

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
DENYING MOTION TO AMEND APPLICATION;
REQUIRING FILING; AND VACATING HEARING AND
PROCEDURAL SCHEDULE**

Mailed Date: April 5, 2024

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I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision denies the “Unopposed Motion to Amend/Restrict the Application of Adrenaline Driven Adventures, Inc.” filed March 28, 2024 (Motion to Amend or Motion); requires Adrenaline Driven Adventures, Inc., (Adrenaline or Applicant) to make a filing clarifying its requested Application amendments (among other matters); vacates the evidentiary hearing scheduled for April 22 and 23, 2024 and the remaining procedural schedule; and puts the parties

on notice that if necessary, a new hearing will be scheduled for the week of May 6, 2024 (by separate decision).

B. Procedural History¹

2. On November 3, 2023, Adrenaline initiated this matter by filing the above-captioned Application (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.²

4. On November 8, 2023, Adrenaline filed two identical Applications, one designated as confidential (Confidential Application) and the other public (Amended Application).

5. 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.

6. On January 29, 2024, based on rulings made during a duly noticed prehearing conference at which all parties appeared, the ALJ found that the Amended Application is at issue in this Proceeding; scheduled a hybrid evidentiary hearing for April 22 and 23, 2024; and adopted a procedural schedule and procedures relating to that hearing (among other matters).³

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

² See Notice of Applications and Petitions filed November 6, 2023.

³ Decision Nos. R24-0005-I at 13-14 (mailed January 4, 2024); R24-0064-I at 3-10 (mailed January 29, 2024).

7. In addition to Adrenaline, the following entities are parties to this Proceeding: Rapid Creek Cycle & Sports, LLC (Rapid Creek) and Pali-Tours LTD (Pali-Tours) (collectively, Interveners).⁴

8. On March 28, 2024, Applicant filed its Motion to Amend.

9. On April 1, 2024, Applicant and Pali-Tours filed their witness and exhibit lists and exhibits, consistent with the adopted procedural schedule.

II. FINDINGS AND CONCLUSIONS

10. The Amended Application seeks authority to provide call-and-demand charter, shuttle, and sightseeing service between all points in Mesa County, Colorado.⁵ The Motion to Amend seeks to modify this language to break down each service type into three different line items, with restrictions specific to each, as follows:

- (I) Transportation of passengers in call-and-demand charter service between all points in Mesa County, Colorado.
- (II) Transportation of passengers in call-and-demand shuttle service between all points in Mesa County, Colorado.
- (III) Transportation of passengers in call-and-demand sightseeing service between all points in Mesa County, Colorado.

Restrictions on the Adrenaline authority shall be as follows:

- (A) Items (I) and (II) are restricted against service originating within a five-mile radius of the intersection of 3rd Street and Main Street, Palisade, Colorado.
- (B) Item (III) is restricted so that any sightseeing service provided by Adrenaline originating within a five-mile radius of the intersection of 3rd Street and Main Street, Palisade, Colorado shall use Low Speed Electric Vehicles only.
- (C) As a means of clarification, Adrenaline may provide shuttle and charter service to passengers with bike equipment or floatation equipment if such shuttle and charter service originates at any point in Mesa County outside of a five-mile radius of the intersection of 3rd Street and Main Street, Palisade, Colorado. Adrenaline may provide sightseeing in vehicles that are not Low Speed Vehicles in Mesa County so long as each such sightseeing trip originates at a point in Mesa County outside of the five-mile radius from the intersection of Third Street and Main Street, Palisade, Colorado. Adrenaline will not provide shuttle or charter service from an originating

⁴ Decision Nos. R24-0005-I at 14; R24-0064-I at 6-7.

⁵ Amended Application at 3.

point that is within a five mile radius of Third Street and Main Street, Palisade, CO 81526 to any of the following destinations: (1) Powderhorn Mountain Resort, 48388 Powderhorn Road, Mesa, Colorado 81643; (2) Mesa Lakes Resort/West Bench Trailhead, 3619 CO-65, Mesa, Colorado 81643; (3) Land's End Observatory; (4) Mesa Top Trailhead; (5) County Line Trailhead; and (6) Wild Rose Picnic Area on Land's End.⁶

11. The Motion to Amend states that both Rapid Creek and Pali-Tours agree with and do not object to the proposed amendments and will withdraw as Interveners when the amendments are approved because the amendments address their objections to the Application.⁷

12. The Motion asserts that no further public notice is necessary since the proposed amendments are restrictive in nature.⁸ Applicant asks that the Motion be approved and that the April 22 and 23, 2024 hearing be vacated.⁹

13. Generally, parties have 14 days to respond to a motion, but the Commission has discretion to waive, shorten or lengthen that response time.¹⁰

14. 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 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 carrier is within the scope of its Commission-granted authority.

