

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING MOTION TO AMEND APPLICATION,
STRIKING INTERVENTION, DISMISSING INTERVENOR,
GRANTING APPLICATION, AS AMENDED, AND
CLOSING PROCEEDING**

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I. STATEMENT

A. Procedural Background¹

1. On July 21, 2022, Topsy Velo, LLC, doing business as Topsy Voyage (Applicant or Topsy) filed its Permanent Authority Application (Application) for 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 a Notice of Applications and Petitions Filed (Notice). The Notice gave notice of the Application and indicated that Applicant was seeking a Commission decision within 250 days for the following requested 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, d/b/a Powderhorn Mountain Resort (Powderhorn or Intervenor) timely noticed its intervention of right.

4. On August 22, 2022, Pali—Tours LTD (Pali-Tours or Intervenor) timely noticed its intervention of right.

5. Also on August 22, 2022, Absolute Prestige Limousine II LLC (Absolute or Intervenor) filed its Entry of Appearance, Intervention, Letter of Authority, and Legal Representation for Absolute Prestige Limousine II, LLC (Absolute’s Intervention). In

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

Absolute's Intervention, Absolute timely noticed its intervention of right, and stated that "Applicant's proposed service in Mesa County [as requested in the Application] would overlap 100% with, and needlessly duplicates [Intervenor's] authority under CPCN No. 55925."² As of the time of the filing of Absolute's Intervention, CPCN PUC No. 55925 granted³ Absolute the following authority: "Transportation of passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in Mesa County, State of Colorado."⁴

6. On August 23, 2022, Rapid Creek Cycles & Sports, LLC, doing business as Palisade Plunge Cycle and Shuttle (Palisade Plunge or Intervenor) timely noticed its intervention of right.

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

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

9. On January 24, 2023, Applicant and Powderhorn filed their Stipulation of Parties Motion to Restrictively Amend Application and to Withdraw Intervention (Applicant's and Powderhorn's Motion to Amend and Withdraw). In Applicant's and Powderhorn's Motion to

² Absolute's Intervention at 2.

³ As further discussed below, this authority has since been amended by the Decision No. R23-0720, issued October 24, 2023 in Proceeding No. 23F-0311CP (Recommended Decision in Proceeding No. 23F-0311CP) (attached as an unmarked attachment to Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023, filed November 22, 2023 (Motion to Vacate and for Other Relief)).

⁴ Letter of Authority for Certificate No. 55925, attached as an unmarked attachment to Absolute's Intervention.

Amend and Withdraw, Powderhorn sought to withdraw its intervention upon a finding that the restrictive amendments to the authority sought through the Application, as modified by the Motion to Amend, are administratively acceptable.

10. By Decision No. R23-0082-I, issued February 7, 2023, the Application was restrictively amended and Powderhorn's intervention withdrawal was acknowledged.

11. On March 21, 2023, Applicant filed a document entitled⁵ Stipulation of Parties Motion to Restrictively Amend Application. This filing sought to further restrict the authority sought through the Application.⁶

12. Also on March 21, 2023, Applicant filed its Notice, in which Applicant waived the statutory period for a Commission decision provided in 40-6-109.5, C.R.S.

13. On March 24, 2023, Intervenor's (I) Motion to Dismiss the Application; (II) Alternate Motion for Withdrawal of Intervention Pending Approval of Applicant's (Additional) Restrictive Amendments; or (III) Alternate Motion for Enlargement of Time to Respond to Remaining Discovery Requests was filed by Pali-Tours.

14. On March 28, 2023, the Stipulation of Parties Joint Motion to Restrictively Amend Application and to Withdraw Intervention was filed by Applicant and Colorado Detours.

15. On April 18, 2023, Stipulation of Parties Motion to Restrictively Amend Application and to Withdraw Intervention was filed by Applicant and Palisade Plunge.

⁵ While the formatting of this filing is substantially flawed, the document's title can nonetheless be discerned from the location of the title within the document and the capitalization of the same.

⁶ However, unlike the title of this filing suggests, the parties' stipulation is not discussed therein.

