

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0078CP

IN THE MATTER OF THE APPLICATION OF PURPLE MOUNTAIN TOUR COMPANY LLC
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
MELODY MIRBABA
APPROVING RESTRICTIVE AMENDMENT,
ADDRESSING INTERVENTIONS,
REQUIRING FILINGS, AND
SCHEDULING REMOTE PREHEARING CONFERENCE**

Mailed Date: April 20, 2023

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I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision approves the restrictive amendment proposed by Purple Mountain Tour Company LLC (Purple Mountain or Applicant); addresses the numerous Interventions filed in this Proceeding; requires several Interveners to make filings by the established deadlines; and schedules a remote prehearing conference to move this matter forward.

B. Procedural History

2. On February 15, 2023, Purple Mountain initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with an attachment. In its Application, Purple Mountain seeks 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 within a 136-mile radius of 24401 Co. Rd. 390, Granite, Colorado, 81228, restricted to service from May 1st through October 31st.

3. On February 21, 2023, the Public Utilities Commission (the Commission or PUC) provided public notice of the Application, per § 40-6-108(2), C.R.S.¹

4. On March 14, 2023, Purple Mountain made a filing seeking to amend the Application (Motion to Amend) to add the restrictions to the Application's proposed service territory.²

¹ See Notice of Applications and Petitions filed February 21, 2023.

² "Restrictions Amendment" filed March 14, 2023.

5. On March 20, 2023, Estes Park Charters Corp. (Estes Park Charters) and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys) (collectively, Estes Park Interveners) filed a joint and timely “Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance of Fun Time Trolley, LLC and Estes Park Charters Corp. and Request for Hearing” (Estes Park Interveners’ Intervention), opposing the Application.

6. On March 21, 2023, NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town) filed a timely “Petition for Leave to Intervene” (Ski Town’s Intervention), opposing the Application.

7. On March 22, 2023, Green Jeep Tours LLC (Green Jeep) filed a timely “Petition for Leave to Intervene” (Green Jeep’s Intervention), opposing the Application; Home James Transportation Services, LTD (Home James) filed a timely “Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance . . . and Request for a Hearing” (Home James’s Intervention), opposing the Application; and Alpine Taxi/Limo, Inc., (Alpine Taxi), AEX, Inc., (AEX) and San Miguel Mountain Ventures, LLC (San Miguel) (collectively, Alpine) filed a joint and timely “Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance . . . and Request for a Hearing” (Alpine’s Intervention), opposing the Application.

8. On March 23, 2023, Wild Side 4 x 4 Tours LLC (Wild Side) filed a timely “Notice of Intervention as of Right, or in the Alternative, Motion to Intervene and Entry of Appearance . . .” (Wild Side’s Intervention), opposing the Application.

9. On March 29, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry. The Commission did not address the Motion to Amend.

10. Also on March 29, 2023, Purple Mountain filed a Motion for Enlargement of Time (Motion) and proposed order seeking an extension of time to file responses or objections to the motions or notices of intervention to April 5, 2023. Purple Mountain did not file any such responses or objections by the deadline it proposed (or at all).

II. RELEVANT LAW

11. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).³ To intervene of right, a carrier's intervention must: state the basis for the claimed legally protected right that may be impacted by the proceeding; include a copy of the carrier's authority; show that the carrier's authority is in good standing; identify the specific parts of the authority that are in conflict with the application; and explain the consequences to the carrier and the public interest if the application is granted.⁴ A carrier's letter of authority provides the basis for the legally protected right which an intervener claims may be impacted by the proceeding. Thus, when determining whether an intervention of right is appropriate, it is important to determine whether the intervener's letter of authority shows that it has the right to operate in a manner that may be impacted by an application's requested authority.

