

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 MOTION TO
DISMISS AND DENYING MOTION TO STRIKE**

Mailed Date: September 5, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Procedural History¹

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

2. 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.

3. The following entities are interveners in this Proceeding: Estes Park Charters Corp. (Estes Park Charters); Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park

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

Trolleys); 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).

4. 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.²

5. On July 31, 2023, Wild Side filed its Notice of Withdrawal of Intervention of Wild Side 4 X 4 Tours, LLC, noting that it was withdrawing its opposition and intervention of right to the Application of Purple Mountain.

6. On August 29, 2023, Purple Mountain, and Alpine Taxi, AEX, San Miguel, Home James, Estes Park Charters, and Estes Park Trolleys (Withdrawing Intervenors) filed a “Joint Motion for Approval of Restrictive Amendment [sic], and Joint Notice of Conditional Withdrawal of Interventions” (Joint Motion).

7. Also on August 29, 2023, the ALJ shortened the response time to the Joint Motion; conditionally granted the Joint Motion and modified the hearing schedule to limit the hearing to September 14 and 18, 2023, provided that Green Jeep makes no filing objecting to the Joint Motion by September 1, 2023.³

8. On September 1, 2023, Green Jeep filed a Response in Opposition to Joint Motion for Approval of Restrictive Amendment and Joint Notice of Conditional Withdrawal of Interventions (Response) and a Motion to Dismiss Application Due to Defective Notice (Motion).

² Decision Nos. R23-0260-I at 21 and. R23-0306-I at 3-6; 7-11.

³ Decision No. R23-0573-I (mailed August 29, 2023).

The grounds for each were essentially the same, that is, the address provided for the authority is invalid and does not exist.

9. Also on September 1, 2023, Green Jeep filed a Motion to Strike Late Filed Witness and Exhibit Lists (Motion to Strike),

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Shorten Response Time to Motion

10. The grounds for the Response and Motion are essentially the same, that is, the address provided for the authority (24401 Co Rd 390, Granite, Colorado) is invalid and does not exist.⁴ Green Jeep also points out a typographical error in Decision No. R23-0573-I that references “CO” instead of “Co” as a significant change to the authority sought.⁵ As an initial matter, the ALJ notes that this is an easily correctable typographical error, and that no response to it is necessary.

11. Since Green Jeep objected to the Joint Motion, the ALJ’s conditional grant of Joint Motion’s is void, and thus, the hearing is still scheduled for September 11, 12, 14 and 18, 2023.

12. Given that the evidentiary hearing is set to begin less than a week from now, and the Motion raises issues relating both to the Joint Motion and to the overall authority that Purple Mountain seeks, the ALJ will shorten the response time to the Motion to **12:00 p.m., on September 7, 2023.**

B. Motion to Strike

13. The ALJ finds that a response to the Motion to Strike will not be helpful, and therefore waives the response time to it.⁶

⁴ Response at 2; Motion at 1-2.

⁵ Response at 2.

⁶ See Rule 1400(b), 4 *Code of Colorado Regulations* (CCR) 723-1.

14. The Motion to Strike seeks to strike all of Purple Mountain exhibits and exhibit and witness lists, which would essentially prohibit it from presenting exhibits and witnesses at the hearing. As grounds, Green Jeep states that Purple Mountain filed its initial exhibits and exhibit and witness lists one day late and its supplemental exhibits and exhibit lists one day late, contrary to Decision No. R23-0306-I.⁷

15. The Motion asserts that the ALJ has given the exhibit and witness filing deadlines “a great deal of weight as they appeared to have factored into her decision not to allow an Intervenor into this proceeding.”⁸ Green Jeep fails to recognize that the decision relating to that entity, NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town) was based on prejudice to Purple Mountain resulting from Ski Town’s significant delay in taking action, without any cause (let alone good cause).⁹ Ski Town’s delay ranged from 165 days to 23 days.¹⁰

16. More importantly, unlike the issue here, Ski Town made absolutely no disclosures of the evidence that it would present at hearing, depriving Purple Mountain of the opportunity to conduct discovery as to Ski Town’s evidence, and to prepare its evidentiary presentation to address Ski Town’s service. Thus, at its core, the ALJ gave great weight to the prejudice that resulted to Purple Mountain due to Ski Town’s failure to timely act.

17. In considering the Motion to Strike, the ALJ also looks at whether interveners are prejudiced by late-filed exhibit and witness disclosures.

⁷ Motion to Strike at 2-3.

⁸ Motion to Strike at 3, citing Decision No. R23-0577-I.

⁹ Decision No. R23-0577-I at 10-11.

¹⁰ Decision No. R23-0577-I at 10-11 (Ski Town had documentation in hand that it should have filed with its Intervention 165 days before filing its Intervention; Ski Town waited 113 days after its Intervention was denied to file a Motion to Reconsider; Ski Town waited 95 days after a decision granting it a permanent authority was issued to file its Motion to Reconsider; and Ski Town waited 23 days after its Letter of Authority was issued to file its Motion to Reconsider.

18. Per Decision No. R23-0306-I, the deadline to file initial exhibit and witness lists was July 31, 2023¹¹. While the administrative record indicates that Purple Mountain filed its initial exhibit and witness disclosures on July 31, 2023, it also includes a Notice of Technical Difficulty from Purple Mountain stating that it was unable to make these filings on July 31, 2023 because it was unable to access the Commission's E-Filing System, but that it sent its disclosures to counsel for all intervenors. Thus, assuming that the exhibit and witness disclosures were filed one day late (which is not clear in the record), given that the disclosures were made to Interveners on the deadline, there is no prejudice to any Intervener.

19. Supplemental witness and exhibit disclosures were due by 5:00 p.m. on August 21, 2023.¹² Purple Mountain filed its supplemental exhibit and witness disclosures one day late, (on August 22, 2023). Green Jeep fails to establish that receiving that filing at 8:00 a.m. on August 22, 2023 (when it was filed), rather than 5:00 p.m. on August 21, 2023, prejudices it in any way, and the ALJ finds none.

20. For the reasons discussed, the Motion to Strike is denied.

21. Purple Mountain is reminded that per Rule 1204(b) of the Commission's Rules of Practice and Procedure, unless otherwise ordered, filings must be received by 5:00 p.m., Monday through Friday, including those made through the Commission's E-Filing System.¹³ Filings made after 5:00 p.m. through the Commission's E-Filing System will be deemed filed the following day at 8:00 a.m.¹⁴

¹¹ Decision No. R23-0306-I at 8 (mailed April 20, 2023).

¹² Decision No. R23-0306-I at 9.

¹³ Rule 1204(b), 4 CCR 723-1.

¹⁴ See *id.*

III. ORDER

A. It Is Ordered That:

1. The response time to Green Jeep Tours LLC's (Green Jeep) Motion to Dismiss Application Due to Defective Notice is shortened **to 12:00 p.m., on September 7, 2023.**

2. Consistent with the above discussion, the response time to the Motion to Strike Late Filed Witness and Exhibit Lists filed on September 1, 2023 (Motion) is waived and the Motion is denied.

3. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

Rebecca E. White,
Director