

Decision No. R20-0901

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0339CP

IN THE MATTER OF THE APPLICATION OF PAGOSA ADVENTURE DOING BUSINESS AS WOLF CREEK TAXI FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMEDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DISMISSING APPLICATION WITHOUT
PREJUDICE AND CLOSING PROCEEDING**

Mailed Date: December 18, 2020

I. STATEMENT

1. On August 18, 2020, Pagosa Adventure, doing business as Wolf Creek Taxi (Applicant) filed an Application seeking a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission).

2. On August 24, 2020, the Commission provided public notice of the Application by publishing a summary of the same in its Notice of Applications Filed:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand taxi service and call-and-demand shuttle service

between all points in the Counties of Archuleta, La Plata, and Mineral, State of Colorado.

3. On August 25, 2020 Pagosa Cab filed its Intervention through George Brown. This filing did not identify Mr. Brown as an owner or member of Pagosa Cab, nor did it identify Mr. Brown as an attorney. The filing did not include any Commission authority held by Pagosa Cab.

4. On August 26, 2020, Wilderness Journeys Pagosa, Inc., doing business as A1 Taxi (A1 Taxi) filed its Intervention and Entry of Appearance through Kevin Metzler. The filing identified Mr. Metzler as an owner of A1 Taxi but did not identify Mr. Metzler as an attorney. The filing included Commission Authority No. 16400 held by A1 Taxi.

5. On August 27, 2020, San Juan Sentry, LLC, doing business as Durango Cab (Durango Cab) filed its Notice of Intervention by Right through Edward Gilbert. This filing did not identify Mr. Gilbert as an owner or member of Durango Cab, nor did it identify Mr. Gilbert as an attorney. This filing attached Commission Authority No. 14196 held by Durango Cab.

6. On September 30, 2020, the Commission deemed the Application complete and referred it to the undersigned Administrative Law Judge (ALJ) for disposition.

7. On October 8, 2020, by Decision No. R20-0710-I, a prehearing conference was scheduled for October 29, 2020. Further, Decision No. R20-0710-I ordered Pagosa Cab to file a copy of its Commission authority no later than October 23, 2020 and was advised that failure to do so would result in its intervention being denied.

8. On October 29, 2020, the prehearing conference was held, and a procedural schedule was agreed to by all the parties.

9. On November 6, 2020, Decision No. R20-0772-I was issued which memorialized the procedural schedule. The procedural schedule required the Applicant to file exhibits and a list of witnesses by November 29, 2020. Decision No. R20-0772-I also dismissed Pagosa Cab's intervention for failure to make the filing required by Decision No. R20-0710-I.

II. MOTION TO DISMISS

10. On December 3, 2020, Durango Cab and A1 Taxi (collectively, Intervenors) filed their Motion to Dismiss Application Pursuant to Rule 1405(k)(VI). Intervenors request the application be dismissed due to the Applicant's failure to file its exhibits and witness list by the deadline stated in Decision No. R20-0772-I.

11. Applicant has failed to file any response to Intervenors' Motion to Dismiss. Applicant's response to the Motion to Dismiss was due on December 17, 2020. No response was filed on or before that date, therefore Applicant's failure to so respond will be deemed a confession of the Motion to Dismiss. Rule 1400 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

12. A review of the Commission's files by the undersigned confirms that Applicant has failed to file a witness and exhibits list in this matter despite the Commission's notice of the requirements of the rules. Nor has the Applicant filed a motion for additional time to make these required filings.

13. Based upon the forgoing circumstances, the undersigned ALJ finds that the Applicant has abandoned the application and the above-captioned application shall be dismissed.

14. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order:

III. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed by San Juan Sentry, LLC, doing business as Durango Cab and Wilderness Journeys Pagosa, Inc., doing business as A1 Taxi, in the captioned proceeding on December 3, 2020, is granted.

2. The hearing scheduled to commence in this matter on January 5, 2021, is vacated.

3. The above-captioned application is dismissed without prejudice.

4. Proceeding No. 20A-0339CP is closed.

5. 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. 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.

6. 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.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the 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.

b) If a party seeks to amend, modify, annul, or reverse basic findings 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.

7. If exceptions to this 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director