12. Persons or entities seeking permissive intervention in a proceeding must: state the specific grounds relied upon for intervention; identify the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific

³ Rule 1401(b) and (c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. See § 40-6-109(a), C.R.S.; and *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

⁴ Rule 1401(b) and (f)(I), 4 CCR 723-1.

interest that justifies intervention; explain why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding; and must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interest of the movant and that the movant's interests would not otherwise be adequately represented.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 and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

III. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Purple Mountain's Motion to Amend Application

14. Purple Mountain seeks to amend its Application to restrict it from providing services that originate or terminate within the county limits of Denver, Jefferson, Adams, Arapahoe counties, or within the city limits of Boulder.⁶ The ALJ finds that the proposed amendments are restrictive in nature, clear and understandable, and administratively enforceable. As such, the ALJ grants the Motion to Amend and amends the Application as requested.

15. The Amended Application seeks authority for Purple Mountain to:

⁵ Rule 1401(c), 4 CCR 723-1.

⁶ "Restrictions Amendment" filed March 14, 2023 (Motion to Amend).

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 within a 136-mile radius of 24401 CO Rd 390 Granite, Colorado.

RESTRICTIONS:

- (1) Service may only be provided from May 1st through October 31st.
- (2) No service may originate or terminate within the county limits of Denver, Jefferson, Adams, and Arapahoe counties, Colorado or within the city limits of Boulder, Colorado.

16. Below, the ALJ considers the Interventions with the Amended Application in mind.

B. Estes Park Interveners' Intervention

17. The Estes Park Interveners assert that they may intervene of right because the authority sought here directly conflicts and overlaps with their authorities, PUC No. 55845 (Fun Tyme) and PUC No. 54696 (Estes Park Charters), both of which are in good standing and are attached to their Intervention as Exhibits 1 and 2.⁷ In support, Fun Tyme states that its authority allows it to provide call-and-demand charter and sightseeing service between all points within 30 miles of the intersection of U.S. Highway 34 and U.S. Highway 36 in Estes Park, Colorado.⁸

18. Estes Park Charters states that its authority (PUC No. 54696) overlaps with the authority sought here because its authority permits it to provide, in relevant part: call-and-demand sightseeing service between all points within a 10-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado and all points within a 75-mile radius of U.S. Highways 34 and 36 in Estes Park, Colorado; call-and-demand sightseeing service between all points within twelve miles of Estes Park, Colorado and specific areas in Boulder County, Colorado; call-and-demand shuttle service between all points within a 10-mile radius of the intersection of U.S. Highways 34

⁷ Estes Park Interveners' Intervention at 1-3.

⁸ *Id.* at 1-2. See Exhibit 1 to Estes Park Interveners' Intervention.

and 36 in Estes Park, Colorado and all points within a 75-mile radius of U.S. Highways 34 and 36 in Estes Park, Colorado; charter service between all points within 12 miles of Estes Park, Colorado; and charter service between all points within 12 miles of Estes Park, Colorado and all points within a 75-mile radius of U.S. Highways 34 and 36 in Estes Park, Colorado.⁹

19. Based on the foregoing, the Estes Park Interveners argue that the authority sought by the Application will directly conflict with and overlap the authority granted to both companies, as Purple Mountain's proposed service territory and services overlaps with their authorities' geographical territories and services.¹⁰ They submit that Purple Mountain will be in direct competition with them, as they can and do provide extensive services to the customers that Purple Mountain seeks to serve, in the same territory and to and from the same service areas.¹¹ They also submit that Purple Mountain's restrictive amendment filed on March 14, 2023 does not impact this.¹² They request that the Commission set the Application for hearing and deny it.

20. The ALJ concludes that the Estes Park Interveners' authorities' conflict and overlap with the authority sought by the Amended Application.¹³ Based on this, and the information and attachments provided with their Intervention, the ALJ concludes that Estes Park Charters and Fun Tyme have met the requirements to intervene of right consistent with per Rule 1401, 4 CCR 723-1. As such, their Intervention is acknowledged; Estes Park Charters and Fun Tyme are parties to this Proceeding.

⁹ Estes Park Interveners' Intervention at 2. *See* Exhibit 2 to Estes Park Interveners' Intervention.

¹⁰ Estes Park Interveners' Intervention at 2-3.

¹¹ *Id.* at 3.

¹² *Id.* at 1.

¹³ Exhibits 1 and 2 to Estes Park Interveners' Interventions.

