

Decision No. C20-0925-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0521EC

IN THE MATTER OF THE PETITION FOR A DECLARATORY ORDER FILED BY WILD SIDE 4 X 4 TOURS LLC, PURSUANT TO THE COMMISSION'S RULE OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(F).

**INTERIM COMMISSION DECISION ACCEPTING
PETITION FOR DECLARATORY ORDER, ISSUING
NOTICE, STAYING ENFORCEMENT ACTION, AND
REFERRING PETITION TO AN ADMINISTRATIVE LAW
JUDGE**

Mailed Date: December 30, 2020
Adopted Date: December 23, 2020

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission accepts, issues notice of, and refers to an Administrative Law Judge (ALJ) the Petition for Declaratory Order (Petition) filed by Wild Side 4 x 4, LLC (Wild Side) on November 23, 2020. The Petition seeks an order stating that Wild Side is exempt from regulation by the Commission, including requirements to obtain a permit pursuant to Article 10.1 of Title 40 of the Colorado Revised Statutes.

2. This Decision establishes a 30-day period for notice, interventions, and any responsive briefs. Interventions and any responsive briefs, including from Commission Staff, must be filed by 5:00 p.m. on January 29, 2021.

3. Additionally, this Decision stays any enforcement action by Commission Staff related to the operation of Wild Side without a permit.

B. Background

4. On November 23, 2020, Wild Side filed its Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i) of the Commission's Rules of Practice and Procedure.

5. In its Petition, Wild Side states that it offers photographic tours and that it has operated for eight years without a permit from the Commission. It explains that in May 2020 it received a Violations Letter from Commission Staff that found violations of 4 CCR 723-6202(a) (operating as a common carrier without appropriate permit and paying annual motor vehicle identification fees), 4 CCR 723-6302(a) (operating as a limited regulation carrier without obtaining appropriate permit), and § 40-10.1-107(1), C.R.S. (maintaining and filing appropriate proof of financial responsibility). Wild Side further explains that Commission Staff states it must be permitted as an Off-Road Scenic Charter pursuant to § 40-10.1-301(12), C.R.S., or be assessed a Civil Penalty Assessment Notice (CPAN) and face civil penalties.

6. Wild Side argues the transportation it provides is an incidental part of its operations and therefore should be found to be outside the Commission's jurisdiction. Wild Side also states it discussed the issue of an Off-Road Scenic Charter permit with Commission Staff in 2012 and 2013, and that Commission Staff informed the company that as long as it was conducting photographic tours and made this clear to the public, Wild Side would not be subject to the Commission's regulation. Wild Side states that it would be prejudiced if the Commission were to now determine it needs a permit.

7. Wild Side also requests that the Commission issue a stay of enforcement while the Commission determines whether to grant its Petition. It asserts that staying the issuance of a CPAN by Commission Staff will conserve administrative resources and reduce unnecessary costs for Wild Side and the Commission.

C. Findings and Conclusions

8. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, we then exercise our discretion to accept or dismiss the petition.

9. We find that evaluating the question presented in the Petition will remove any uncertainty as to whether Wild Side must obtain a permit under § 40-10.1-301(12), C.R.S., or is otherwise subject to regulation by the Commission. Therefore, we accept Wild Side's Petition and issue notice of the Petition to interested persons, firms, and corporations by service of this Decision.

10. We note that Commission Staff has communicated with Wild Side regarding the necessity of obtaining a permit on several occasions. Therefore, we encourage the participation of Staff in this proceeding.

11. We find good cause to grant Wild Side's request for a stay of enforcement during the pendency of this proceeding. This will conserve administrative resources and reduce unnecessary costs for Wild Side and the Commission.

12. The Petition is available by accessing the Commission's E-Filing system under the above proceeding number at Colorado.gov/dora/puc. **This Decision is the notice that Wild Side's Petition seeking a declaratory order that it is exempt from regulation by the**

Commission as a motor carrier pursuant to Article 10.1 of Title 40 of the Colorado Revised Statutes, including requirements to obtain a permit, has been filed.

13. Commission notice period for the Petition shall extend for 30 days from the mailed date of this Decision and, therefore, shall extend through and include **5:00 p.m. on January 29, 2021**. The intervention and response period will run concurrent with the notice period. Interventions and responses, including those filed by Commission Staff, shall be due by **5:00 p.m. on January 29, 2021**.

14. All matters in this proceeding are referred to an ALJ for disposition.

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order (Petition) filed by Wild Side 4 x 4, LLC (Wild Side) on November 23, 2020, is accepted.

2. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

3. The notice period for the Petition shall extend through and include **5:00 P.M. on January 29, 2021**.

4. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on January 29, 2021**.

5. Responsive briefs shall be due from all parties by **5:00 p.m. on January 29, 2021**.

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or by accessing the Commission's comment wizard using the above proceeding number at <http://www.dora.state.co.us/pacific/PUC/puccomments>.

7. Consistent with the discussion above, any enforcement action by Commission Staff related to the operation of Wild Side without a permit is stayed during the pendency of this proceeding.

8. The Petition is referred to an Administrative Law Judge.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 23, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners