

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0283CP

IN THE MATTER OF THE APPLICATION OF HUNDREDTH FLOOR GROUP INC., FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION
DISMISSING APPLICATION WITHOUT PREJUDICE**

Issued Date: September 13, 2024

I. STATEMENT AND BACKGROUND

A. Statement and Summary

1. This Decision dismisses Hundredth Floor Group, Inc.'s ("Applicant") Amended Application for a Certificate of Public Convenience and Necessity ("CPCN") to Operate as a Common Carrier by Motor Vehicle for Hire filed July 5, 2024 ("Amended Application") without prejudice for failure to prosecute it and closes this Proceeding.

B. Procedural History¹

2. On June 20, 2024, Applicant initiated this matter by filing the above-captioned Application ("Application").

3. On July 5, 2024, Applicant filed the Amended Application.

4. On July 8, 2024, the Public Utilities Commission ("Commission") provided public notice of the Application, per § 40-6-108(2), C.R.S.

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

5. On August 14, 2024, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (“ALJ”) for disposition by minute entry.

6. In addition to Applicant, Colorado Jeep and Off Road Tours, Inc. (“Colorado Jeep”) is a party to this Proceeding, having properly intervened of right.²

7. On August 21, 2024, by Decision No. R24-0609-I, the ALJ scheduled a fully remote prehearing conference for September 9, 2024 and required that by September 4, 2024, Applicant either have counsel enter an appearance on its behalf or make a filing establishing that it is eligible to be represented by a non-attorney consistent with relevant law.³

8. The Commission’s Certificate of Service for the above Decision (Decision No. R24-0609-I) indicates that the Decision was served on Applicant through the Commission’s E-Filing System (“E-Filings”) on the day it was issued, August 21, 2024.⁴

9. Administrative staff emailed the Zoom information necessary to join the September 9, 2024 prehearing conference to all parties, including Applicant, on September 3, 2024.⁵

10. The ALJ held the prehearing conference on September 9, 2024 as noticed. Colorado Jeep appeared, but Applicant did not. This Decision memorializes the rulings made during the prehearing conference.

11. To date, no counsel has entered an appearance on Applicant’s behalf and Applicant made no filing establishing that it is eligible to be represented by a non-attorney.

² Decision No. R24-0609-I at 9 (issued August 21, 2024).

³ *Id.*

⁴ See Certificate of Service for Decision No. R24-0609-I.

⁵ Email to Parties with Zoom Information for Prehearing Conference filed September 10, 2024 (“Email to Parties”).

12. Applicant has made no filings in this Proceeding since submitting its Amended Application on July 5, 2024.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

13. As the party asking the Commission to grant the Amended Application, Applicant carries the burden to prove that the Amended Application should be granted.⁶ As such, Applicant also has the duty to prosecute (or pursue) its Amended Application without unnecessary or unreasonable delay.⁷

14. When determining whether to dismiss for failure to prosecute, the tribunal should “consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits,” including the length of delay, the reason for the delay, any prejudice that may result to other parties based on the delay, and the extent to which the applicant has renewed efforts to prosecute the application.⁸

15. When a party registers as a filer with E-Filings, the party “expressly” agrees to accept service in all Commission proceedings through E-Filings.⁹ Filing through E-Filings constitutes service on registered users who are parties.¹⁰

16. The Commission’s Certificate of Service for Decision No. R24-0609-I indicates that Applicant is a registered filer with E-Filings.¹¹

17. Because Applicant is registered with E-Filings, and Decision No. R24-0609-I was served on Applicant through E-Filings, the ALJ concludes that the Decision was

⁶ Rule 1500, of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1.

⁷ See *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

⁸ *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010).

⁹ Rule 1205(b), 4 CCR 723-1.

¹⁰ *Id.*

¹¹ See Certificate of Service for Decision No. R24-0609-I.

properly served on Applicant, and that Applicant had notice of the Decision, and all the matters addressed therein. In addition, the ALJ finds that the record establishes that Applicant was provided the information needed to attend the prehearing conference.¹²

18. Decision No. R24-0609-I warns Applicant that failure to appear at the prehearing conference may result in a decision averse to its interests, including granting the complete relief opposing parties seek and dismissing the Amended Application.¹³ The Decision also warns that the ALJ will deem any party's failure to appear at the hearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.¹⁴

19. The prehearing conference was held open for an additional 15 minutes to allow Applicant an additional opportunity to appear. Applicant still did not appear. Colorado Jeep made a verbal motion to deny and dismiss the Amended Application given Applicant's failure to pursue it. For the reasons discussed below and those discussed during the hearing, the ALJ dismissed the Amended Application without prejudice, and memorializes that ruling here.

