

Decision No. R23-0573-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0078CP

IN THE MATTER OF THE APPLICATION OF PURPLE MOUNTAIN TOUR COMPANY LLC
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
MELODY MIRBABA
SHORTENING RESPONSE TIME TO JOINT MOTION,
CONDITIONALLY GRANTING JOINT MOTION AND
CONDITIONALLY MODIFYING HEARING SCHEDULE**

Mailed Date: August 29, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision shortens the response time to the “Joint Motion for Approval of Restrictive Andmentment [*sic*], and Joint Notice of Conditional Withdrawal of Interventions” (Joint Motion) to September 1, 2023. If the only Intervener who has not joined the Joint Motion, Green Jeep Tours LLC (Green Jeep), does not make a filing objecting to the Joint Motion by September 1, 2023, the Joint Motion is automatically granted, consistent with the findings discussed below. If Green Jeep files an objection, the Administrative Law Judge (ALJ) will issue a separate Decision addressing the objection and the Joint Motion, as necessary. In addition, if the Joint Motion is automatically granted consistent with the above condition, the evidentiary hearing will automatically be reduced to two days, on September 14 and 18, 2023, and the September 11 and 12, 2023 hearing dates will be vacated.

B. Procedural History¹

2. On February 15, 2023, Purple Mountain initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire with an attachment, which was amended on March 14, 2023 (Amended Application).

3. On March 29, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry. The Commission did not address the Motion to Amend.

4. Between March 20 and 29, 2023, the following entities made filings to intervene in this Proceeding: Estes Park Charters Corp. (Estes Park Charters); Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys); NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town); Green Jeep Tours LLC (Green Jeep); Home James Transportation Services, LTD (Home James); Alpine Taxi/Limo, Inc., (Alpine Taxi); AEX, Inc., (AEX); San Miguel Mountain Ventures, LLC (San Miguel); and Wild Side 4 x 4 Tours LLC (Wild Side). Except for Ski Town, all of the above entities were granted intervention status or acknowledged as proper interveners of right.²

5. After holding a duly noticed prehearing conference, the ALJ scheduled a hybrid evidentiary hearing on the Amended Application for September 11, 12, 14, and 18, 2023 and established procedural deadlines to accommodate that hearing.³

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. R23-0260-I at 22-23 (mailed April 20, 2023); Decision No. R23-0306-I at 7 (mailed May 10, 2023). Ski Town challenged the ALJ's decision rejecting its Intervention by a Motion to Modify filed on August 11, 2023. That Motion will be addressed by a separate decision in short order.

³ Decision Nos. R23-0260-I at 21 and. R23-0306-I at 3-6; 7-11.

6. On July 31, 2023, Wild Side filed a “Notice of Withdrawal of Intervention of Wild Side 4x4 Tours LLC” (Withdrawal). In its Withdrawal, Wild Side states that it withdraws its opposition to and intervention in this Proceeding, and no longer wishes to be a party to this Proceeding.

7. On August 29, 2023, Purple Mountain, and Alpine Taxi, AEX, San Miguel, Home James, Estes Park Charters, and Estes Park Trolleys (Withdrawing Interveners) filed the Joint Motion.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

8. The Joint Motion acknowledges that only one Intervener, Green Jeep, is not included in the Joint Motion.⁴ But, it does not state that the parties conferred with Green Jeep about the Joint Motion, contrary to Rule 1400(a).⁵ Nor does it state whether Green Jeep objects or does not oppose the Joint Motion. As such, the ALJ does not waive the response time to the Joint Motion. But, given that the response time will not lapse before the first day of the evidentiary hearing, the ALJ will shorten the response time to the Joint Motion to September 1, 2023.⁶

9. The parties and counsel are reminded of their obligation to confer with each other on any motion they file, as has been required by the Commission’s Rules for decades. As is the case here, failing to do so has unnecessarily complicated matters.

10. The Joint Motion states that Purple Mountain and the Withdrawing Interveners have reached an agreement to resolve their disputes. Specifically, if the proposed restrictive

⁴ Joint Motion at 2.

⁵ Rule 1400(a) of the Commission’s Rules of Practice and Procedure. 4 *Code of Colorado Regulations* (CCR) 723-1.

⁶ See Rule 1400(b), 4 CCR 723-1

amendment in the Joint Motion is approved, the Withdrawing Interveners withdraw their interventions.⁷ The Joint Motion seeks to amend the proposed authority to remove shuttle service, and call and demand charter service from the service types that Purple Mountain may provide.⁸ The goal of the amendment is to allow Purple Mountain to only provide sightseeing service (within the proposed service territory).

11. To be acceptable, changes to an application's requested authority must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

12. Amending the Application as requested would limit the type of service that Purple Mountain may provide from its existing request to provide call-and-demand shuttle, charter, and sightseeing service to only call-and-demand sightseeing service. The ALJ finds that the proposed amendments are restrictive, clear, understandable, and administratively enforceable. The ALJ concludes that the proposed amendments meet the remaining requirements discussed above. Consequently, the ALJ grants the Joint Motion and amends the Application as requested, provided that Green Jeep does not making a filing objecting to the Joint Motion within the established

⁷ Joint Motion at 2.

⁸ *Id.*

timeframe. In such a circumstance, the requested authority will be amended to seeking authority to operate as a common carrier by motor vehicle for hire for the:

transportation of passengers in call-and-demand sightseeing service between all points within a 136-mile radius of 24401 CO Rd 390 Granite, Colorado.

RESTRICTIONS:

- (1) Service may only be provided from May 1st through October 31st.
- (2) No service may originate or terminate within the county limits of Denver, Jefferson, Adams, and Arapahoe counties, Colorado or within the city limits of Boulder, Colorado.

13. In addition, in such a circumstance, the ALJ finds that since only Green Jeep will remain as a party opposing the proposed authority, that there is no need for a four-day evidentiary hearing. As such, the ALJ will vacate the first two days of hearing, September 11 and 12, 2023, leaving the September 14 and 18, 2023 hearing dates in place. As noted, if Green Jeep files an objection to the Joint Motion, a separate decision will issue addressing that and the Joint Motion.

III. ORDER

A. It Is Ordered That:

1. The response time to the “Joint Motion for Approval of Restrictive Andmentment [sic], and Joint Notice of Conditional Withdrawal of Interventions” (Joint Motion) is shortened to close of business on September 1, 2023.

2. If Green Jeep Tours LLC (Green Jeep) does not make a filing objecting to the Joint Motion by the above established deadline, the Joint Motion is automatically granted, consistent with the above discussion.

3. If Green Jeep makes a filing objecting to the Joint Motion, a separate Decision addressing the objection and the Joint Motion will issue, as necessary.

4. If the Joint Motion is automatically granted consistent with the above condition, the September 11 and 12, 2023 evidentiary hearing dates will be vacated, and the September 14 and 18, 2023 hearing dates will remain in place (as a hybrid hearing).

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director