

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0201CP

IN THE MATTER OF THE APPLICATION OF PALMYRA LIMO LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION
DISMISSING APPLICATION WITHOUT PREJUDICE**

Issued Date: July 11, 2024

I. STATEMENT AND SUMMARY

A. Statement and Summary

1. This Decision dismisses Palmyra Limo LLC's ("Applicant" or "Palmyra") above-captioned Application for a Certificate of Public Convenience and Necessity ("CPCN") to Operate as a Common Carrier by Motor Vehicle for Hire filed May 2, 2024 (Application) without prejudice for failure to prosecute it.

II. FINDINGS AND CONCLUSIONS

A. Procedural History¹

2. On May 2, 2024, Palmyra filed the Application with the Public Utilities Commission ("Commission") seeking a CPCN for the transportation of passengers in call-and-demand shuttle service between the Montrose Regional Airport, on the one hand, and the Town of Mountain Village, Colorado, on the other hand.²

3. On May 6, 2024, the Commission provided public notice of the Application.³

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

² Application at 3.

³ Notice of Applications and Petitions Filed May 6, 2024 (Notice) at 2.

4. On June 3, 2024, Western Slope Rides LLC (“Western Slope”) filed a timely Entry of Appearance and Notice of Intervention (“Western Slope’s Intervention” or “Intervention”), with a copy of its Letter of Authority for its CPCN, PUC No. 55885.

5. In addition to Western Slope, San Miguel Mountain Ventures, LLC (“San Miguel”) and Wilson Peak Limo LLC doing business as Mountain Limo (“Mountain Limo”) filed timely Interventions.

6. On June 12, 2024, the Commission deemed the Application complete and referred the matter for disposition to an administrative law judge (“ALJ”) by minute entry.

7. On June 27, 2024, the ALJ issued Decision No. R24-0464-I that: (a) scheduled a fully remote prehearing conference for July 9, 2024 at 9:30 a.m. to move this matter forward; (b) acknowledged San Miguel and Mountain Limo as interveners of right; (c) required Western Slope to make a filing by July 8, 2024 addressing its legal representation and deficiencies in its Intervention; and (d) approved Applicant’s request to be presented by non-attorney Alfredo E. Barriga.⁴

8. Commission records indicate that the parties are all registered filers with the Commission’s E-Filing System (“E-Filing System”).⁵ Decision No. R24-0464-I was served on all parties through the E-Filing System on June 27, 2024.⁶

9. Consistent with Decision No. R24-0464-I, on July 2, 2024, administrative staff emailed all parties the Zoom information to join the July 9, 2024 prehearing conference, including Western Slope.⁷

⁴ Decision No. R24-0464-I at 9-10 (issued June 27, 2024)

⁵ See Certificate of Service for Decision No. R24-0464-I. For purposes of this discussion, the parties include Applicant, and all those who filed an intervention in this Proceeding, including Western Slope.

⁶ *Id.*

⁷ July 2, 2024 Email filed July 9, 2024 (July 2, 2024 Email).

10. On July 8, 2024, Western Slope filed a “Notice of Intervention by Right, Alternative Motion for Intervention and Entry of Appearance on Behalf of Western Slope Rides” (Response to Decision No. R24-0464-I or Response). Western Slope’s Response includes an entry of appearance for counsel on behalf of Western Slope.⁸

11. On July 8, 2024, after Western Slope filed its Response, Commission staff emailed Western Slope’s counsel the Zoom information to join the prehearing conference using counsel’s email address in Western Slope’s Response.⁹

12. The ALJ held the July 9, 2024 prehearing conference as noticed. San Miguel and Mountain Limo appeared, but neither Western Slope nor Applicant appeared, despite the ALJ holding the hearing open for additional time to allow them more time to appear.¹⁰ The rulings made during the prehearing conference are outlined below.

13. Applicant has made no filings in this Proceeding since filing the Application.

14. Western Slope has made no filings since its Response.

B. Relevant Law

15. 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.¹¹

⁸ Response to Decision No. R24-0464-I at 1 and 3.

⁹ July 8, 2024 Email filed July 9, 2024 (July 8, 2024 Email); Response to Decision No. R24-0464-I at 3 (listing counsel’s email address).

¹⁰ The hearing commenced at 9:30 a.m. and concluded at approximately 9:50 a.m.

