

Decision No. R23-0082-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0335CP

IN THE MATTER OF THE APPLICATION OF TIPSY VELO LLC, DOING BUSINESS AS TIPSY VOYAGE, 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
AVIV SEGEV
AMENDING APPLICATION
AND DISMISSING INTERVENTION**

Mailed Date: February 7, 2023

I. STATEMENT

A. Procedural Background

1. On July 21, 2022, Topsy Velo, LLC, doing business as Topsy Voyage (Topsy Voyage or Applicant) filed its Permanent Authority Application (Application), through which Applicant seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire. This filing commenced Proceeding No. 22A-0335CP.

2. On July 25, 2022, the Commission issued public notice of the authority sought by Topsy Voyage in the Application (Notice) as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers: (1) in call-and-demand charter service between all points in the area comprised of the Counties of Mesa and Delta, State of Colorado; (2) in call-and-demand shuttle service between all points in the area comprised of the Counties of Mesa and Delta, State of Colorado; (3) in call-and-demand sightseeing service between all points in the area comprised of the Counties of Mesa and Delta, State of Colorado. This application is restricted: (a) Item (2) is restricted against service to or from the Powderhorn Ski Area, located in Mesa County, Colorado; (b) Item (3)

is restricted to sightseeing service that originates and terminates at the same point.

3. On July 26, 2022, Powderhorn Pacific, LLC, doing business as Powderhorn Mountain Resort (Powderhorn) timely noticed its intervention of right.

4. On August 22, 2022, Pali-Tours Ltd and Absolute Prestige Limousine II LLC timely noticed their intervention of right.

5. On August 23, 2022, Rapid Creek Cycles & Sports, LLC, doing business as Plunge Cycle and Shuttle, timely noticed its intervention of right.

6. On August 24, 2022, Colorado Detours LLC d/b/a Western Colorado Wine Tour timely noticed its intervention of right.

7. On August 31, 2022, the Commission, via a minute entry, deemed the Application complete and referred Proceeding No. 22A-0335CP to an Administrative Law Judge (ALJ) for disposition.

8. On January 24, 2023, the parties submitted their Stipulation of Parties and Motion to Restrictively Amend Application and to Withdraw Intervention (Motion to Amend Application). The Motion to Amend Application seeks amend the authority sought by Topsy Voyage in the Application to request as follows:

A Certificate of Convenience and Necessity to operate as a common carrier by motor vehicle for hire to provide the following transportation:

1. In call-and-demand charter service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado;
2. In call-and-demand shuttle service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado;
3. In call-and-demand sightseeing service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado.

RESTRICTIONS:

1. Item (2) is restricted against service to or from the Powderhorn Ski Area, located in Mesa County, Colorado;
2. Item (3) is restricted to sightseeing service that originates and terminates at the same point.

3. Items (1), (2) and (3) are restricted to traffic that either originates or terminates at a vineyard, winery, bar, restaurant that serves wine, or place of lodging.

9. In the Motion to Amend Application, Powderhorn seeks to withdraw its intervention upon the Commission's finding that the restrictive amendments to the authority sought through the Application, as modified by the Motion to Amend, are administratively acceptable.

B. Motion to Amend Application

10. The authority sought in a CPCN application and any restriction on such authority must be restrictive in nature, clear and understandable, administratively enforceable, and contained wholly within the scope of the authority sought in the CPCN application, as noticed.

11. The only requested change to the authority sought by Topsy Voyage in the Motion to Amend as compared with the authority sought in the Application is the addition of Restriction No. 3.¹

12. The ALJ finds that amendments to the restrictions on the authority sought by the Applicant, as stated in the Motion to Amend, are restrictive in nature, clear and understandable, administratively enforceable, and contained wholly within the scope of authority sought in the Application, as noticed. Therefore, the authority sought by Applicant will be amended as requested, and Powderhorn's conditional request to withdraw as an intervenor will be granted.

13. Because the Motion to Amend was jointly filed by the parties, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the request is unopposed and response time to the Motion to Amend will be waived.

¹ Compare Application at 2 with Notice at 3.

II. ORDER

A. It Is Ordered That:

1. Response time to the Stipulation of Parties and Motion to Restrictively Amend Application and to Withdraw Intervention (Motion to Amend Application), filed January 24, 2022, is waived.

2. The Motion to Amend Application is granted.²

3. The authority sought by Topsy Velo, LLC, d/b/a Topsy Voyage (Topsy Voyage or Applicant) through its Permanent Authority Application, filed July 21, 2022, is amended as follows:

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

1. In call-and-demand charter service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado;
2. In call-and-demand shuttle service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado;
3. In call-and-demand sightseeing service between all points in the area comprised of the counties of Mesa and Delta, State of Colorado.

RESTRICTIONS:

1. Item (2) is restricted against service to or from the Powderhorn Ski Area, located in Mesa County, Colorado;
 2. Item (3) is restricted to sightseeing service that originates and terminates at the same point.
 3. Items (1), (2) and (3) are restricted to traffic that either originates or terminates at a vineyard, winery, bar, restaurant that serves wine, or place of lodging.
4. The intervention of Powderhorn Pacific, LLC, doing business as Powderhorn Mountain Resort (Powderhorn) is withdrawn.

² The unopposed motion is granted without determination at this time as to the merits of any portion of the requested authority.

5. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director