

Decision No. R23-0333-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0110CP

IN THE MATTER OF THE APPLICATION HIGH COUNTRY CHAUFFEURS 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
AVIV SEGEV
GRANTING INTERVENTION, ADOPTING PROCEDURES,
SCHEDULING EVIDENTIARY HEARING, AND
PROVIDING INSTRUCTIONS CONCERNING EXHIBITS
AND PARTICIPATING IN REMOTE HEARING**

Mailed Date: May 18, 2023

I. STATEMENT

A. Procedural Background

1. On March 3, 2023, High Country Chauffeurs LLC (High Country or Applicant) filed with the Commission 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. 23A-0110CP.

2. On March 6, 2023, the Commission issued a Notice of Applications and Petitions Filed (Notice). The Notice set procedural deadlines and established a 30-day intervention period.

3. On April 5, 2023, NDW Enterprises LLC d/b/a Ski Town Transportation (Ski Town) filed its Motion for Leave to Intervene (Motion to Intervene).

4. On April 12, 2023, the Commission, via a minute entry, deemed the Application complete and referred Proceeding No. 23A-0110CP to an Administrative Law Judge (ALJ) for disposition.

5. By Decision No. R23-0298-I, issued May 5, 2023, the ALJ scheduled a prehearing conference for May 16, 2023, at 9:00 a.m. Paragraph 5 of Decision No. R23-0298-I states:

High Country and Ski Town must appear at the remote prehearing conference. Failure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

6. On May 16, 2023, a prehearing conference was held as scheduled. High Country did not appear at the hearing. Ski Town appeared represented by counsel. At the outset of the remote prehearing conference, Ski Town indicated that it did not intend on filing exceptions to Recommended Decision No. R23-0302 in Proceeding No. 22A-0132CP, issued on May 9, 2023¹, and the ALJ granted Ski Town's intervention in this Proceeding. During the remote prehearing conference, Ski Town agreed: to participate in a remote evidentiary hearing on July 17, 2023, starting at 9:30 a.m.; that High Country should submit its final witness and exhibit lists no later than four weeks prior to the evidentiary hearing; and that Ski Town should submit its final witness and exhibit lists no later than two weeks prior to the evidentiary hearing.

B. Motion to Intervene

7. In the Motion to Intervene, Intervenor argues that it should be allowed to permissively intervene in this Proceeding because: intervenor holds temporary authority granted

¹ Following the stipulation of the parties in Proceeding No. 22A-0132CP, on May 9, 2023, Recommended Decision No. R23-0302 was issued. Unless exceptions affecting the scope of authority sought by Ski Town are filed in Proceeding No. 22A-0132CP, Decision No. R23-0302 would grant Ski Town authority that, according to Ski Town, overlaps the authority sought by Applicant. *See* Motion to Intervene at 2.

to it indefinitely by Decision No. C22-0606 in Proceeding No. 22A-0131CP-TA, pending a Decision in Proceeding No. 22A-0132CP; Intervenor has a substantial interest in this Proceeding; intervenor would suffer substantial harm if it were not a party to this Proceeding; and no harm would come to Applicant if the Motion to Intervene was granted.² Intervenor further argues that Applicant failed to establish that there is a public need for the service proposed, that the existing services are materially inadequate, that Applicant is fit to provide any service to the public, that the public convenience and necessity requires a grant of the Application, and that the public interest would be served by the grant of the Application. Given the above, Intervenor states that Applicant failed to meet the statutory tests under the Doctrine of Regulated Monopoly and requests that the Application should therefore be dismissed or denied.³

8. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 provides, in part, regarding motions to permissively intervene:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented...

9. Rule 1308(f) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 states:

If a party fails to file timely a responsive pleading, to admit or deny an allegation in a complaint, or to raise an affirmative defense, the Commission may deem the party to have admitted such allegation or to have waived such affirmative defense and may grant any or all of the relief requested.

² See Motion to Intervene at 1-6.

³ *Id.* at 6-8.

10. No response to the Motion to Intervene was filed. Pursuant to Rule 1308(f) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the factual allegations made in the Motion to Stroke are deemed admitted. Based upon good cause shown for Ski Town's unopposed request, it is found that Ski Town made a sufficient showing that it has a right to participate in this proceeding, or that its pecuniary or tangible interests, which would not otherwise be adequately represented, may be substantially affected. Ski Town's request for permissive intervention will be granted, as ordered below.

11. The questions of whether Applicant established that there is a public need for the services proposed in the Application, the existing services are materially inadequate, Applicant is fit to provide the public with the services proposed in the Application, public convenience and necessity requires that the Application, and the public interest would be served by the grant of the Application are evidentiary questions. These evidentiary questions should be more appropriately addressed in an evidentiary hearing. Therefore, Intervenor request to dismiss or deny the Application will be denied, as ordered below.

C. Advisements

12. **Parties are advised** that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. **Parties are advised** further that no exhibit will be received in evidence, except in rebuttal, unless filed and served in accordance with the procedural schedule.

13. Any party wishing to make an oral closing statement may do so immediately following the close of the evidence (i.e., after presentation of evidence near the end of the hearing).

14. **Parties are advised that** this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (CCR) 723-1, Part 1. The ALJ expects the

parties to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

15. Each party is specifically reminded that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

D. Procedural Schedule and Unified Numbering System for Hearing Exhibits

16. The procedural schedule discussed in the prehearing conference is reasonable and will be adopted, as ordered below.

17. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- High Country is assigned hearing exhibit numbers 100 to 199; and
- Ski Town is assigned hearing exhibit numbers 200 to 299.

E. Remote Evidentiary Hearing

18. As agreed to by Intervenor, a remote evidentiary hearing shall be scheduled for July 17, 2023. This Decision and Attachments A and B provide critical information and instructions to facilitate holding the remote hearing, which all parties must follow.

19. To minimize the potential that the remote hearing may be disrupted by non-participants, the link, meeting ID code, and passcode 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.

20. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hearing. Attachment B outlines procedures and

requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the hybrid hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

F. Additional Procedural Notices

21. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

22. Additional procedural requirements may be addressed in future Interim Decisions.

G. Informal Video-Conference Practice Session.

23. The ALJ will hold an informal practice video-conference session if requested by either or both parties to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

24. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us to schedule an informal practice video-conference session.

25. The parties will receive information and a link to participate in the informal practice session by email.

II. ORDER

A. It Is Ordered That:

1. NDW Enterprises LLC d/b/a Ski Town Transportation's (Ski Town) Petition for Leave to Intervene is granted, in part, as to Ski Town's request to intervene in this Proceeding.

2. All other requests made by Ski Town in the Motion to Intervene are denied.

3. A hearing in this matter shall be conducted at the following date, time, and place:

DATE: July 17, 2023

TIME: 9:30 a.m.

PLACE: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge⁴

4. High Country Chauffeurs LLC shall file and serve its final witness and exhibit lists no later than June 19, 2023.

5. NDW Enterprises LLC d/b/a Ski Town Transportation shall file and serve its final witness and exhibit lists no later than July 3, 2023.

6. When filing copies of exhibits and lists of witnesses, the parties shall file (or supplement) and serve (a) a list that identifies the witnesses each party intends to call at the hearing, including a detailed summary of the anticipated testimony of each witness and (b) copies of the exhibits each party will present at the hearing.

⁴ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. The parties are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

7. 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 that reads "Rebecca E. White".

Rebecca E. White,
Director