16. By Decision No. R23-0251-I, issued April 21, 2023, the interventions of Palisade Plunge, Pali-Tours, and Colorado Detours were dismissed, and the Application was further⁷ restrictively amended to request authority as follows:

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 following locations in Mesa County, Colorado: (a) Powderhorn Ski Area; (b) Mesa Lakes Resort / West Bench Trailhead, 3619 CO-65, Mesa, Colorado 81643; (c) Lands End Observatory; (d) Mesa Top Trailhead, CO-65; (e) County Line Trailhead, CO-65; (f) Wild Rose Picnic Area on Lands End Road; and (g) Shirttail Trailhead and parking lot.
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. Items (1), (2) and (3) are restricted against service that originates and terminates in the County of Delta, State of Colorado.

17. By Decision No. R23-0671-I, issued October 5, 2023, the ALJ, among other things, scheduled an evidentiary hearing in this Proceeding for November 28, 2023.

18. On November 22, 2023, Applicant’s Motion to Vacate and for Other Relief was filed by Topsy. In the Motion to Vacate and for Other Relief Applicant requests: to restrictively amend the Application,⁸ that Absolute’s intervention be stricken,⁹ that the evidentiary hearing

⁷ I.e., the Application was restrictively amended beyond the restrictive amendments set forth in Decision No. R23-0082-I.

⁸ Motion to Vacate and for other Relief at 2-3.

⁹ *Id.* at 3.

scheduled for November 28, 2023 be vacated,¹⁰ that response time to the Motion to Vacate and for Other Relief be waived,¹¹ and to recover attorney fees and costs from intervenor.¹²

19. On November 24, 2023, Intervenor Absolute Prestige Limousine II, LLC's Response to Applicant's Motion to Restrictively [*sic*] Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023 (Response to Motion to Vacate and for Other Relief) was filed by Absolute.

20. By Decision No. R23-0782-I, issued November 27, 2023, the ALJ vacated the Hearing scheduled for November 28, 2023, and stated that the remaining requested relief in the Motion to Vacate and for Other Relief will be addressed by a separate decision.¹³

21. On December 18, 2023, Applicant filed its Errata Notice for "Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023" (Notice of Errata). The Notice of Errata states that the Motion to Vacate and for other Relief fails to include as an exhibit the restated authority sought by Applicant. Applicant attached said restated authority to the Notice of Errata.

22. On December 18, 2023, Intervenor Absolute Prestige Limousine II, LLC's Response to Errata Notice for Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023, and Applicant's Motion to Restrictively Amend Application and for Other Relief [*sic*] Including the Vacating of Hearing on November 28, 2023 (Response to Notice of Errata) was filed by Absolute.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *See* Decision No. R23-0782-I, issued November 27, 2023, at 3-4.

B. Proceeding No. 23F-0311CP

23. On June 8, 2023, Topsy filed a verified Complaint (Complaint) against Absolute and Ms. Shirleen Hutton (hereinafter, the Respondents in Proceedings No. 23F-0311CP). This filing initiated Proceeding No. 23F-0311CP.¹⁴ As pertinent herein, the Complaint in Proceedings No. 23F-0311CP alleged that: Absolute admitted that CPCN PUC No. 55925 is dormant, if not abandoned; and Absolute violated Rule 6205 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, by failing to file an application to suspend its authority, and such failure shows that Absolute has abandoned CPCN PUC No. 55925.¹⁵

24. On July 10, 2023, the Answer and Response to Formal Complaint was filed by the Respondents in Proceedings No. 23F-0311CP. As pertinent herein, in the Answer: the Respondents in Proceedings No. 23F-0311CP admitted that Absolute holds CPCN PUC No. 55925 that was issued by the Colorado Public Utility Commission; admitted that no transportation services were performed by Absolute during 2022; and denied that CPCN PUC No. 55925 is dormant, abandoned or suspended.¹⁶

25. On September 29, 2023, Complainant's Motion for Summary Judgment (Motion for Summary Judgment) was filed by Topsy. As pertinent herein, in the Motion for Summary Judgment, Topsy argued that Complainant states that Respondents in Proceedings No. 23F-0311CP abandoned CPCN PUC No. 55925 based upon a) the Annual Report of to the Commission by Respondents in Proceedings No. 23F-0311CP reflecting that no services were provided under CPCN PUC No. 55925; b) Respondents in Proceedings No. 23F-0311CP having

¹⁴ See generally, Recommended Decision No. R23-0720.

