

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0652CP

IN THE MATTER OF THE APPLICATION OF STRAWBERRY PARK HOT SPRINGS SHUTTLE 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
CONVERTING IN-PERSON HEARING
TO REMOTE VIDEO-CONFERENCE HEARING
AND ESTABLISHING PROCEDURES**

Mailed Date: August 6, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Procedural History.

1. Only the procedural history necessary to understand this Decision is included.
2. On November 21, 2019, Strawberry Park Hot Springs Shuttle LLC (Strawberry Park) initiated this matter by filing the above-captioned Application.
3. Hot Springs Shuttle LLC (Hot Springs) is the only intervener in this matter. Thus, the parties are Strawberry Park and Hot Springs.
4. The Administrative Law Judge (ALJ) has twice scheduled this matter for an in-person evidentiary hearing in Steamboat Springs, Colorado. Decision Nos. R20-0227-I issued April 7, 2020 and R20-0061-I issued January 28, 2020. The ALJ continued the first hearing date, (May 7, 2020), based upon conditions surrounding COVID-19, and rescheduled the hearing for September 10, 2020, to take place in-person at the Routt County Combined Courthouse in Steamboat Springs. Decision No. R20-0227-I. *Id.* Because the ALJ and Commission personnel

were required to drive from Denver to Steamboat Springs, the ALJ scheduled a final telephone prehearing status conference for September 8, 2020 at 10:00 a.m. to confirm that a hearing is still necessary. *Id.*

5. The September hearing date was chosen to allow enough time to pass to increase the likelihood that the COVID-19 public health orders and related executive orders would not then be in place, and that in-person gatherings would not present public health risks. *Id.* The ALJ noted that it was uncertain whether conditions would improve enough to allow for an in-person hearing as planned, and that, depending on how conditions develop, the ALJ may schedule a status conference before the September hearing.

B. Impact of COVID-19 on Hearing.

6. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. Executive Order D-2020 003. Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted.

7. Since the hearing was scheduled on April 7, 2020, conditions relating to COVID-19 have not progressed to allow for in-person hearings. For example, no in-person hearings are authorized at the Commission's office, and Commission personnel are restricted to essential travel

only.¹ Even if Commission personnel were authorized to travel to Steamboat Springs, due COVID-19, the Routt County Combined Courthouse is not an available location to hold a hearing. This means the hearing cannot be held at the Courthouse as planned. Moreover, based on data showing a recent increase in COVID-19 infections, state and local officials have issued orders placing restrictions on public gatherings (among other orders), which include social distancing and mandatory masks in public. Executive Order D 2020 138; Routt County Public Health Order 2020-03, Amended on July 29, 2020. All of these efforts are intended to protect the public health from the spread of COVID-19.

8. Based on the foregoing, the ALJ concludes that an in-person hearing is neither feasible, nor in the public interest at this time. It is unknown when an in-person hearing may be safely held. It is unreasonable to continue the hearing again in order to hold it in-person at a future date because: (a) this matter has been pending since November 2019; (b) after a five-month continuance, an in-person hearing is still unavailable; and (c) it is unknown when a hearing can be held in-person.

9. Since April 7, 2020 when the in-person hearing was scheduled, the Commission has obtained additional resources and developed processes that facilitate holding video-conference evidentiary hearings in a streamlined fashion while minimizing challenges associated with remote hearings.

10. For all the reasons discussed, the ALJ finds that at this time, it is in the parties' and public interest to convert the September 10, 2020 in-person hearing to a remote video-conference

¹ The ALJ and the court reporter must travel to Steamboat Springs for the in-person hearing; if this restriction remains in place, the ALJ and court reporter will not be able to do this.

hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19, while allowing this proceeding to move forward.

11. Given that this Decision is issued more than a month before the September 10, 2020 hearing, the parties have sufficient time to familiarize themselves with technology that will be used to hold the hearing.