C. Ski Town's Intervention

21. Ski Town's Intervention is less than straight-forward, but ultimately appears to seek to intervene as of right, or, in the alternative, to permissively intervene.¹⁴ Ski Town states that it has been providing transportation in the Steamboat Springs area under its Luxury Limousine Permit No. LL-03502.¹⁵ Ski Town Transportation also received a 30-day emergency temporary authority to provide call-and-demand shuttle services between Yampa Valley Regional Airport, Hayden, Colorado and the town of Steamboat Springs, Colorado, including all points within one mile of the town limits of Steamboat Springs and the Steamboat Springs Ski Area; and between Yampa Valley Regional Airport, Hayden, Colorado and the town of Craig, Colorado, including all points within one mile of the town limits of Craig, Colorado.¹⁶

22. As additional grounds to intervene, Ski Town states that it has filed applications for temporary and permanent authorities in Proceeding Nos. 22A-0131CP-TA and 22A-0132CP.¹⁷ Ski Town asserts that the Commission granted it another temporary authority in Proceeding No. 22A-0131CP-TA and that this temporary authority has been extended indefinitely pending resolution of the permanent authority application.¹⁸ Ski Town states it has been and currently is operating under this temporary authority.¹⁹ Ski Town asserts that the authority under which it has been operating include service territories that overlap with the service territory that the Application seeks to serve, and that being excluded from intervening in this proceeding would be fundamentally unfair.²⁰ Ski Town is concerned that if Purple Mountain's Application is granted, it could thwart Ski Town's

¹⁴ Ski Town's Intervention at 2-4.

¹⁵ *Id.* at 2.

¹⁶ *Id.* Appendix A to Ski Town's Intervention at 1 (Decision No. C22-0169 (mailed March 17, 2022) in Proceeding No. 22A-0117CP-ETA).

¹⁷ Ski Town's Intervention at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3.

efforts, and “act as a spoiler precluding the grant of Ski Town’s meaningful service addition.”²¹ Ski Town argues that the Commission has allowed carriers with temporary authorities to permissively intervene in the past and should do so here.²²

23. Under Rule 1401(f)(II), 4 CCR 723-1, a common carrier holding temporary authority in conflict with authority sought in an application does not have standing to intervene as of right but may file a motion to permissively intervene. Ski Town admits that it does not own a permanent authority to provide common carrier service, and instead, bases its Intervention on temporary authority.²³ Thus, as initial matter, the ALJ finds that Ski Town has not properly intervened of right.

24. Turning to Ski Town’s request to permissively intervene, as already noted, a person or entity seeking to permissively intervene must meet numerous requirements, including the identifying specific interest that justifies intervention and must demonstrate that the proceeding may substantially affect their pecuniary or tangible interest.²⁴

25. While Ski Town relies on its temporary authority or authorities as grounds to permissively intervene, it failed to provide a copy of any Letter of Authority, permit, or other document issuing either temporary authority. This is no small failure. For example, in the Decision granting the first temporary authority (in Proceeding No. 22A-0117CP-ETA), the Commission conditioned the grant of authority upon Ski Town meeting certain requirements (*e.g.*, providing proof of financial responsibility) before it may begin operations under the temporary authority.²⁵ The Decision also required compliance with the conditions placed on the authority within 30 days,

²¹ *Id.* at 3-4.

²² *Id.* at 2.

²³ *Id.* at 2.

²⁴ Rule 1401(c), 4 CCR 723-1.

²⁵ Appendix A to Ski Town’s Intervention at 4.

or the temporary authority grant would be void.²⁶ Notably, the Decision limited the temporary authority to 30 days itself.²⁷ And, that Decision came with a right to appeal. Ski Town provides no information or documentation that would confirm that it met the Decision's conditions for the temporary authority to be issued (such as the authority itself), or that the authority is still valid and active. And it is unknown whether the Decision upon which Ski Town relies was appealed, later modified, or whether it became a final Commission decision. Ski Town's Intervention is silent on this. As such, the ALJ cannot rely on the Decision granting the authority as a final Commission decision granting an authority. This all leads to the inevitable conclusion that Ski Town simply failed to establish that the first temporary authority was issued or that that it is still active.