⁶ Motion to Amend at 2-3.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

15. Given that the Motion to Amend states that Interveners do not object to the requested relief, closely approaching hearing-related deadlines, and the April 22 and 23, 2024 evidentiary hearing, the ALJ finds good cause to waive the remaining response time to the Motion and does so.

16. As explained below, the ALJ denies the Motion to Amend because many of the proposed amendments are not clear and understandable or worded so that a person will know from reading the permit the exact extent of the authority and each restriction. However, given that the parties appear close to resolving their disputes,¹¹ to conserve the parties' resources and give Applicant time to clarify its proposed amendments and work with Interveners on the same, the ALJ will vacate the remaining deadlines in the procedural schedule and the April 22 and 23, 2024 evidentiary hearing.¹²

17. Turning to the Motion to Amend, proposed restriction (B) would limit sightseeing service originating within a five-mile radius of 3rd Street and Main Street in Palisade to the use of "Low Speed Electric Vehicles."¹³ Neither the Motion nor the proposed restriction define Low-Speed Electric Vehicle.¹⁴ That terminology could be subject to many meanings, none of which can be discerned through the proposed language or the Motion. As a result, proposed restriction (B) is ambiguous.

18. Proposed restriction (C) includes numerous potential restrictions that require clarification. Specifically, the first sentence in proposed restriction (C) states:

(C) As a means of clarification, Adrenaline may provide shuttle and charter service to passengers with bike equipment or floatation equipment if such shuttle and charter service originates at any point in Mesa County outside

¹¹ See Motion to Amend at 3 (stating that "upon approval" of the Motion to Amend, Rapid Creek and Pali-Tours "will withdraw as Interveners in this action, having no further objection to Adrenaline's application.").

¹² See Decision No. R24-0064-I at 7-8.

¹³ See *id.*

¹⁴ See *generally, id.* at 1-4.

of a five-mile radius of the intersection of 3rd Street and Main Street, Palisade, Colorado.¹⁵

Rather than clarifying the proposed authority, this language creates confusion. Specifically, it is unclear whether this language is intended to be a new restriction to items (I) and (II) to restrict service originating *outside* of the relevant radius *to passengers with bike or flotation equipment*. If the reference to passenger equipment is not intended to further restrict shuttle and charter service under items (I) and (II), the entire first sentence in proposed restriction (C) is unnecessary. Indeed, if the referenced language is not intended to further restrict service, but is intended to clarify that Applicant can provide service originating from points outside the relevant five-mile radius (under items (I) and (II)), the language is unnecessary because items (I) and (II), read with proposed restriction (A) would already permit Applicant to provide call-and-demand shuttle and charter service originating from any point within Mesa County that is *outside* of the relevant five-mile radius.¹⁶ But if the reference to passenger equipment is intended to further restrict service under items (I) and (II), this should be clearly stated in the restriction.¹⁷

19. The second sentence in proposed restriction (C) states “Adrenaline may provide sightseeing in vehicles that are not Low Speed Vehicles in Mesa County so long as each such sightseeing trip originates at a point in Mesa County outside of the five-mile radius from the intersection of Third Street and Main Street, Palisade, Colorado.”¹⁸ Here, the Motion references “Low Speed Vehicles,” rather than Low-Speed Electric Vehicles. This is both internally inconsistent and ambiguous given that this terminology is also undefined and subject to numerous

¹⁵ *Id.* at 3.

¹⁶ While the ALJ understands that Applicant seeks to add that language for “clarification,” as demonstrated above, the language results in confusion rather than clarification.

¹⁷ For example, this could be clarified by an additional restriction to service under items (I) and (II) originating *outside* of the relevant radius *to passengers with bike or flotation equipment*.

¹⁸ Motion to Amend at 3.

interpretations (none of which can be discerned from the Motion or proposed language). To the extent that this language is intended to make clear that proposed restriction (B) does not prevent Applicant from providing service under item (III) from points originating outside the relevant five-mile radius, the language is unnecessary. Indeed, item (III), read with proposed restriction (B) would plainly permit the Applicant to provide sightseeing service originating from points outside of the relevant five-mile radius, *regardless* of the type of vehicle used. In fact, because proposed restriction (B) only restricts sightseeing transportation using Low-Speed Electric Vehicles to service that originates within the relevant five-mile radius, Applicant could use any type of vehicle for sightseeing service that originates outside of the relevant five-mile radius. But if the suggested language is intended for another purpose, the Applicant must clarify its intent and provide clear and unambiguous language (including clarifying Low-Speed Vehicles or Low-Speed Electric Vehicles, whichever Applicant intends) for the proposed amendment. Otherwise, including the language in the proposed authority results in unnecessary confusion given that it would have no practical effect.

