

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0078CP

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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.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
SCHEDULING HEARING AND  
ESTABLISHING PROCEDURES AND DEADLINES**

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Mailed Date: May 10, 2023

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**I. STATEMENT, SUMMARY, AND BACKGROUND**

**A. Statement and Summary**

1. This Decision schedules a hybrid evidentiary hearing for September 11, 12, 14, and 18, 2023; establishes procedures and deadlines relating to that hearing; acknowledges Purple Mountain Tour Company LLC’s (Purple Mountain or Applicant) waiver of the statutory deadline

for a final Commission decision to issue; and memorializes other rulings made during the May 4, 2023, prehearing conference.

**B. Procedural History<sup>1</sup>**

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.

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

4. 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.

5. Between March 20 and 29, 2023, the following entities made filings to intervene in this Proceeding: Estes Park Charters Corp. (Estes Park Charters); Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys); NDW Enterprises LLC, doing business as Ski Town Transportation (Ski Town); Green Jeep Tours LLC (Green Jeep); Home James Transportation Services, LTD (Home James); Alpine Taxi/Limo, Inc., (Alpine Taxi); AEX, Inc., (AEX); San Miguel Mountain Ventures, LLC (San Miguel); and Wild Side 4 x 4 Tours LLC (Wild Side).

6. On April 20, 2023, the ALJ scheduled a remote prehearing conference for May 4, 2023; granted the Motion to Amend; rejected Ski Town's Intervention; required Green Jeep to make certain filings on or by April 27, 2023 to establish that it is entitled to intervene;

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

acknowledged Estes Park Charters, Estes Park Trolleys, Home James, Alpine Taxi, AEX, San Miguel, and Wild Side as parties to this Proceeding; and required Home James and AEX to file their updated letters of authority by April 27, 2023.<sup>2</sup>

7. On April 27, 2023, Green Jeep, Home James, and AEX made filings in an effort to comply with the above-referenced requirements.<sup>3</sup>

8. The ALJ held the remote prehearing conference as noticed and all parties appeared.

## **II. FINDINGS AND CONCLUSIONS**

### **A. Issues Addressed During Prehearing Conference**

9. During the prehearing conference, Purple Mountain waived the statutory deadline under § 40-6-109.5(1), C.R.S., for a final commission decision to issue. In addition, the parties agreed to the hearing dates and the majority of the procedural deadlines outlined in the ordering paragraphs below. Although not discussed during the prehearing conference, the ALJ is establishing a deadline for the parties to file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing in the order in which they will be called, and the anticipated amount of time each party will use to examine the witnesses. This will help ensure that the hearing has been scheduled for an appropriate number of days, and that the parties have conferred and agree upon the order in which witnesses are called (to the extent possible). This improves hearing efficiency and serves administrative economy.

10. The parties also agreed that the evidentiary hearing should be held as a hybrid hearing so that witnesses appearing from locations outside the Denver metro area have flexibility

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<sup>2</sup> Decision No. R23-0260-I (mailed April 20, 2023) at 21-23.

<sup>3</sup> See Green Jeep, Home James and AEX's filings made on April 27, 2023.

to appear at the hearing via videoconference.<sup>4</sup> Parties and witnesses appearing in-person will appear at a Commission hearing room in Denver.

11. The ALJ advised the parties that additional procedures would be put in place to allow for a hybrid evidentiary hearing and provided the parties an overview of those procedures (including that most exhibits will be admitted by administrative notice using a spreadsheet linked to the parties' exhibits as they appear in the administrative record). Those procedures are described in the ordering paragraphs below and in Attachment B to this Decision. *It is extremely important* that all parties carefully review and follow the instructions and requirements in Attachment B to this Decision, which are intended to facilitate electronic evidentiary presentations at the hearing. Indeed, as explained in Attachment B, to accommodate a hybrid hearing, all evidence must be presented electronically during the hearing. This means that all parties must prepare any documentary evidence (to be filed as exhibits) for electronic presentation. This will allow parties and witnesses participating remotely to view exhibits on the videoconference screen while exhibits are offered into evidence and witnesses testify about them.