26. As to the second temporary authority, Ski Town provided even less evidence of its issuance. For example, Ski Town did not provide the Decision granting or indefinitely extending the temporary authority, or the temporary Letter of Authority, permit or other documentation issuing the temporary authority. Instead, Ski Town provided a single typed page, (filed as Appendix B but marked as Appendix A), with a described authority. But this has little, if any, evidentiary value. The document does not identify to whom the alleged authority was granted; the issue date; expiration date. Nor does it include any of the hallmarks that a Commission-issued Letter of Authority includes, such as the Commission's letterhead, or the State of Colorado Seal.²⁸ Rather, it presents like a document that anyone could have created on their home computer. For all these reasons, the ALJ finds that Ski Town failed to establish that the referenced temporary authority was issued or that it is still active.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Compare Appendix B to Ski Town's Intervention to Exhibits 1 and 2 to Estes Park Interveners' Intervention.

27. Ski Town's request to permissively intervene is based on one or more temporary authorities, but as noted, Ski Town failed to establish that such authorities have been issued or are still valid and active. As its alleged interest in the Amended Application is based on one or both of those authorities, Ski Town has failed to meet the requirements to permissively intervene. What is more, although Ski Town argues that the Commission has granted intervention status to those who have temporary authorities, the ALJ is not inclined to do so in the circumstances presented here, particularly given Ski Town's failure to establish that it has valid and active temporary authority(ies). It is unknown whether Ski Town will be granted a permanent authority, or even when the Commission will consider granting one (as Ski Town also provided no information on the status of its permanent application proceeding). The status of its temporary authority (assuming it is active now) could change while this Proceeding is pending. And, if Ski Town's temporary authority is deactivated during this Proceeding (assuming it is active now), or if it is denied a permanent authority during this Proceeding, it could not assert a tangible or pecuniary interests in the outcome of this Proceeding, but it would still be able to object to Purple Mountain's requested authority and potentially increase the costs and scope of this litigation. And, Ski Town has provided almost no showing that it is likely to receive a permanent authority. Ski Town's desire to prevent Purple Mountain from negatively impacting its own ability to obtain a permanent authority does not establish that this Proceeding may substantially impact its tangible or pecuniary interests. For all these reasons, the ALJ denies Ski Town's request to permissively intervene.²⁹

²⁹ To the extent that Ski Town relies on its luxury limousine permit to establish that it may permissively intervene, the ALJ rejects this argument. The ALJ is unaware of any proceeding in which intervention status has been granted based on a luxury limousine permit, and Ski Town cites none. Nor does Ski Town explain how its operations under that authority meet the permissive intervention standard under Rule 1401(c), 4 CCR 723-1.

D. Green Jeep's Intervention

28. Green Jeep asserts that it provides transportation in the Estes Park area under its Off Road Charter (ORC) Permit No. ORC-00204, and that it has been granted a permanent common carrier authority in Proceeding No. 22A-0215CP (by Decision No. R23-0051).³⁰ Green Jeep attached a copy of the Decision granting it a permanent authority (Decision No. R23-0051), as Exhibit 1. Green Jeep has not received its Letter of Authority yet, as it is still in the process of meeting the Commission's requirements for issuance of the same.³¹ As such, Green Jeep does not provide a copy of its Letter of Authority but expects that one will be issued soon.

29. Green Jeep's Intervention fails to describe with any detail the anticipated authority granted by Recommended Decision No. R23-0051 (including the service territory); nor does it identify the specific parts of its anticipated authority that conflicts with the requested authority here.³² Rather, Green Jeep makes vague references to Estes Park, Grand Lake and Rocky Mountain National Park (without reference to its anticipated authority) being within 136 miles of Granite, Colorado.³³ While the Decision granting the authority describes the anticipated authority, this does not alleviate Green Jeep of the obligation to meet the basic requirements of Rule 1401(f)(I) to describe the parts of its authority that conflict with the authority sought here.³⁴ And, it is unknown whether the Decision upon which Green Jeep relies was appealed, later modified, or whether it became a final Commission decision. Green Jeep's Intervention is silent on this. As such, the ALJ cannot rely on the Decision granting the authority as a final Commission decision granting an authority.