¹⁵ See *id.* at 4.

¹⁶ See *id.* at 6.

admitted to providing transportation service during 2022; and c) Respondent having received calls for service, but chose to provide service under a permit, rather than CPCN PUC No. 55925.¹⁷

26. After careful consideration of the record and giving Respondents in Proceedings No. 23F-0311CP the benefit of every reasonable inference with respect to Absolute's lack of substantial operations under CPCN PUC No. 55925 and Absolute's intention not to exercise the dormant common carrier authority as to service for fewer than ten passengers, the ALJ issued the Recommended Decision in Proceeding No. 23F-0311CP.¹⁸ As pertinent herein, in Recommended Decision in Proceeding No. 23F-0311CP, the ALJ recommended that the Commission enter an order revoking the portion of CPCN PUC No. 55925 which permits transportation of fewer than ten passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between points in Mesa County, State of Colorado. In Recommended Decision in Proceeding No. 23F-0311CP, the ALJ recommended that Absolute's authority under CPCN PUC No. 55925 be amended to read:

Transportation of passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in Mesa County, State of Colorado.

RESTRICTION: This authority is restricted to the transportation of ten (10) or more passengers per trip.¹⁹

27. The Recommended Decision in Proceeding No. 23F-0311CP was served on the parties to Proceeding No. 23F-0311CP on October 24, 2023.²⁰ No. exceptions were filed to the Recommended Decision in Proceeding No. 23F-0311CP. Recommended Decision in Proceeding

¹⁷ *Id.* at 8.

¹⁸ *See generally, id.*

¹⁹ *See* Appendix A to the Recommended Decision in Proceeding No. 23F-0311CP (attached as an unmarked attachment to the Motion to Vacate and for Other Relief).

²⁰ *See* the Certificate of Service for the Recommended Decision in Proceeding No. 23F-0311CP (available online through the Commission's E-Filings system at <https://www.dora.state.co.us/pls/efi/EFI.homepage>).

No. 23F-0311CP became a final decision of the Commission decision by operation of law prior to Applicant's filing of the Motion to Vacate and for Other Relief.²¹

C. Motion to Vacate and for Other Relief

28. In the Motion to Vacate and for Other Relief, in addition to Applicant's request to vacate the hearing scheduled for November 28, 2023,²² Applicant requests: to amend the Application,²³ strike Absolute's intervention,²⁴ waive the response time to the Motion to Vacate,²⁵ and waive Attorney's fees and costs from Intervenor for Intervenor's violations of Colo. R. Civ. Pro. 11, Rule 1202(e) of the Rules.²⁶

29. With respect to Applicant's request to amend the Application, Applicant states that it seeks to amend the Application by adding a restriction that reads: "This entire authority is restricted to the transportation of nine (9) or fewer passengers per trip."²⁷ Applicant contends that this restriction is administratively enforceable, "tracks the language used in [the Recommended Decision in Proceeding No. 23F-0311CP]," is in the public interest, and "fills the void left by the dormancy of CPCN [PUC No.] 55925."²⁸

30. With respect to Applicant's request to strike Absolute's intervention, Applicant states that upon the Commission's acceptance of the Applicant's restrictive amendment, as set forth in the Motion to Vacate and for Other Relief, "there would no longer be any overlap between the restricted authority sought [by Applicant] and the remaining portion of

²¹ See §§ 40-6-109 and 40-6-114, C.R.S.

²² Which was granted by Decision No. R23-0782-I.

²³ Motion to Vacate and for Other Relief at 1.

²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ *Id.* at 4.

²⁷ *Id.* at 2.

²⁸ *Id.* at 2-3.

