

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0119CP

IN THE MATTER OF THE APPLICATION OF NOMAD INC. LTD FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DENYING INTERVENTION AND
GRANTING APPLICATION**

Mailed Date: May 21, 2021

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I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Summary

1. This Decision denies Rapid Creek Cycles & Sports, LLC’s (Rapid Creek)

Intervention, and grants Nomad Inc.’s (Nomad) amended Application subject to conditions.

B. Background

2. On March 15, 2021, Nomad commenced this proceed by filing a verified Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission). Nomad amended the Application¹ on March 22, 2021.

3. The Commission provided public notice of the Application on March 22, 2021. Notice of Application filed March 22, 2021, at 2.

4. On April 15, 2021, Rapid Creek filed a “Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance of Rapid Creek Cycles and Sports, LLC and Request for Hearing” (Intervention).

5. On April 28, 2021, the Commission deemed the Application complete, and referred the matter to an Administrative Law Judge (ALJ) for disposition.

C. Findings and Conclusions

1. Rapid Creek’s Intervention

6. As amended, the Application seeks:

authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand charter service and call-and-demand sightseeing service between all points in Pitkin County, State of Colorado, on the one hand, and all points in the Counties of Delta and Mesa, State of Colorado, on the other hand.

Notice of Application filed March 22, 2021, at 2.

7. Thus, if granted, the proposed authority would allow Nomad to transport passengers to or from Pitkin County to points within Delta and Mesa Counties. It does not

¹ Unless otherwise specified, all references herein to the Application are to the amended Application.

authorize transportation to and from points solely within Delta County, solely within Pitkin County, or solely within Mesa County. Nor does it authorize transportation between Delta and Mesa Counties. Thus, for Rapid Creek's permit to conflict with or overlap with the proposed authority, it must have authority to transport passengers to or from Pitkin County to points within Delta or Mesa Counties.

8. Rapid Creek asserts that it may intervene of right based on its Permit No. 55955. Intervention at 1. Rapid Creek asserts that it "provides services . . . in the same territories and to and from the same locations proposed in the Application." Intervention at 2. But Rapid Creek does not point to the specific parts of its authority that establish this.

9. Rapid Creek states that its permit gives it authority to operate as a common carrier for the:

Transportation of passengers, in call-and-demand shuttle service between all points within a 29-mile radius of 239 Main Street, Palisade, Colorado.

RESTRICTION:

This authority is restricted to originating service at 239 Main Street, Palisade, Colorado, and terminating service at the following locations:

- (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; or
- (6) Wild Rose Picnic Area on Lands End Road.

Id. at 1-2. Thus, Rapid Creek's authority requires transportation to originate at 239 Main Street, Palisade, Colorado, and terminate at one of the listed locations. The originating point, (239 Main Street, Palisade, Colorado), is in Mesa County. This means that Rapid Creek's permit conflicts with the proposed authority only if at least one of the listed locations where service may

terminate is in Pitkin County. But, none of the listed locations are within Pitkin County. As such, Rapid Creek does not have authority to transport passengers to or from Pitkin County.

10. Because the proposed authority seeks to provide transportation to or from Pitkin County to points within Delta and Mesa Counties, and Rapid Creek's permit does not authorize it to transport passengers to or from Pitkin County, the proposed service territory does not overlap or conflict with Rapid Creek's authority.

11. To intervene of right, Rapid Creek must establish that it has a legally protected right that may be affected by the proceeding, and must identify the specific parts of its authority in conflict with the Application. Rule 1401(b) and (f)(I), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure. As explained, Rapid Creek's authority does not conflict with or overlap with Nomad's proposed authority. Based on this, the ALJ concludes that Rapid Creek has failed to establish that it has a legally protected interest in the subject of the proceeding, and thus, has not properly intervene of right. Rule 1401, 4 CCR 723-1; *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985). Indeed, because Rapid Creek's authorized service does not overlap with the proposed authority sought here, its competitive position to operate within its service territories is not at risk. *Cf. Yellow Cab Coop. Ass'n. v. Public Utilities Comm'n.*, 869 P.2d 545, 550 (Colo. 1994).

