorney at Law
PO Box 866
Helena, MT 59624

Montana Mountain Express LLC
PO Box 161712
Big Sky, MT 59716

AS ITS INTERESTS MAY APPEAR:

Montana Consumer Counsel
616 Helena Avenue
P.O. Box 201703
Helena, MT 59620-1703