12. The parties are reminded that the Commission's Rules establishing procedures for filing confidential exhibits apply to this Proceeding.<sup>5</sup> Among other requirements, this means that parties offering an exhibit which contains confidential information, must file both a public (redacted) version of the exhibit and a confidential (unredacted) version of the exhibit. This, and other requirements concerning confidential exhibits are explained in more detail in

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<sup>4</sup> During the prehearing conference, the ALJ also told the parties that as the hearing date approaches, the ALJ will evaluate whether it is necessary or appropriate to convert the hearing to a fully remote hearing based on the circumstances then existing (such as an increased risk of exposure to COVID-19 or other similar illnesses). Depending on the circumstances, the ALJ may modify the hearing to be held fully remotely or may enter such other orders as appropriate.

<sup>5</sup> See Rules 1100 through 1111, 4 CCR 723-1

Attachment B. The ALJ will enter appropriate orders should any party fail to comply with these requirements.

13. In addition, Attachment A includes important technical information and requirements to facilitate remote testimony and appearances.

14. Also during the prehearing conference, the ALJ found that Green Jeep's April 27, 2023 filing complies with the requirements in Decision No. R23-0260-I and establishes that Green Jeep has properly intervened of right; that AEX's April 27, 2023 filings comply with the same Decision; and noted concerns that Home James's April 27, 2023 filing demonstrates that it does not have a copy of its most recently issued authority. Counsel explained that it appears likely that the person or entity from whom Home James's current owner purchased the business did not provide the current owner with a copy of its most recent issued authority. The ALJ advised that if Home James plans to offer its authority during the evidentiary hearing, that it should plan to present the most recently issued authority.<sup>6</sup>

15. In any event, based on the filings that Home James and AEX made on April 27, 2023, the ALJ found that updates to their authorities do not impact the ALJ's prior conclusions that their authorities overlap and conflict with the authority sought here, and thus, they remain parties to this Proceedings.

16. Counsel for Ski Town (who also represents Green Jeep in this Proceeding), attempted to enter an appearance on behalf of Ski Town. The ALJ reminded counsel that Ski Town is not a party to this Proceeding, per Decision No. R23-0260-I. Counsel stated that Ski Town's application for a permanent authority has recently been granted, and that Ski Town plans

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<sup>6</sup> Counsel also explained that Home James's recent Application seeking to extend its authority has been granted, and thus it appears likely that there may be yet another update to its authority.

to file a motion under Rule 1502(c) requesting that Decision No. R23-0260-I be set aside, modified or stayed.<sup>7</sup>

## **B. Advisements to Parties**

17. Purple Mountain is on notice that failure to appear at the evidentiary hearing may result in dismissal of the Application for failing to pursue or prosecute it. At the hearing, Purple Mountain bears the burden of proof by a preponderance of the evidence to show that it has met the legal requirements to be granted the requested authority.<sup>8</sup> Among the legal requirements, Applicant must establish that: there is a public need for the proposed service; granting the authority is in the public interest; *and* the existing service is inadequate.<sup>9</sup> The question is not whether the extent of business in a particular area is sufficient to warrant more certified carriers, but whether the public convenience and necessity demand the service of an additional carrier.<sup>10</sup>

18. Intervenors are on notice that the ALJ will deem their failure to appear at the evidentiary hearing as abandoning or withdrawing their Interventions and opposition to the Application and may result in granting the Application without an evidentiary hearing.

19. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at: <https://www.colorado.gov/pacific/dora/pucrules>.

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<sup>7</sup> See Rule 1502(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>8</sup> §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 *Code of Colorado Regulations* (CCR) 723-1. More information on the legal requirements that an applicant must meet to be granted a common carrier authority may be found in the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and more specifically Rule 6203 and § 40-10.1-201(1), C.R.S.

<sup>9</sup> Rule 6203(a)(XVII), 4 CCR 723-6.

<sup>10</sup> See *Ephraim Freightways Inc. v. Public Utilities Comm'n*, 380 P.2d 228, 231 (Colo. 1963).

**III. ORDER**

**A. It Is Ordered That:**

1. Consistent with the above discussion, Green Jeep Tours LLC’s (Green Jeep) April 27, 2023 filing establishes that it has properly intervened of right. As such, Green Jeep is a party to this Proceeding.

2. The filings made on April 27, 2023 by Home James Transportation Services, LTD (Home James) and AEX, Inc., (AEX) to comply with Decision No. R23-0260-I (mailed April 20, 2023) do not alter prior conclusions that Home James and AEX have properly intervened of right.

3. Based on the above and Decision No. R23-0260-I, the following entities are interveners and parties in this Proceeding: Estes Park Charters Corp. (Estes Park Charters); Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys); Green Jeep; Home James; Alpine Taxi/Limo, Inc., (Alpine Taxi); AEX; San Miguel Mountain Ventures, LLC (San Miguel); and Wild Side 4 x 4 Tours LLC (Wild Side).