12. Because the hearing will not be held in-person, there is no need for a final prehearing status conference. As such, the ALJ will vacate the September 8, 2020 prehearing status conference.

C. Procedures for Video-Conference Hearing.

13. The video-conference hearing will be held using the web-hosted video conferencing service, GoToMeeting. The ALJ strongly encourages the parties to test their ability to use GoToMeeting. This Decision and Attachment A explains the procedures, requirements, and instructions to participate in the video-conference hearing using GoToMeeting, and are intended to ensure that the video-conference hearing proceeds efficiently without technical problems. As such, the parties must carefully review and follow all requirements in this Decision and Attachment A.

14. The procedures developed for the video-conference evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, when party presents an exhibit, it will be displayed on the video-conference screen live so that parties and witnesses may view them together while the exhibits are being testified to and offered into evidence.

15. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the GoToMeeting link and access code to participate in the hearing will be

provided to the parties by email before the hearing. For the same reason, the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

16. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case.

17. Given that the hearing is held by video-conference, exhibits must be presented electronically. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented at remote hearings.² As such, it is essential that the parties ensure they can access and use box.com *before* the hearing. The ALJ is entering orders to facilitate using box.com to manage exhibits during the hearing. To this end, the parties will be provided box.com links and instructions by email in order to: (a) upload documents and exhibits for use during the hearing; and (b) download documents and exhibits once they are presented during the hearing. These requirements do not impact the parties' obligation to file and serve exhibits consistent with Decision No. R20-0227-I.

D. Informal Video-Conference Practice Session.

18. The ALJ will hold an informal practice video-conference session to give the parties an additional opportunity to practice using GoToMeeting and box.com before the hearing. The parties will receive information and a link to participate in the informal practice session by email.

² Box.com is a web-based document sharing service. When exhibits will be first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

E. Advisements.

19. *The parties are on notice* that failing to appear at the hearing may result in a decision adverse to their interests, including granting the complete relief opposing parties request.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the in-person hearing on the merits of the Application in this proceeding scheduled for September 10, 2020 at 9:00 a.m., is converted to a remote video-conference hearing, which the parties and witnesses may join using the GoToMeeting link to be provided to the parties by email.

2. The September 8, 2020 10:00 a.m. prehearing status conference is vacated.

3. The parties and witnesses may not distribute the GoToMeeting link and access code to anyone not participating in the hearing. The parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. All participants in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated herein.

5. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties are responsible for providing their witnesses with the link to join the GoToMeeting hearing. The parties must ensure that they and their respective witnesses are ready and able to participate in the evidentiary hearing by video-conference using GoToMeeting.

6. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by video-conference, all evidence must be presented electronically. All parties are

responsible for ensuring they and their respective witnesses have access to all exhibits via a box.com link the Commission will provide, and are able to download and view documents from box.com *during the hearing*. At minimum, this requires parties and witnesses to have internet access during the hearing.

7. **Deadlines Remain in Place.** All the deadlines established in Decision No. R20-0227-I remain in place, including deadlines to file exhibit and witness lists and exhibits.

8. **Exhibit Requirements.** Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block *before* uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page one, regardless of content *before* uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

9. **Exhibit Number Assignments.** As stated in Decision No. R20-0227-I, Strawberry Park Hot Springs Shuttle LLC (Strawberry Park) is assigned hearing exhibit numbers 1 through 99, and Hot Springs Shuttle LLC (Hot Springs) is assigned hearing exhibit numbers 100-199. For example, Strawberry Park should mark its first hearing exhibit as "Hearing Exhibit 1" and Hot Springs should mark its first hearing exhibit as "Hearing Exhibit 100."

10. **Informal Video-Conference Practice Session.** The ALJ will hold an informal Go-To-Meeting practice session on September 2, 2020 at 3:00 p.m.; the parties will receive a link to join the practice session by email.

11. 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 "Doug Dean".

Doug Dean,
Director