CPCN [PUC No.] 55925,” thereby removing any standing by Absolute as an intervenor by right.²⁹ Applicant further states that “[i]nasmuch as the remaining portion of CPCN [PUC No.] 55925 not found to be abandoned has been found to be dormant and not been operated for an extended period of time, there appears to be no way Absolute could qualify as an intervenor by permission.”³⁰

31. With respect to Applicant’s request to waive response time to the Motion to Vacate and for Other Relief, Applicant states that “fundamental fairness dictates that where an application case may become uncontested, and that a hearing may become unnecessary, that the procedural hurdle of a response time falling after the hearing be eliminated by waiving response time and granting the request for an immediate vacating of the hearing date.”³¹

32. With respect to Applicant’s request to recover attorney fees and costs, Applicant states that, despite the fact that CPCN PUC No. 55925 provides the sole basis for Absolute’s intervention in this Proceeding, and the findings articulated in the Recommended Decision in Proceeding No. 23F-0311CP, Absolute “refuses” to withdraw its intervention.³² Applicant further states that Absolute’s “continued opposition in the case is frivolous and groundless and calculated to increase the cost of litigation for Applicant in violation of [Colo. R. Civ. Pro. 11, Rule 1202(e) of the Rules of Practice and Procedure, 4 CCR 723-1, and 13-17-102, C.R.S].”³³

33. In the Response to Motion to Vacate and for Other Relief, Intervenor states that it is Applicant who is responsible for the delay in this case, as it is the Applicant who has continuously requested for the hearing in this Proceeding date to be continued.³⁴ Intervenor further

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 4.

³² *Id.*

³³ *Id.* at 1-2.

³⁴ Response to Motion to Vacate and for Other Relief at 2.

states that Applicant has consistently requested the interventions of Intervenor, as well as previous intervenor in this Proceeding, be struck.³⁵ In the Response to Motion to Vacate and for Other Relief, Intervenor does not meaningfully address the Applicant's argument regarding the lack of overlap between the Application, as requested to be amended in the Motion to Vacate and for Other Relief, and CPCN PUC No. 55925; nor does Intervenor meaningfully address Applicant's argument regarding Intervenor's lack of standing in this Proceeding.³⁶

D. Relevant Law

34. Pursuant to § 24-4-105(7), C.R.S. and Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1, the proponent of a Commission decision bears the burden of proof for the same.

35. Rule 1401(a) of the Rules of Practice and Procedure, 4 CCR 723-1 states, among other things, that "... any person may file a notice of intervention as of right..."

36. Rule 1401(b) of the Rules of Practice and Procedure, 4 CCR 723-1 states, among other things, that "[m]otions to strike interventions of right are allowed to the extent that the challenge is to the party's legally protected interest or the party's request for hearing."

37. Pursuant to Section 40-6-109(5), C.R.S. and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may determine any application without a formal hearing.

³⁵ *Id.* at 3.

³⁶ *See generally*, Response to Motion to Vacate and for Other Relief.

E. Analysis

1. Waiver of Response Time

38. Because the time for Intervenor to respond to the Motion to Vacate and for Other Relief has passed, Applicant’s request to waive response time to the Motion to Vacate the Motion to Vacate and for Other Relief is denied as moot.

2. Applicant’s Requested Authority, Intervenor’s Authority, and Intervenor’s Standing

39. The Application, as amended by Decision No. R23-0251-I, requests the following authority:

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 following locations in Mesa County, Colorado: (a) Powderhorn Ski Area; (b) Mesa Lakes Resort / West Bench Trailhead, 3619 CO-65, Mesa, Colorado 81643; (c) Lands End Observatory; (d) Mesa Top Trailhead, CO-65; (e) County Line Trailhead, CO-65; (f) Wild Rose Picnic Area on Lands End Road; and (g) Shirttail Trailhead and parking lot.
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. Items (1), (2) and (3) are restricted against service that originates and terminates in the County of Delta, State of Colorado.³⁷

³⁷ See Decision No. R23-0251-I, issued April 21, 2023.

40. In the Motion to Vacate and for Other Relief, Applicant seeks to further amend the Application by adding the following restriction to Applicant's requested authority: "This entire authority is restricted to the transportation of nine (9) or fewer passengers per trip."³⁸

41. As of the date the Recommended Decision in 23F-0311CP, became a final decision of the Commission, Absolute's authority is as follows:

Transportation of passengers, in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in Mesa County, State of Colorado.

RESTRICTION: This authority is restricted to the transportation of ten (10) or more passengers per trip.³⁹

42. The amendments requested by Applicant in the Motion to Vacate and for Other Relief are restrictive in nature, clear and understandable, administratively enforceable, and contained wholly within the scope of the authority sought in the Application, as noticed.⁴⁰ Accordingly, Applicant's request to restrictively amend the Application will be granted, as ordered below.