4. A hybrid evidentiary hearing on Purple Mountain Tour Company LLC’s (Purple Mountain or the Applicant) Application, as amended, is scheduled as follows:

DATE: September 11, 12, 14, and 18, 2023

TIME: 9:00 a.m. each day

PLACE: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

OR

Join by video conference using Zoom.

5. To minimize the potential that the hybrid hearing may be disrupted by non-participants, the hearing link and meeting ID or access code to attend the hearing by Zoom will be provided to the parties by email before the hearing, and participants in the hearing may not distribute this Zoom information to anyone not participating in the hearing.<sup>11</sup>

6. **Hearing Procedures.**

a. Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. This means that all parties must prepare any documentary evidence (exhibits) for electronic presentation.<sup>12</sup> All those participating in the hearing remotely *must comply* with the requirements in Attachment A to this Decision, which is incorporated into this Decision as if fully set forth.

b. *All parties must comply* with the requirements in Attachment B to this Decision, which is incorporated into this Decision as if fully set forth. As noted, Attachment B includes instructions and requirements relating to presenting evidence electronically at the hearing, and thus, it is extremely important that all parties review and follow the requirements in Attachment B.

7. **Deadlines to File Exhibits, Exhibit Lists and Witness Lists.**

a. All parties must file and serve their exhibits, exhibit lists, and witness lists on or by the close of business on **July 31, 2023**. Witness lists must include a brief description of the witnesses' anticipated testimony, the witnesses' contact information, and indicate whether the witness will appear in-person or remotely. Exhibit lists must identify the hearing exhibit number,

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<sup>11</sup> Approximately one week before the hearing, the parties will receive an email with information needed to join the hearing via Zoom at the parties' email addresses on file with the Commission for this Proceeding. As such, the parties must ensure that the Commission has their most current email address.

<sup>12</sup> This may require parties to electronically scan documentary exhibits so that they may be presented in electronic form during the hearing.

the full substantive title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as “Hearing Exhibit 100” without information as to substantive nature or content of the exhibit). Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list. The parties are only required to prefile exhibits that they intend to offer into evidence during the evidentiary hearing. Nothing in this Decision requires the parties to prefile exhibits that may be used *solely* to impeach a witness’s testimony, to refresh a witness’s recollection or on rebuttal.<sup>13</sup>

b. The parties may amend their exhibit and witness lists to add exhibits not included in a prior exhibit list or add witnesses not included in a prior witness list. Any party wishing to do so must file and serve such additional exhibits and amended exhibit and witness lists on or by the close of business **on August 21, 2023**. Amended exhibit and witness lists **must list all the exhibits** that the filing party intends to offer and **all witnesses** who may testify at hearing. Amended exhibit and witness lists **will substitute** the filing party’s initial exhibit and witness lists, and as such, may not be filed as a supplement to prior exhibit and witness list filings.<sup>14</sup>

c. The August 21, 2023 deadline is also the last day to file exhibits that will be included in the linked spreadsheet that will be used during the hearing to offer and admit exhibits by administrative notice, as discussed in more detail in Attachment B.

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<sup>13</sup> Because Applicant has the burden of proof, Applicant presents its direct case first. Once applicant rests, the interveners may present their evidence. Once interveners rest, applicant may present rebuttal evidence that responds to the evidence that interveners presented. As such, only the applicant may present rebuttal evidence.

<sup>14</sup> This is intended to avoid Applicant filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

8. **Deadline to File Joint Witness Examination Matrix.** The parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing in the order in which they will be called, and the anticipated amount of time each party will use to examine the witnesses on or by the close of business on **September 6, 2023**.

9. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the hearing exhibit number blocks as set forth in the below table.

<b>Party</b>	<b>Assigned Hearing Exhibit Numbers</b>
Purple Mountain	100 to 199
Estes Park Charters	200 to 299
Estes Park Trolleys	300 to 399
Home James	400 to 499
Alpine Taxi	500 to 599
AEX	600 to 699
San Miguel	700 to 799
Wild Side	800 to 899
Green Jeep	900 to 999

10. Hearing Exhibit 2000 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

11. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (e.g., Purple

Mountain will use hearing exhibit numbers 1100-1199; Estes Park Charters will use hearing exhibit numbers 1200-1299, *etc.*).

12. 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 cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director