

Decision No. R24-0257

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0550CP

IN THE MATTER OF THE APPLICATION OF ADRENALINE DRIVEN ADVENTURE COMPANY, INC. 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
AMENDING APPLICATION, ACKNOWLEDGING
INTERVENTION WITHDRAWAL, AND GRANTING
PERMANENT AUTHORITY SUBJECT TO CONDITIONS**

Mailed Date: April 22, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision amends the above-captioned Application consistent with Adrenaline Driven Adventure Company, Inc.'s (Adrenaline or Applicant) April 15, 2024 filing; acknowledges Interventions' withdrawals; grants Adrenaline a permanent authority subject to conditions; and closes this Proceeding.

B. Procedural History

2. On November 3, 2023, Adrenaline initiated this matter by filing an Application seeking a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle, charter, and sightseeing service between all points in Mesa County, Colorado.

3. On November 6, 2023, the Public Utilities Commission (the Commission) provided public notice of the Application, per § 40-6-108(2), C.R.S.¹

4. On November 8, 2023, Adrenaline filed two identical Applications, one designated as confidential (Confidential Application) and the other public (Application).

5. On December 13, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition by minute entry.

6. On January 29, 2024, based on rulings made during a duly noticed prehearing conference at which all parties appeared, the ALJ found that the Application filed November 8, 2024 is at issue in this Proceeding; scheduled a hybrid evidentiary hearing for April 22 and 23, 2024; and adopted a procedural schedule and procedures relating to that hearing (among other matters).²

7. In addition to Adrenaline, the following entities are parties to this Proceeding: Rapid Creek Cycle & Sports, LLC (Rapid Creek) and Pali-Tours LTD (Pali-Tours) (collectively, Interveners).³

8. On March 28, 2024, Applicant filed an Unopposed Motion to Amend/Restrict (Motion to Amend).

9. On April 1, 2024, Applicant and Pali-Tours filed their witness and exhibit lists and exhibits, consistent with the adopted procedural schedule.

10. On April 5, 2024, the ALJ denied the Motion to Amend; vacated the procedural schedule (including the evidentiary hearing); and required that Adrenaline make a filing on or by April 15, 2024 that: (a) clarifies Applicant's intent behind the proposed amendments in the Motion

¹ See Notice of Applications and Petitions filed November 6, 2023.

² Decision Nos. R24-0005-I at 13-14 (mailed January 4, 2024); R24-0064-I at 3-10 (mailed January 29, 2024).

³ Decision Nos. R24-0005-I at 14; R24-0064-I at 6-7.

to Amend; (b) states whether Applicant accepts and agrees to the potential amendments outlined in the same Decision, and if not, propose clear and unambiguous Application amendments (assuming it still wishes to amend); (c) includes a clear and unambiguous definition of the term “Low-Speed Electric Vehicles” for the proposed amendments; and (d) indicates that Applicant has conferred the Interveners about the amendments in the filing; (e) whether Interveners object to the proposed amendments in the filing, and (f) whether Interveners withdraw their Interventions and objections to the requested authority if the proposed amendments in Applicant’s filing are approved.⁴

11. On April 15, 2024, Adrenaline filed its “Response to Interim Decision of Administrative Law Judge Melody Mirbaba Dated April 5, 2024 and Unopposed Motion to Amend/Restrict the Application [. . .]” (Second Motion to Amend or Second Motion).

II. FINDINGS AND CONCLUSIONS

A. Second Motion to Amend

12. Generally, parties have 14 days to respond to a motion, but the Commission has discretion to waive, shorten or lengthen that response time.⁵

13. To be acceptable, changes to an application’s requested authority must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit,

⁴ Decision No. R24-0213-I at 10 (mailed April 5, 2024).

⁵ Rule 1400(b) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

which is the touchstone by which one determines whether the operation of a carrier is within the scope of its Commission-granted authority.

14. The Interveners do not oppose the Second Motion.⁶ Since the Second Motion is unopposed, the ALJ finds good cause to waive the response time to it and does so.

15. The Application seeks authority to provide call-and-demand charter, shuttle, and sightseeing service between all points in Mesa County, Colorado.⁷ The Second Motion seeks to modify this language to break down each service type into three different line items, with restrictions specific to each, consistent with the language outlined in Decision No. R24-0213-I, with a definition of the term “Low-Speed Electric Vehicles.” Specifically, the Second Motion seeks to amend the requested authority to seek a CPCN for authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers:

- (I) in call-and-demand charter service between all points in Mesa County, Colorado;
- (II) in call-and-demand shuttle service between all points in Mesa County, Colorado; and
- (III) in call-and-demand sightseeing service between all points in Mesa County, Colorado.

