

Decision No. R24-0064-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0550CP

IN THE MATTER OF THE APPLICATION OF ADRENALINE DRIVEN ADVENTURE COMPANY, INC. 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
SCHEDULING HEARING, ESTABLISHING PROCEDURES
AND DEADLINES, AND ADDRESSING OTHER MATTERS**

Mailed Date: January 29, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision schedules a hybrid evidentiary hearing for April 22 and 23, 2024; establishes procedures and deadlines relating to that hearing; and memorializes other rulings made during the January 18, 2024 prehearing conference.

B. Procedural History

2. On November 3, 2023, Adrenaline Driven Adventure Company, Inc. (Applicant) initiated this matter by filing the above-captioned Application. The Application seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle, charter, and sightseeing service between all points in Mesa County, Colorado.

3. On November 6, 2023, the Public Utilities Commission (the Commission) provided public notice of the Application, per § 40-6-108(2), C.R.S.¹

4. On November 8, 2023, Applicant filed two identical Applications, one as confidential (Confidential Application) and one as non-confidential (Amended Application).

5. On December 1, 2023, Rapid Creek Cycle & Sports, LLC (Rapid Creek) filed a “Notice of Intervention by Right and Alternative Petition for Intervention, and Entry of Appearance of Rapid Creek Cycles & Sports, LLC and Request for a Hearing” (Rapid Creek’s Intervention).

6. On December 6, 2023, Pali-Tours LTD filed an “Entry of Appearance and Intervention of Pali-Tours LTD” (First Intervention) with a copy of its Letter of Authority as Exhibit A.

7. On December 13, 2023, Pali-Tours filed another “Entry of Appearance and Intervention of Pali-Tours LTD” (Second Intervention).

8. On December 13, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition by minute entry. Subsequently, the undersigned ALJ was assigned to this Proceeding.

9. On January 4, 2024, the ALJ scheduled this matter for a fully remote prehearing conference for January 18, 2024; addressed Rapid Creek and Pali-Tours’ legal representation; acknowledged Pali-Tours’ as a party; ordered Rapid Creek to file its Letter of Authority by January 16, 2024; and ordered Applicant to either have counsel enter an appearance on its behalf, or

¹ See Notice of Applications and Petitions filed November 6, 2023.

establish that it is eligible to be represented by a non-attorney by January 16, 2024.² The Decision notes that Applicant filed numerous Applications (the last two with changes relating to legal representation), and that Pali-Tours filed two Interventions (the last of which appeared to be filed for the sole purpose of supplementing its Certificate of Service for the first Intervention).

10. On January 9, 2024, Rapid Creek filed a copy of its Letter of Authority for its Commission-issued permit (CPCN) No. 55955.

11. On January 16, 2024, attorney John Williams of John Williams Legal, LLC filed an Entry of Appearance on behalf of Applicant.

12. On January 18, 2024, the ALJ held the prehearing conference as noticed; all parties appeared. This Decision memorializes the rulings made during the prehearing conference.

II. FINDINGS, ANALYSIS AND CONCLUSIONS

A. Issues Addressed During Prehearing Conference

13. During the prehearing conference, Applicant clarified issues relating to the two identical Applications filed on November 8, 2023. First, Applicant clarified that it did not intend to file the Confidential Application as confidential, and that Applicant intends to pursue the Amended Application (filed November 8, 2023). As noted during the prehearing conference, the ALJ finds that the Amended Application (filed on November 8, 2023) is at issue in this Proceeding. In addition, also during the prehearing conference, Pali-Tours confirmed that its Second Intervention was filed for the sole purpose of updating or supplementing its Certificate of Service for its First Intervention.

² Decision No. R24-0005-I (mailed January 4, 2024).

14. During the prehearing conference, the ALJ found that since counsel entered an appearance on behalf of Applicant by the deadline established in Decision No. R24-0005-I, that Applicant complied with the Decision. The ALJ also found that Rapid Creek complied with the same Decision by filing a copy of its Letter of Authority by the established deadline, and that based on its Letter of Authority and Intervention, that Rapid Creek has properly intervened of right and therefore is acknowledged as a party to this Proceeding.

15. With the parties' input, the ALJ scheduled a hybrid evidentiary hearing for April 22 and 23, 2024, and established deadlines (set forth in the ordering paragraphs below).³ Parties and witnesses will appear at the hybrid hearing, either in person at the Commission's office in Denver, Colorado, or via videoconference. Applicant is required to confer with the parties to determine if any party will appear in person for the hearing. If no party will appear in person for the hearing, Applicant must make a filing by the deadline established below indicating this. No such filing is necessary if at least one party will appear in person. If no party will appear in person, the hybrid hearing will be converted to a fully remote hearing.

16. During the prehearing conference, the ALJ also explained procedures for the hearing, including that Applicant will present evidence first since it has the burden of proof; that Interveners will present their evidence next; that Applicant will have an opportunity to present rebuttal evidence; that all documentary evidence must be presented electronically; and that parties must ensure that they and their witnesses have the ability to download exhibits during the hearing. This Decision and Attachments A and B hereto outlines additional procedures for the hearing.

³ The ALJ denied Applicant's request that the hearing be held in person in Grand Junction, Colorado, finding that Applicant failed to establish good cause therefor.

B. Advisements

17. *Applicant is on notice* that failure to appear at the evidentiary hearing may result in dismissal of the Amended Application for failing to pursue or prosecute it.