³⁰ Green Jeep's Intervention at 2.

³¹ *Id.*

³² See Rule 1401(f)(I), 4 CCR 723-1.

³³ Green Jeep's Intervention at 3.

³⁴ It is Green Jeep's responsibility, not the ALJ's, to assert and establish that specific parts of its anticipated authority conflicts with the one sought here. See Rule 1401(f)(I), 4 CCR 723-1.

30. Nonetheless, given that Green Jeep has provided evidence that a Commission Decision has issued granting it permanent authority that may overlap with the one sought here, and that Green Jeep anticipates receiving the Letter of Authority soon, the ALJ will allow Green Jeep an opportunity to rectify the failings in its Intervention. Specifically, Green Jeep must file a copy of its Commission-issued Letter of Authority with a filing explaining how the specific parts of its authority overlaps with the authority sought here. If Green Jeep does not have a Letter of Authority to submit by the established deadline, and it still wishes to intervene, it must make a filing that: describes with specificity the parts of its anticipated authority that are in conflict with the authority sought here (as amended by this Decision); describes the procedural history in Proceeding No. 22A-0215CP since Decision No. R23-0051 was issued; explains why Green Jeep has not been issued a Letter of Authority; and provides an estimated date by which its Letter of Authority will be issued.³⁵

31. If Green Jeep fails to make the required filings by the established deadlines, its Intervention will be rejected, and it will not be granted party status in this Proceeding. The ALJ defers ruling on whether Green Jeep should be permitted to intervene in this Proceeding until after the deadline to make these filings have passed.

E. Home James' Intervention

32. Home James asserts that it may intervene of right because the authority sought here directly conflicts and overlaps with its authority, (PUC No. 16114), which is in good standing (attached as Exhibit 1).³⁶ In support, Home James states that its permit allows it to provide charter and shuttle service between all points in Grand County, Colorado within a 5-mile radius of Vasquez

³⁵ For similar reasons discussed in fn. 29, *infra*, the ALJ rejects arguments (to the extent that Green Jeep makes them) that it may intervene based on its ORC permit.

³⁶ Home James' Intervention at 2.

Road and U.S. Highway 40 in Winter Park, Colorado, and all points in Rocky Mountain National Park in Grand County, Colorado; between all points in Grand County, Colorado within a 5-mile radius of Vasquez Road and U.S. Highway 40 in Winter Park, Colorado, and several specific points in Black Hawk, Frisco, and Vail, Colorado; and between all points in Denver, Colorado and all points in Grand County, Colorado.³⁷

33. Based on the above authority, Home James submits that the authority sought here conflicts and overlaps with its authorized service territory and types.³⁸ Home James argues that if granted the requested authority, Purple Mountain will be in direct competition with it, as Home James can and does provide extensive services to the customers that Purple Mountain seeks to serve.³⁹ Home James notes that Purple Mountain's restrictive amendment filed on March 14, 2023, does not change this.⁴⁰ Home James requests that the Commission set the Application for hearing and deny the Application.⁴¹

34. The ALJ concludes that Home James's authority conflicts and overlaps with the authority sought by the Amended Application.⁴² Based on this, and the information and attachments provided with its Intervention, the ALJ concludes that Home James has met the requirements to intervene of right consistent with per Rule 1401, 4 CCR 723-1. As such, its Intervention is acknowledged; Home James is a party to this proceeding.

35. The ALJ notes that Home James' Letter of Authority includes outdated and "historical" references to call-and-demand limousine service, which is now considered shuttle

³⁷ Home James' Intervention at 1-2; Exhibit 1 to Home James' Intervention.

³⁸ Home James' Intervention at 2.

³⁹ *Id.*

⁴⁰ *Id.* at 1.

⁴¹ *Id.*

⁴² Home James' Intervention at 1-2; Exhibit 1 to Home James' Intervention.

service.⁴³ If Home James's Letter of Authority has been updated to use current terminology, Home James must file its updated Letter of Authority by the established deadline. In such a circumstance, the ALJ will review the updated Letter of Authority to confirm that the authority has not been modified as to eliminate the conflict with the authority sought here. If Home James does not make this filing by the established deadline, the ALJ will construe this to mean that Home James's PUC No. 16114 has not been updated and that the Letter of Authority that Home James filed as Exhibit 1 is its most recently issued authority for that permit number.

