

Decision No. R23-0399-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0150CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55979.

PROCEEDING NO. 23A-0152CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55979.

PROCEEDING NO. 23A-0159CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55979.

PROCEEDING NO. 23A-0160CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55979.

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

Mailed Date: June 12, 2023

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I. STATEMENT, SUMMARY AND BACKGROUND

A. Summary

1. This Decision schedules a fully remote evidentiary hearing for September 25, 26, and 28, 2023; establishes procedures and deadlines relating to that hearing; acknowledges Hy-Mountain Transportation Inc., doing business as High Mountain Taxi (High Mountain) and Wilson Peak Limo LLC, doing business as Mountain Limo (Wilson Peak) as parties to this Consolidated Proceeding; and memorializes other rulings made during the June 8, 2023, prehearing conference.

B. Procedural History¹

2. On March 30 and 31, 2023, Mountain Taxi LLC (Mountain Taxi) Mountain Taxi initiated the above-referenced Consolidated Proceedings by filing Applications in each of the above Proceedings.

¹ Only the procedural history necessary to understand this Decision is included.

3. On April 26, 2023, High Mountain filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance of High Mountain Taxi, and Request for Hearing in Proceeding No. 23A-0152CP-EXT.

4. On May 1, 2023, Tazco, Inc., doing business as Sunshine Taxi (Sunshine) filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance of Tazco Inc., and Request for Hearing in Proceeding No. 23A-0160CP-EXT.

5. On May 2, 2023, Wilson Peak filed Motions to Permissively Intervene and Request for Hearing in Proceeding Nos. 23A-0150CP-EXT and 23A-0159CP-EXT.

6. On May 17, 2023, the Commission deemed all four of the above-referenced Applications complete and referred all four of the above-referenced Proceedings to an Administrative Law Judge (ALJ) for disposition by minute entry.

7. On May 25, 2023, the ALJ consolidated all of the above-captioned Proceedings; ordered that all future filings be made solely in primary Proceeding No. 23A-0150CP-EXT and that filings reflect the above updated caption; scheduled the Consolidated Proceeding for a remote prehearing conference for June 8, 2023; ordered High Mountain and Wilson Peak to file a copy of their valid Commission-issued Letters of Authority on or by June 1, 2023; authorized Mountain Taxi to be represented by non-attorney Taylor Brown; and acknowledged Sunshine as a party to this Consolidated Proceeding.

8. On May 26, 2023, Wilson Peak filed its Letter of Authority and a Notice of the same in primary Proceeding No. 23A-0150CP-EXT.

9. On June 5, 2023, High Mountain filed its Letter of Authority and a Notice of the same in Proceeding No. 23A-0152CP-EXT. High Mountain did not make this filing in primary

Proceeding No. 23A-0150CP-EXT, nor did it amend the caption as required by Decision No. R23-0353-I.

10. On June 8, 2023, the ALJ held the prehearing conference as noticed; all parties appeared.

II. FINDINGS AND CONCLUSIONS

A. Issues Addressed During Prehearing Conference

11. During the prehearing conference, the ALJ found that High Mountain and Wilson Peak's respective Letters of Authority and Interventions establish that they have properly intervened of right and acknowledged them both as parties to this Consolidated Proceeding.²

12. The ALJ reminded the parties to ensure that future filings are made only in primary Proceeding No. 23A-0150CP-EXT, and to ensure that future filings' caption include all the proceeding titles and numbers, as set forth above.

13. In addition, during the prehearing conference, the parties agreed to the hearing dates and the procedural deadlines outlined in the ordering paragraphs below. The parties also agreed that the evidentiary hearing should be fully remote with witnesses and parties appearing by videoconference from remote locations. The ALJ advised the parties that additional procedures would be put in place to allow for a remote evidentiary hearing. Those procedures are outlined 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

² High Mountain filed its Letter of Authority after the deadline to do so. Indeed, Decision No. R23-0353-I required High Mountain to make this filing by June 1, 2023, but High Mountain did not make the filing until June 5, 2023. Despite this, the ALJ did not reject High Mountain's Intervention because the filing was made before the prehearing conference, and the four-day delay does not prejudice the parties. High Mountain is reminded that it must meet any deadlines established in this Consolidated Proceeding. If High Mountain again misses a deadline, there may be unfavorable consequences for High Mountain.

Decision, which are intended to facilitate smooth electronic evidentiary presentations at the hearing. Indeed, as explained in Attachment B, 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. In addition, as noted in Attachment B, the ALJ anticipates that most exhibits will be admitted by administrative notice using a spreadsheet linked to the parties' exhibits as they appear in the administrative record. This approach allows the parties to rely on the exhibit filings they make in this Consolidated Proceeding rather than having to submit identical copies of pre-filed exhibits during the hearing.