18. At the hearing, Applicant bears the burden of proof by a preponderance of the evidence to show that it has met the legal requirements to be granted the requested authority.⁴ Among the legal requirements, Applicant must establish that it is fit to conduct the proposed operations and that the present or future public convenience and necessity requires or will require the proposed service.⁵ In deciding the latter question, the Commission applies the regulated monopoly doctrine,⁶ which requires that an applicant demonstrate the public needs the proposed service; that granting the authority is in the public interest; and that the existing service is inadequate.⁷ The question is not whether the extent of business in a particular area is sufficient to warrant more certified carriers, but whether the public convenience and necessity demand the service of an additional carrier.⁸

19. *Intervenors are on notice* that the ALJ will deem their failure to appear at the evidentiary hearing as abandoning or withdrawing their Interventions and opposition to the Amended Application and may result in granting the Amended Application without an evidentiary hearing.

20. Unless a filing is made indicating that no party will appear in person for the hearing, parties and witnesses will appear at the hearing either in person at a Commission hearing room in

⁴ §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁵ Rule 6203(a)(XI), 4 CCR 723-6. *See* § 40-10.1-201(1), C.R.S.

⁶ *Ephraim Freightways Inc. v. Pub. Utils. Comm'n*, 380 P.2d 228, 230 (Colo. 1963).

⁷ Rule 6203(a)(XVII), 4 CCR 723-6. *See* § 40-10.1-201(1), C.R.S.; *Durango Transp. Inc. v. Pub. Utils. Comm'n*, 122 P.3d 244, 248-49 (Colo. 2005); *Ephraim Freightways Inc. v. Public Utilities Comm'n*, 380 P.2d 228, 231-32 (Colo. 1963).

⁸ *See Ephraim Freightways Inc.*, 380 P.2d at 231.

Denver, Colorado, or from remote locations by videoconference. The hearing will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate remote hearing participation. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

21. Attachment B includes important information and requirements relating to presenting evidence electronically at the hearing, and thus, it is extremely important that all parties review and follow the requirements in Attachment B.

22. To minimize the potential that the hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing. Parties will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this Proceeding. As such, it is important that all parties ensure that the Commission has the correct email address for them.

23. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at: <https://www.colorado.gov/pacific/dora/pucrules>.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Rapid Creek Cycle & Sports, LLC (Rapid Creek) is acknowledged as a party, having properly intervened of right, and both

Adrenaline Driven Adventure Company, Inc. (Applicant) and Rapid Creek are deemed to have complied with Decision No. R24-0005-I.

2. Based on the above and Decision No. R24-0005-I, the parties to this Proceeding are Rapid Creek, Pali-Tours Ltd. (Pali-Tours), and Applicant.

3. A hybrid evidentiary hearing in this Proceeding is scheduled as follows:

DATE: April 22 and 23, 2024
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

OR

Join by videoconference using Zoom

4. **Deadline to Report if No Party Will Appear in Person.** Applicant must confer with the parties to determine who will appear for the hearing in person. If no party will appear in person, Applicant must make a filing on or by April 12, 2024 indicating that no party will appear in person. In such a case, the hearing will be converted to a fully remote evidentiary hearing.

5. **Hearing Procedures.**

a. Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. This means that all parties must prepare any documentary evidence (exhibits) for electronic presentation. In addition to the below requirements, all parties must comply with the requirements in Attachment B, which includes additional instructions and requirements relating to presenting evidence electronically at the hearing. Attachment B is incorporated herein as if fully set forth.

b. All those participating in the hearing remotely ***must comply*** with the requirements in Attachment A to this Decision, which is incorporated into this Decision as if fully set forth.

6. Deadlines to File Exhibits, Exhibit Lists and Witness Lists.

a. All parties must file and serve exhibits they intend to offer into evidence at the hearing, exhibit lists, and witness lists on or by the close of business on **April 1, 2024**. Witness lists must include a brief description of the witnesses' anticipated testimony, the witnesses' contact information, **and indicate whether the witness will appear in-person or remotely**. Exhibit lists must identify the hearing exhibit number, the full substantive title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit). Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list. The parties are only required to prefile and serve exhibits that they intend to offer into evidence during the evidentiary hearing. Nothing in this Decision requires the parties to prefile exhibits that may be used *solely* to impeach a witness's testimony, to refresh a witness's recollection, or on rebuttal.⁹

b. The parties may amend their exhibit and witness lists to add exhibits and witnesses not included in a prior exhibit list. Any party wishing to do so must file and serve such additional exhibits and amended exhibit and witness lists on or by the close of business **on April 15, 2024**. Amended exhibit and witness lists **must list all the exhibits** that the filing party intends

⁹ Only the Applicant may present rebuttal evidence.

to offer and **all witnesses** who may testify at hearing. Amended exhibit and witness lists **will substitute** the filing party's initial exhibit and witness lists, and as such, may not be filed as a supplement to prior exhibit and witness list filings.

7. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, marked consistent with Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the hearing exhibit number blocks set forth in the below table.

Party	Assigned Hearing Exhibit Numbers
Applicant	100 to 199
Pali-Tours	200 to 299
Rapid Creek	300 to 399

8. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Applicant will use hearing exhibit numbers 1100-1199; Pali-Tours will use hearing exhibit numbers 1200-1299, *etc.*).

9. 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