20. To start, Applicant's failure to appear for the prehearing conference is construed as waiving its objection to the ALJ's decision during the prehearing conference granting Colorado Jeep's request to deny the Amended Application and dismiss it. Given that Applicant was properly served with Decision No. R24-0609-I and was provided the Zoom information needed to attend the hearing, Applicant had notice of the hearing and the information necessary to participate in it. More importantly, given Decision No. R24-0609-I's explicit warnings, when Applicant chose not to appear at the prehearing conference, it assumed the risk that the Amended Application could be dismissed. Applicant's failure to appear is a failure to pursue or prosecute

¹² Email to Parties.

¹³ Decision No. R24-0609-I at 8.

¹⁴ *Id.*

the Amended Application. Indeed, since Applicant carries the burden of proof that the Amended Application should be granted, the matter cannot proceed to a resolution unless Applicant actively participates in this Proceeding. Applicant's participation in the prehearing conference is specially necessary given that the hearing was scheduled to identify a hearing date, intended to schedule a hearing on the merits of the Amended Application, and establish a procedural schedule to facilitate that hearing. By failing to appear, Applicant ensured that this matter does not move forward.

21. As noted, Decision No. R24-0609-I requires Applicant to either have its attorney enter an appearance on its behalf or make a filing establishing that it is eligible to be represented by a non-attorney, consistent with relevant law (outlined in the Decision) by September 4, 2024. Applicant did not have counsel enter an appearance or make a filing establishing it is eligible to be represented by a non-attorney. Applicant has made no filing establishing good cause for this failure. For this matter to move toward a resolution on the merits, Applicant has to meet the legal representation requirements in Decision No. R24-0609-I. That is because Commission Rules and relevant statutes require that parties appearing in Commission proceedings be represented by an attorney licensed to practice law, or establish they are eligible to be represented by a non-attorney.¹⁵ Thus, so long as Applicant does not address its legal representation either by having counsel enter an appearance or establishing it is eligible to be represented by a non-attorney, it is not in a position to meet the legal requirements necessary for the Amended Application to be granted or addressed on the merits. As a result, failing to comply with these requirements means the Amended Application cannot move forward, and also amounts to failing to pursue or prosecute the Amended Application.

¹⁵ Rule 1201(a) and (b)(II), 4 CCR 723-1. See § 13-1-127(2) and (2.3)(c), C.R.S.

22. Applicant has made no filings since submitting the Amended Application on July 5, 2024. This lack of action (despite being required to make filings and appear at the prehearing conference) also supports a conclusion that Applicant has abandoned the Amended Application and failed to pursue to prosecute it. Indeed, Applicant made no filing requesting an extension of time to meet the legal representation requirements in Decision No. R24-0609-I, a different date for the prehearing conference, or establishing good cause for its failure to appear and meet the requirements in Decision No. R24-0609-I. Applicant's silence and failure to participate in this Proceeding supports a conclusion that Applicant does not intend to pursue or prosecute the Amended Application. At the very least, by failing to participate, Applicant has given no indication that it intends to pursue or prosecute the Amended Application.

23. For the reasons discussed, the ALJ concludes Applicant has abandoned its Amended Application and failed to pursue or prosecute it. Based on the foregoing findings and the record as a whole, the ALJ finds that Applicant's delay in pursuing or prosecuting the Amended Application is unreasonable. The ALJ has considered all factors relevant to determining whether the Amended Application should be dismissed, including policies favoring resolution of disputes on the merits and disfavoring unreasonable delay.¹⁶ For the foregoing reasons and authorities, the ALJ recommends that the Amended Application be dismissed without prejudice.

24. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

¹⁶ See *Edmond*, 226 P.3d at 1253.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Hundredth Floor Group, Inc.'s ("Applicant") Amended Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed July 5, 2024 is dismissed without prejudice.¹⁷

2. Proceeding No. 24A-0283CP is closed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

¹⁷ Dismissal without prejudice allows Applicant to file a new application seeking the same or substantially the same authority sought in this Proceeding.

7. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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