F. Alpine, AEX, and San Miguel's Intervention

36. Alpine, AEX, and San Miguel assert that they may intervene of right because the authority sought here directly conflicts with their respective authorities, PUC No. 26246 (Alpine), PUC No. 12750 (AEX), and PUC No. 1648 (San Miguel), which are in good standing, and attached to their Intervention.⁴⁴ They argue that because they are authorized to provide call-and-demand shuttle and charter services in Routt, Gunnison, and Mesa Counties, among other mountain counties, and that Purple Mountain seeks to serve these areas, the authority sought here conflicts and overlaps with their authorities.⁴⁵

37. Alpine's authority allows it to provide call-and-demand taxi service between all points in Routt County and all other points in Colorado, and between all points in Moffat County, and all other points in Colorado (with restrictions).⁴⁶

⁴³ Rule 6001 (tt) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (limousine service is shuttle service, and is only used in historical authorities; limousine service is different from "luxury limousine" service).

⁴⁴ Alpine's Intervention at 2; Exhibits 1-3 to Alpine's Intervention.

⁴⁵ *Id.* at 2.

⁴⁶ Exhibit 1 to Alpine's Intervention at 1.

38. AEX's authority allows it to provide shuttle service between points within a 10-mile radius of Elk Avenue and Colorado State Highway 135 in Crested Butte, Colorado, and other identified points that include Denver, Aspen, and Montrose, Colorado.⁴⁷ It also authorizes AEX to provide shuttle service between points within a 5- and 10-mile radius of identified locations that include points in Gunnison, Crested Butte, Grand Junction, Montrose, Colorado, among other authorized service areas.⁴⁸ AEX's authority includes numerous other service territories and types, including sightseeing service between Crested Butte and Gunnison, points in Denver, Aspen, Colorado Springs, and Montrose, Colorado.⁴⁹

39. San Miguel's authority allows it to provide taxi service between all points within a 100-mile radius of Telluride, Colorado, with numerous restrictions; and from points in Montrose, Colorado and a 12-mile radius thereof to Grand Junction, Colorado, with numerous restrictions.⁵⁰ San Miguel is also authorized to provide call-and-demand shuttle service between all points within a 100-mile radius of the U.S Post Office (Post Office) in Telluride, Colorado, with numerous restrictions; and between all points within a 15-mile radius of the intersection of U.S. Highway 550 in Montrose, Colorado and all points within a 15-mile radius of the Post Office in Crested Butte, Colorado, with numerous restrictions; between points in San Miguel County and all other points in the state; and between points within a 10-mile radius of 5th and Main Streets in Grand Junction, Colorado and points within a 10-mile radius of Powderhorn Ski Resort, in Mesa County, Colorado, with numerous restrictions.⁵¹ San Miguel's authority includes numerous other service

⁴⁷ Exhibit 2 to Alpine's Intervention at 1.

⁴⁸ *Id.* at 1.

⁴⁹ *Id.* at 3.

⁵⁰ Exhibit 3 to Alpine's Intervention at 1.

⁵¹ *Id.* at 2-3.

territories and types, such as charter service between all points within a 100-mile radius of the Post Office in Telluride, with restrictions.⁵²

40. Alpine, AEX, and San Miguel explain that they are ready, willing, and able to serve additional passengers seeking the services that Purple Mountain proposes to provide and that they would be harmed by diversion of their passengers and revenue from the provision of service in the overlapping service territory if the Application is granted.⁵³ For all these reasons, they argue that they have legally protected rights and interests that may be affected by the outcome of this case, which entitles them to intervene as of right.⁵⁴ The proposed restrictive amendment filed on March 14, 2023, does not change or impact this.⁵⁵ Alpine, AEX, and San Miguel request that the Commission set the Application for hearing and deny the Application.⁵⁶

41. The ALJ concludes that Alpine, AEX, and San Miguel authorities overlap and conflict with the authority sought by the Amended Application.⁵⁷ Based on this, and the information and attachments provided with their Intervention, the ALJ concludes that Alpine, AEX, and San Miguel have met the requirements to intervene of right consistent with per Rule 1401, 4 CCR 723-1. As such, their Intervention is acknowledged; Alpine, AEX, and San Miguel are parties to this Proceeding.