14. To minimize the potential that the videoconference 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.

15. The parties are reminded that the Commission's Rules establishing procedures for filing confidential exhibits apply to this Proceeding.³ 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 Attachment B. The ALJ will enter appropriate orders should any party fail to comply with these requirements.

³ See Rules 1100 through 1111, 4 CCR 723-1

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

B. Advisements to Parties

17. Mountain Taxi is on notice that failure to appear at the evidentiary hearing may result in dismissal of all four Applications for failing to pursue or prosecute them. At the hearing, Mountain Taxi 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.⁴ Among the legal requirements, Mountain Taxi 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.⁵ 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.⁶

18. Mountain Taxi is again advised that should it wish for any other non-attorneys to represent it at the hearing or otherwise, Mountain Taxi must make a filing establishing that the additional non-attorneys have authority to represent the company in this Consolidated Proceeding.⁷ It is presumed that a corporation's officers, a partnership's partners, a limited partnership's members, and persons authorized to manage a limited liability company have authority to represent the company in the proceeding.⁸

⁴ §§ 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 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.

⁵ Rule 6203(a)(XVII), 4 CCR 723-6.

⁶ See *Ephraim Freightways Inc. v. Public Utilities Comm'n*, 380 P.2d 228, 231 (Colo. 1963).

⁷ § 13-1-127(2) and (2.3)(c), C.R.S.; Rule 1201(b)(II), 4 CCR 723-1. During the prehearing conference, Mountain Taxi asked whether it could be represented by other non-attorneys, and the ALJ reminded Mountain Taxi of the above requirements and encouraged Mountain Taxi to re-read Decision No. R23-0343-I, which explains these requirements.

⁸ § 13-1-127(2) and (2.3)(c), C.R.S.

19. Interveners 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 Applications and may result in granting the Applications without an evidentiary hearing.

20. 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>.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, Hy-Mountain Transportation Inc., doing business as High Mountain Taxi (High Mountain) and Wilson Peak Limo LLC, doing business as Mountain Limo (Wilson Peak) are parties to this Consolidated Proceeding, having properly intervened as of right.

2. The parties to this Consolidated Proceeding are Mountain Taxi LLC (Mountain Taxi); Tazco, Inc., doing business as Sunshine Taxi (Sunshine); High Mountain; and Wilson Peak.

3. A fully remote evidentiary hearing on the Applications in this Consolidated Proceeding is scheduled as follows:

DATE: September 25, 26, and 28, 2023

TIME: 9:00 a.m. each day

METHOD: Join by video conference using Zoom

4. To minimize the potential that the 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.⁹

5. **Hearing Procedures.** Because the hearing will be held remotely by videoconference, all evidence must be presented electronically. This means that all parties must prepare any documentary evidence (exhibits) for electronic presentation.¹⁰ All parties *must comply* with the requirements in Attachments A and B to this Decision, which is incorporated as if fully set forth. As noted, Attachment B includes instructions and requirements relating to presenting evidence electronically at the hearing. Many of those requirements *are not* outlined in this Decision. As such, *it is extremely important* that all parties review and follow the requirements in Attachment B.

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

a. All parties must file with the Commission and serve on all parties their exhibits, exhibit lists, and witness lists on or by the close of business on **July 25, 2023**. Witness lists must include a brief description of the witnesses' anticipated testimony, and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, 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

⁹ 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.

¹⁰ This may require parties to electronically scan documentary exhibits so that they may be presented in electronic form during the hearing.

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.¹¹

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 29, 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.¹²

c. The August 29, 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.

7. **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 18, 2023**.

¹¹ Because Mountain Taxi has the burden of proof, it will present its direct case first. Once Mountain Taxi rests, the Interveners may present their evidence. Once Interveners rest, Mountain Taxi may present rebuttal evidence that responds to the evidence that Interveners presented. As such, only Mountain Taxi may present rebuttal evidence during the hearing.

¹² This is intended to avoid the parties 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 Statements of Position.** Any party wishing to file a statement of position (*i.e.*, a written closing argument) must do so on or by the close of business on **October 10, 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 to mark all hearing exhibits, consistent with the requirements in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the hearing exhibit number blocks set forth in the below table.

Party	Assigned Hearing Exhibit Numbers
Mountain Taxi	100 to 199
High Mountain	200 to 299
Sunshine	300 to 399
Wilson Peak	400 to 499

10. Hearing Exhibit 500 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.*, Mountain Taxi will use hearing exhibit numbers 1100-1199; High Mountain 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