20. Finally, the last sentence of proposed restriction (C) states:

- (C) . . . Adrenaline will not provide shuttle or charter service from an originating point that is within a five mile radius of Third Street and Main Street, Palisade, CO 81526 to any of the following destinations: (1) Powderhorn Mountain Resort, 48388 Powderhorn Road, Mesa, Colorado 81643; (2) Mesa Lakes Resort/West Bench Trailhead, 3619 CO-65, Mesa, Colorado 81643; (3) Land's End Observatory; (4) Mesa Top Trailhead; (5) County Line Trailhead; and (6) Wild Rose Picnic Area on Land's End.¹⁹

However, proposed restriction (A) would already prohibit shuttle and charter service originating within the relevant five-mile radius, regardless of where service terminates.²⁰ This broader

¹⁹ *Id.*

²⁰ *Id.* at 2.

restriction plainly includes service originating within that radius and terminating at the above locations. As such, this language is unnecessary and could create confusion given that it would have no practical effect and is redundant. If, however, Applicant intends to only restrict service under items (I) and (II) against service originating within the relevant five-mile radius *and* terminating at the listed locations, proposed restriction (A) would be unnecessary, and the above language (or similar language) could be used instead.

21. Other minor modifications to the suggested language would improve clarity and provide internal consistency. While there are numerous questions about the proposed amendments, the ALJ has endeavored to outline potential language for amendments consistent with the Motion to Amend, with the caveat that this language lacks a definition of Low-Speed Electric Vehicles. Specifically, the requested authority could be amended to seek a CPCN for authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers:

- (I) in call-and-demand charter service between all points in Mesa County, Colorado;
- (II) in call-and-demand shuttle service between all points in Mesa County, Colorado; and
- (III) in call-and-demand sightseeing service between all points in Mesa County, Colorado.

RESTRICTIONS:

- (A) Items (I) and (II) are restricted against service originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.
- (B) Service under Item (III) originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado is restricted to the use of Low-Speed Electric Vehicles, defined as [***Applicant's to be provided definition***].

22. Of course, the above language makes numerous assumptions about the intent behind the proposed amendments, which may or may not be correct. As such, the Applicant will be required to make a filing clarifying its intended amendments, including stating whether it agrees to the suggested language above, and provide an unambiguous definition of Low-Speed Electric

Vehicles for its proposed restriction. If Applicant does not agree with the above language, it must explain its proposed restrictions (including addressing the items discussed above) and provide clear and unambiguous language that could be used to amend the requested authority.

23. Applicant's proposed amendments appear intended to resolve the disputes with Interveners, who agree to withdraw their Interventions once the amendments are approved.²¹ While the proposed amendments cannot be approved for the many reasons discussed, the ALJ does not seek to undo the parties' efforts to resolve their disputes. To this end, Applicant is required to confer with the Interveners, and include a statement in its required filing indicating: whether Interveners object to the proposed amendments in the filing and whether Interveners withdraw their Interventions and objections to the requested authority if the proposed amendments are approved. If that is the case, the ALJ may decide this matter without an evidentiary hearing based on the record.

24. *Applicant and Interveners are on notice* that if Applicant does not make the required filing within the time prescribed without establishing good cause, or if Interveners object to the proposed authority described in Applicant's anticipated filing, the ALJ will establish new procedural deadlines and will reschedule the evidentiary hearing for two days during the week of May 6, 2024.²²

²¹ Motion to Amend at 3.

²² The ALJ cannot schedule the hearing much later than the week of May 6, 2024 unless Applicant waives the statutory deadline for a final Commission decision to issue, per § 40-6-109.5, C.R.S.

III. ORDER**A. It Is Ordered That:**

1. Consistent with the above discussion, the remaining procedural deadlines in Decision No. R24-0064-I (mailed January 29, 2024) and the remote evidentiary hearing scheduled for April 22 and 23, 2024 are vacated. No other aspect of Decision No. R24-0064-I is modified.

2. The Unopposed Motion to Amend/Restrict the Application of Adrenaline Driven Adventures, Inc. filed March 28, 2024 by Adrenaline Driven Adventure Company, Inc. (Applicant) is denied.

3. On or by 5:00 p.m. on April 15, 2024, Applicant must make a filing consistent with the above discussion, which, at a minimum, must: (a) clarify Applicant's intent behind its proposed amendments; (b) state whether Applicant accepts and agrees to the potential amendments outlined in ¶ 21 above, and if not, propose clear and unambiguous Application amendments (assuming it still wishes to amend); (c) include a clear and unambiguous definition of the terms "Low-Speed Electric Vehicles" for the proposed amendments; and (d) indicate that Applicant has conferred with Rapid Creek Cycle & Sports, LLC and Pali-Tours LTD (collectively, Interveners) about the amendments in the filing, whether Interveners object to the proposed amendments in the filing, and whether Interveners withdraw their Interventions and objections to the requested authority if the proposed amendments in Applicant's filing are approved.

4. 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

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

Rebecca E. White,
Director