42. Like Home James's authority, AEX's Letter of Authority includes outdated and "historical" references to call-and-demand limousine service (among others), which is now considered shuttle service.⁵⁸ If AEX's Letter of Authority has been updated to use current

⁵² *Id.* at 3-5.

⁵³ Alpine's Intervention at 2.

⁵⁴ *Id.*

⁵⁵ *See id.* at 1.

⁵⁶ *Id.* at 3.

⁵⁷ Exhibits 1 to 3 to Alpine's Interventions.

⁵⁸ *See* Rule 6001 (tt), 4 CCR 723-6.

terminology, AEX must file its updated Letter of Authority by the established deadline. In such a circumstance, the ALJ will review the updated Letter of Authority to confirm that the authority has not been modified as to eliminate the conflict with the authority sought here. If AEX does not make this filing by the established deadline, the ALJ will construe this to mean that AEX's PUC No. 12750 has not been updated and that the Letter of Authority that AEX filed as Exhibit 2 to its Intervention is its most recently issued authority for that permit number.

G. Wild Side's Intervention

43. Wild Side asserts that it may intervene of right because the authority sought here directly conflicts and overlaps with its authority, (PUC No. 55983), which is in good standing and attached as Exhibit 1.⁵⁹ In support, Wild Side explains that its authority allows it to provide call-and-demand sightseeing service "between all points within a 20-mile radius of the intersection of West Elkhorn Avenue and Moraine Avenue in Estes Park, Colorado, including Rocky Mountain National Park" with restrictions related to passenger numbers, vehicle types, and certain trip types.⁶⁰ Wild Side explains that this service territory conflicts and overlaps with the authority sought here, and therefore, the Application conflicts with its legally protected interest in its authority.⁶¹ The proposed restrictive amendment filed on March 14, 2023, does not change or impact this.⁶² Wild Side states that it is ready, willing, and able to service passengers seeking such transportation service and would be financially harmed if Purple Mountain is authorized to duplicate the service that Wild Side provides.⁶³

⁵⁹ Wild Side's Intervention at 2.

⁶⁰ *Id.*; Exhibit 1 to Wild Side's Intervention at 2.

⁶¹ *Id.* at 2.

⁶² *Id.* at 1.

⁶³ *Id.* at 2.

44. The ALJ concludes that Wild Side's authority overlaps and conflicts with the authority sought by the Amended Application.⁶⁴ Based on this, and the information and attachments provided with its Intervention, the ALJ concludes that Wild Side has met the requirements to intervene of right consistent with per Rule 1401, 4 CCR 723-1. As such, Wild Side's Intervention is acknowledged; Wild Side is a party to this Proceeding.

H. Purple Mountain's Motion for Extension of Time

45. Purple Mountain's Motion seeks an enlargement of time to file responses to the various intervention motions and notices, up to and including April 5, 2023. The Motion also states that Purple Mountain is uncertain as to whether it will file responses or objections to the motions or notices of intervention. Given that Purple Mountain did not file any such responses or objections by the deadline it proposed (or at all), the ALJ construes this to mean that Purple Mountain decided it was not necessary to respond to the Interventions. In any event, Purple Mountain's failure to file a response to the Intervention by its proposed deadline moots the relief sought by the Motion. For all these reasons, the Motion is denied as moot and abandoned.

I. Remote Prehearing Conference

46. To move this matter forward, and in anticipation of a hearing on the Amended Application, the ALJ is scheduling a remote prehearing conference per Rule 1409(a), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure.

47. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established (*e.g.*, deadlines to file exhibits, exhibit lists, and witness lists). During the prehearing conference, the ALJ will address the manner or location in which the

⁶⁴ Wild Side's Intervention at 1-2; Exhibit 1 to Wild Side's Intervention at 2.

hearing will be held, that is, in-person, remote, or hybrid. In-person hearings require all parties, witnesses, and the ALJ to appear in person at a Commission hearing room located in downtown Denver.⁶⁵ Remote hearings require all parties, witnesses, and the ALJ to appear remotely via Zoom. And hybrid hearings allow parties and witnesses to appear in person or remotely by Zoom and require the ALJ to appear in person at a Commission hearing room in Denver, Colorado.⁶⁶ Other issues relevant to this Proceeding may be raised or addressed at the prehearing conference, including whether Interveners required to make filings by this Decision have complied, and whether Green Jeep's anticipated filings establish that it should be permitted to intervene in this matter.

48. Before the prehearing conference, the parties⁶⁷ must confer with each other on the issues that will be addressed during the prehearing conference and must be prepared to address those issues during the prehearing conference. At minimum, the parties must confer on all issues discussed herein. When conferring on a hearing date, the parties should discuss the appropriate number of days for the hearing, and plan on a hearing being held no later than the week of July 31, 2023.

49. Participants will appear at the prehearing conference from remote locations by video conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing

⁶⁵ The Commission strives to accommodate parties' requests to hold hearings in requested locations. Here, Purple Mountain's Application asks that the hearing be held in Denver, Colorado. Application at 6. As such, this Decision presumes that if a hearing is held in person, it will be in Denver, Colorado.

⁶⁶ The ALJ will only schedule a hybrid hearing if one or more party will appear in-person. Otherwise, there is no reason to schedule the hearing as hybrid, as parties would be appearing remotely.

⁶⁷ For purposes of this conferral only, Green Jeep is considered a party.

conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

50. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.⁶⁸

51. *All parties are on notice* that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Amended Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

IV. **ORDER**

A. **It Is Ordered That:**

1. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: May 4, 2023

TIME: 1:00 p.m.

PLACE: Join by video conference using Zoom

2. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

⁶⁸ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this proceeding. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

3. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

4. The parties must confer with each other prior to the prehearing conference consistent with the above discussion.

5. Purple Mountain Tour Company LLC's Restrictive Amendment filed on March 14, 2023, is granted consistent with the above discussion. The above-captioned Application is amended as set forth in ¶ 15 above.

6. Estes Park Charters Corp. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys are parties to this Proceeding, having intervened as of right.

7. The Petition for Leave to Intervene filed on March 21, 2023, by NDW Enterprises LLC's, doing business as Ski Town Transportation, is denied.

8. **No later than 5:00 p.m. on April 27, 2023**, Green Jeep Tours LLC (Green Jeep) must either:

- a. file a copy of its Commission-issued Letter of Authority with a filing explaining how the specific parts of its authority overlaps with the authority sought here; or
- b. if Green Jeep does not have a Commission-issued Letter of Authority, it must make a filing that: describes with specificity the parts of its anticipated authority that are in conflict with the authority sought here (as amended by this Decision); describes the procedural history in Proceeding No. 22A-0215CP since Decision No. R23-0051 was issued; explains why Green Jeep has not been issued a Letter of Authority; and provides an estimated date by which its Letter of Authority will be issued.

9. If Green Jeep fails to make the required filings by the established deadlines, its Intervention will be rejected, and it will not be granted party status in this Proceeding.

10. Home James Transportation Services LTD (Home James) is a party to this Proceeding, having intervened as of right.

11. If the Commission has updated the Letter of Authority, (PUC No. 16114), that Home James submitted with its Intervention, **no later than 5:00 p.m. on April 27, 2023**, Home James must file its updated Letter of Authority.

12. Alpine Taxi/Limo, Inc., AEX Inc., (AEX) and San Miguel Mountain Ventures LLC are parties to this Proceeding, having intervened as of right.

13. If the Commission has updated the Letter of Authority, (PUC No. 12750), that AEX submitted with its Intervention, **no later than 5:00 p.m. on April 27, 2023**, AEX must file its updated Letter of Authority.

14. Wild Side 4 x 4 Tours LLC is a party to this Proceeding, having intervened as of right.

15. This Decision is effective immediately.

(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 black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director