RESTRICTIONS:

- (A) Items (I) and (II) are restricted against service originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.
- (B) Service under Item (III) originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado is restricted to the use of Low Speed Electric Vehicles. The term Low Speed Electric Vehicle is defined as a vehicle that (i) is propelled utilizing electricity as its primary source of propulsion; (ii) has at least three wheels in contact with the ground; (iii) does not use handlebars to steer; and (iv) displays a seventeen-character vehicle registration number as provided by 49 CFR 565.⁸

⁶ Second Motion at 3.

⁷ Application at 3.

⁸ Second Motion at 4.

16. The Second Motion states that Interveners withdraw their Interventions in this matter once the Second Motion is granted.⁹

17. The ALJ finds that to be administratively enforceable, clear, and understandable, the reference in the proposed authority to 49 C.F.R. 565 must identify the version of that regulation by year. Otherwise, if the regulation is later updated, this could create confusion as to which version is referenced, which may raise difficulties in enforcing and understanding the authority. As such, the ALJ will modify the suggested restriction to identify the version of the referenced regulation that exists as of April 15, 2024 (the date the proposed restriction was filed).

18. With the above minor modification, the ALJ finds that the proposed amendments are restrictive, clear, understandable, and administratively enforceable, and otherwise meet the requirements discussed in ¶ 13 above. For these reasons, and because the proposed amendments are unopposed, the ALJ grants the Second Motion, and amends the requested authority consistent with the above discussion.

19. Since the proposed amendments are accepted with the minor non-substantive modification discussed, consistent with the Second Motion, Pali-Tours' and Rapid Creek's Interventions are acknowledged as withdrawn. As a result, Pali-Tours and Rapid Creek are no longer parties to this Proceeding, and the Application, as amended, is not contested.

⁹ Second Motion at 4.

B. Application

20. Because the Application, as amended, is uncontested, 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 or requested, the ALJ will consider the Application based on the record without a formal hearing.¹⁰

21. The record shows that Adrenaline is incorporated in Colorado and is in good standing.¹¹ The verified Application establishes that Adrenaline is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, and agrees to be bound by, and to comply with, those Rules.¹² The Application establishes and supporting information that Adrenaline has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested.¹³ The Application and supporting information establishes that Adrenaline's managers have experience in the transportation and tourism industries, managing businesses and employees, which establishes that Adrenaline is managerially fit to operate the requested authority.¹⁴ Finally, a review of the verified Application and supporting information indicate a need for the proposed service.¹⁵

22. Based on the foregoing and the record, the ALJ concludes that because Adrenaline is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the requested authority should be granted, subject to the below conditions.

¹⁰ § 40-6-109(5), C.R.S., and Rule 1403, of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

¹¹ See Certificate of Good Standing filed November 8, 2023.

¹² Application at 7.

¹³ *Id.* at 4-5, citing bank statements, balance sheets, profit and loss statements, and statement of operational fitness filed November 8, 2023.

¹⁴ *Id.* at 5, citing statement of managerial fitness filed November 8, 2023.

¹⁵ *Id.* at 4, citing statement of public need filed November 8, 2023.

23. 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.

III. ORDER

A. The Commission Orders That:

1. The relief requested in Adrenaline Driven Adventure Inc.'s (Adrenaline) "Response to Interim Decision of Administrative Law Judge Melody Mirbaba Dated April 5, 2024 and Unopposed Motion to Amend/Restrict the Application [. . .]" (Second Motion) is granted. The Application filed November 8, 2023 (Application) is amended as set forth above and the Interventions filed by Rapid Creek Cycle & Sports, LLC (Rapid Creek) and Pali-Tours LTD (Pali-Tours) are deemed withdrawn. Rapid Creek and Pali-Tours are no longer parties to this Proceeding.

2. Adrenaline 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:

- (I) in call-and-demand charter service between all points in Mesa County, Colorado;
- (II) in call-and-demand shuttle service between all points in Mesa County, Colorado; and
- (III) in call-and-demand sightseeing service between all points in Mesa County, Colorado.

RESTRICTIONS:

- (A) Items (I) and (II) are restricted against service originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.
- (B) Service under Item (III) originating within a five-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado is restricted to the use of Low-Speed Electric Vehicles. The term Low-Speed Electric Vehicle is defined as a vehicle that (i) is propelled utilizing electricity as its primary source of propulsion; (ii) has at least three wheels in contact with the ground; (iii) does not use handlebars to steer; and (iv) displays a seventeen-character vehicle registration number as provided by 49 C.F.R. 565 as it exists on April 15, 2024.

3. Adrenaline must operate in accordance with all applicable Colorado Laws and Commission rules.

4. Adrenaline 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, Adrenaline 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 Adrenaline 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 Adrenaline in writing when the Commission's records demonstrate compliance with ordering paragraph 4 above.

7. Proceeding No. 23A-0550CP 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 § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

10. 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.

11. 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.

12. 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