43. As a comparison of the authority sought through the Application, as amended herein and ordered below, against the authority presently held by Intervenor⁴¹ makes evident, Absolute's authority no longer overlaps with the authority sought by Applicant. The lack of overlap between the authority sought by Applicant and the authority held by Intervenor has three consequences: first, Intervenor no longer has standing to contest the Application; second, the Application is rendered unopposed; and third, pursuant to § 40-6-109(5), C.R.S. and Rule 1403 of

³⁸ Motion to Vacate and for Other Relief at 2.

³⁹ See Appendix A to the Recommended Decision in Proceeding No. 23F-0311CP (attached as an unmarked attachment to the Motion to Vacate and for Other Relief).

⁴⁰ See Decision No. R10-0157, issued February 10, 2010, in Proceeding No. 09A-452CP at 6-7.

⁴¹ Given that Absolute is the sole remaining intervenor in this Proceeding, the only relevant authority against which Applicant's requested authority is analyzed herein is Intervenor's.

the Rules of Practice and Procedure, 4 CCR 723-1, the Application will be considered under modified procedure, without a formal hearing.

44. In the Motion to Vacate and for Other Relief, Applicant requests to strike Absolute's intervention based on the lack of overlap between CPCN PUC No. 55925 and Applicant's requested authority. In other words, Applicant is challenging the scope of Absolute's legally-protected interest (CPCN PUC No. 55925). Given the granting of Applicant's request to restrictively amend the Application ordered below, Absolute's basis for its intervention has been removed; Intervenor's authority (which is restricted to ten or more passengers) no longer overlaps with Applicant's requested authority (which is restricted to fewer than ten passengers).⁴² It is also noteworthy that at no time did Absolute request to permissively intervene in this Proceeding. Therefore, Applicant's request to strike Absolute's intervention will be granted, as ordered below. Consequently, the Application is deemed unopposed, and, pursuant to § 40-6-109(5), C.R.S. and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the Application may be considered under modified procedure, without a formal hearing.

45. The Application and its supporting documentation establish that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.⁴³ The Application and its supporting documentation further establish that Applicant has or will have sufficient equipment with which to render the proposed service, and is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application and the lack of opposition thereto indicate a need for

⁴² See *Yellow Cab Cooperative Assn v. Colorado Public Utilities Commission*, 869 P.2d 545 (Colo. 1994) (holding that vehicle capacity limitations in Colorado company's certificate determined to be integral part of restrictions deemed necessary to prevent destructive competition), citing *Public Utilities Commission v. Donahue*, 335 P.2d 285 at 288 (Colo. 1959).

⁴³ See generally, the Rules Regulating Transportation by Motor Vehicle 4 CCR 723-6.

the proposed service as amended. The ALJ finds that the Application, as amended and modified⁴⁴ herein, is reasonable and in the public interest. For the foregoing reasons, the requested authority will be granted, as ordered below.

3. Applicant's Request for Attorney Fees and Costs

46. Intervenor timely noticed its intervention of right in this Proceeding and the same was not contested, at any time, by Applicant. As any intervenor, Absolute is wholly within its rights to pursue its intervention in this Proceeding. Intervenor's apparent refusal⁴⁵ to withdraw its intervention in this Proceeding preceded this Decision, which is intended, among other things, to address Intervenor's standing and provide clarity as to the Authority sought by Applicant, as amended, as compared with the Authority currently held by Intervenor. Applicant failed to carry the burden of proving that Intervenor's refusal to withdraw its intervention in this Proceeding justifies the imposition of attorney fees and cost. Therefore, Applicant's request for attorney fees will be denied, as ordered below.

4. Intervenor's Request to Reset Hearing

47. In the Response to the Notice of Errata, Absolute "...requests that the Administrative Law Judge enter an Order citing a date and time to reset the evidentiary hearing at the commission's earliest opportunity so that this matter can be scheduled for hearing."⁴⁶ Given this request, the Response to the Notice of Errata is construed as a motion to reset the evidentiary hearing (hereinafter, Absolute's Motion to Reset Hearing).