12. Alternatively, Rapid Creek seeks to permissively intervene. Intervention at 1. A party seeking to permissively intervene must identify the specific interest that justifies the intervention, and demonstrate that the proceeding may substantially affect the intervener's pecuniary and tangible interests. Rule 1401(c), 4 CCR 723-1. Rapid Creek's request to permissively intervene is based on the premise that its authority conflicts with or overlaps with

the proposed authority. As discussed in detail, this premise is not accurate. Rapid Creek provides no other reason to support permissive intervention. Because Rapid Creek's Intervention does not identify the specific interest that justifies its intervention, or demonstrate that the proceeding may substantially affect its pecuniary and tangible interests, the ALJ concludes that Rapid Creek does not meet the requirements of Rule 1401(c) to permissively intervene. 4 CCR 723-1.

13. Based on the foregoing, the ALJ concludes that Rapid Creek has failed to intervene of right or to establish that it should be allowed to permissively intervene. As a result, the ALJ will deny Rapid Creek's Intervention.

2. Application

14. Given that Rapid Creek's Intervention is denied, the Application is no longer contested. *See* Rule 1403(b), 4 CCR 723-1. Because the Application is uncontested, is verified, includes sufficient facts to make a determination on the relief sought, is supported by the required documents and information, and a hearing is not required, the ALJ will consider the amended Application based on the record without a formal hearing. § 40-6-109(5), C.R.S., and Rule 1403(a), 4 CCR 723-1.

15. Nomad is a domestic limited liability corporation organized in Colorado in good standing. Certificate of Fact of Good Standing filed March 15, 2021. The verified Application establishes that Nomad is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. Application filed March 22, 2021 (Application) at 9. The verified Application establishes that Nomad has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. *Id.* at 5 and 10. Indeed, Nomad successfully operates under a Commission-issued luxury limousine permit (No. LL-03629). *Id.* at 5-6. Nomad's owner

has over 20 years of managerial experience, eight of which are specific to running a custom adventure travel business in Pitkin County. *Id.* at 6.

16. Based on all of this and the record as a whole, the ALJ concludes that Nomad is managerially, operationally, and financially fit to operate under the requested authority. Finally, a review of the verified Application indicates a need for the proposed service. Application, at 5. Based on the record and the foregoing, the ALJ concludes that Nomad has met all other prerequisites for receiving the requested authority. *See e.g.*, Rule 6203, 4 CCR 723-6.

17. For the foregoing reasons and authorities, the ALJ recommends that the amended Application be granted, subject to the below conditions. 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.

II. ORDER

A. The Commission Orders That:

1. For the reasons discussed, Rapid Creek Cycles and Sports, LLC's Intervention filed April 15, 2021 is denied.

2. Consistent with the above discussion, Nomad Inc.'s (Nomad) Application, as amended on March 22, 2021, is granted subject to the conditions identified below. Nomad is granted a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle as follows:

Authority to operate as a common carrier by motor vehicle for hire for the
Transportation of

passengers in call-and-demand charter and call-and-demand sightseeing service

between all points in Pitkin County, State of Colorado, on the one hand, and all points in the Counties of Delta and Mesa, State of Colorado, on the other hand.

3. Nomad must operate in accordance with all applicable Colorado laws and Commission rules.

4. Nomad may not commence operation under the authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- a. causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- b. paying to the Commission, the motor vehicle fee for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- c. having an effective tariff on file with the Commission. To this end, Nomad must file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff must be filed as a new Advice Letter proceeding and must comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at www.colorado.gov/pacific/dora/common-carriers); and
- d. paying the applicable issuance fee.

5. If Nomad does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit will be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

6. The Commission will notify Nomad in writing when the Commission's records demonstrate compliance with ordering paragraph 4.

7. Proceeding No. 21A-0119CP is closed.

8. 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.

9. As provided by § 40-6-106, 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 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.

b. 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.

10. 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 "Doug Dean".

Doug Dean,
Director