⁴⁴ The modification to Topsy's proposed passenger capacity restriction, as set forth in the Ordering section below, was made for purposes of consistency with the remaining restrictions on Topsy's authority.

⁴⁵ See Motion to Vacate and for Other Relief at 4 (stating that "Absolute refuses to get out of this proceeding even with an offer to totally restrict out any overlap of authority").

⁴⁶ Response to Notice of Errata at 2.

48. Consistent with the findings herein, and given the striking below of Absolute's intervention, Absolute's Motion to Reset Hearing will be denied, as ordered below.

49. Therefore, in accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023 (Motion to Vacate and for Other Relief), filed by Topsy Velo, LLC, doing business as Topsy Voyage (Applicant or Topsy) on November 22, 2023 is granted, in part, consistent with the discussion above.

2. Topsy's request to restrictively amend the Permanent Authority Application (Application) for a Certificate of Public Convenience and Necessity (CPCN), filed by Applicant on July 21, 2022 is granted, consistent with the discussion above.

3. The intervention of Absolute Prestige Limousine II LLC (Absolute or Intervenor) is stricken.

4. Intervenor Absolute Prestige Limousine II, LLC's Response to Errata Notice for Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023, and Applicant's Motion to Restrictively Amend Application and for Other Relief [*sic*] Including the Vacating of Hearing on November 28, 2023

5. Absolute is dismissed as an intervenor.

6. Applicant's request for the imposition of attorney fees and costs against Intervenor is denied.

7. All other requests for relief in the Motion to Vacate and for Other Relief that are not specifically addressed herein are denied.

8. Intervenor Absolute Prestige Limousine II, LLC's Response to Errata Notice for Applicant's Motion to Restrictively Amend Application and for Other Relief Including the Vacating of Hearing on November 28, 2023, and Applicant's Motion to Restrictively Amend Application and for Other Relief [*sic*] Including the Vacating of Hearing on November 28, 2023 is construed as a motion to reset an evidentiary hearing in this Proceeding (Motion to Reset Hearing).

9. Consistent with the foregoing, the Motion to Reset Hearing is denied.

10. The Application, as amended and modified herein, is granted.

11. Conditioned upon Topsy's full compliance with the requirements contained in Ordering Paragraph No. 9, Topsy is granted authority to operate as a common carrier by motor vehicle for hire as follows:

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 following locations in Mesa County, Colorado: (a) Powderhorn Ski Area; (b) Mesa Lakes Resort / West Bench Trailhead, 3619 CO-65, Mesa, Colorado 81643; (c) Lands End Observatory; (d) Mesa Top Trailhead, CO-65; (e) County Line Trailhead, CO-65; (f) Wild Rose Picnic Area on Lands End Road; and (g) Shirttail Trailhead and parking lot.
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. Items (1), (2) and (3) are restricted against service that originates and terminates in the County of Delta, State of Colorado.
5. Items (1), (2) and (3) are restricted to the transportation of nine (9) or fewer passengers per trip.

12. Tipsy shall not be granted a CPCN and shall not commence operations until it has respectively and fully complied with each of the following conditions: (a) cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission; (b) pay to the Commission, the motor vehicle fee (\$50.00) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement; (c) file with the Commission and have an effective, publicly-available tariff. The tariff should comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The tariff shall be filed in a new Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the proposed effective date; (d) submit a Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection must be done in accordance with Rules 6103 and 6104 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6; and the inspection must show that the vehicle passed the inspection. The inspection report may be found at: <https://puc.colorado.gov/common-carriers>; (e) register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system (E-Filings), and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at: www.dora.state.co.us/pls/efi/EFI.homepage; and (f) pay the applicable fee for the issuance of the authority.

13. No CPCN shall be issued, and Applicant shall not operate under the requested CPCN authority, unless the respective Applicant complies with all the conditions set forth in Ordering Paragraph No. 9.

14. If Applicant does not comply with each requirement in Ordering Paragraph No. 9, within 60 days of the effective date of this Decision, the CPCN requested by such applicant is denied without further action of the Commission. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

15. Applicants shall operate in accordance with all applicable statutes, orders, and rules of the Commission. The Commission may issue an order to cease and desist or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112 (1), C.R.S.

16. Proceeding No. 22A-0335CP is closed.

17. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

18. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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