¹¹ Rule 1401(b) and (f)(I), of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

16. Generally, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado, but an individual may appear without an attorney on behalf of a company after establishing its eligibility to do so.¹²

17. When a party registers as a filer with the Commission's E-Filing System, the party "expressly" agrees to accept service in all Commission proceedings through the E-Filings System.¹³ Filing through the Commission's E-Filing System constitute service on registered users in the System.¹⁴

18. The proponent of an order has the burden to prove that the requested relief should be granted.¹⁵ As relevant here, an applicant carries the burden to prove that its application should be granted.¹⁶ As such, an applicant has the duty to prosecute (or pursue) its application without unnecessary or unreasonable delay.¹⁷

19. When determining whether to dismiss for failure to prosecute, the tribunal should "consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits," including the length of delay, the reason for the delay, any prejudice that may result to other parties based on the delay, and the extent to which the applicant has renewed efforts to prosecute the application.¹⁸

C. Western Slope's Intervention and Legal Representation

20. The ALJ finds that Western Slope's Response to Decision No. R24-0464-I satisfies the requirements of that Decision by addressing deficiencies in its Intervention and including

¹² Rule 1201(a) and (b)(II), 4 CCR 723-1.

¹³ Rule 1205(b), 4 CCR 723-1.

¹⁴ *Id.*

¹⁵ Rule 1500, 4 CCR 723-1 (proponent of an order carries the burden of proof; party commencing proceeding is the proponent of the order).

¹⁶ *Id.*

¹⁷ *See People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

¹⁸ *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010).

counsel's entry of appearance on its behalf.¹⁹ What is more, its Response, taken together with its Intervention and Letter of Authority (filed with its Intervention), meets the legal standard discussed above to intervene as of right.²⁰ For all these reasons, the ALJ acknowledges Western Slope as an intervener of right. By having counsel enter an appearance on its behalf, Western Slope addressed its legal representation, consistent with the requirements in Decision No. R24-0464-I.

21. Nonetheless, for the reasons discussed below, the ALJ finds that Western Slope's failure to appear at the prehearing conference warrants dismissal of its Intervention.

22. Because Western Slope is a registered filer with the Commission's E-Filing System, and Decision No. R24-0464-I was served on it through the E-Filing System, the ALJ concludes that Decision No. R24-0464-I was properly served on Western Slope.²¹ In addition, given that Western Slope timely filed its Response to Decision No. R24-0464-I, the ALJ concludes that it had actual notice of Decision No. R24-0464-I, including the July 9, 2024 prehearing conference.²²

23. Decision No. R24-0464-I advises the parties that the information needed to join the prehearing conference will be emailed to them at their email addresses on file with the Commission for this Proceeding, and that it is important that all parties ensure that the Commission has the correct email address for them.²³ Consistent with this, Western Slope was provided the Zoom information to join the prehearing conference twice: once via email to Western Slope directly on

¹⁹ Response to Decision No. R24-0464-I at 2-3. *See* Decision No. R24-0464-I.

²⁰ *See* Response to Decision No. R24-0464-I at 2-3; Western Slope's Intervention and Letter of Authority; Application; and Decision No. R24-0464-I.

²¹ Certificate of Service for Decision No. R24-0464-I.

²² *See* Response to Decision No. R24-0464-I; Decision No. R24-0464-I.

²³ Decision No. R24-0464-I at 9.

July 2, 2024 and again to the email address in its Response to Decision No. R24-0464-I for Western Slope's counsel on July 8, 2024.²⁴

24. Decision No. R24-0464-I specifically warns that “failure to appear at the prehearing conference may result in decisions adverse to [parties’] interests, including granting the complete relief opposing parties seek, dismissing Interventions, and dismissing or granting the Application.”²⁵ Thus, when Western Slope failed to appear at the duly noticed prehearing conference, it assumed the risk that its Intervention could be dismissed.

25. As noted, Western Slope was properly served with Decision No. R24-0464-I scheduling the prehearing conference; received actual notice of the same Decision; was twice given the information needed to join the prehearing conference; was on notice that failure to appear at the prehearing conference may result in dismissal of its Intervention; failed to appear at the prehearing conference; and failed to establish good cause for its failure to appear. For these reasons and those discussed above, Western Slope's Intervention is dismissed.

D. Application

26. During the prehearing conference, San Miguel made verbal motion to dismiss the Application based on Palmyra's failure to appear at the prehearing conference. Mountain Limo joined the Motion. After waiting an additional 15 to 20 minutes for Applicant to appear, for the reasons discussed below, the ALJ granted the motion and dismissed the Application during the prehearing conference.

²⁴ July 2, 2024 Email; July 8, 2024 Email.

²⁵ Decision No. R24-0464-I at 9.

27. Because Palmyra is a registered filer with the Commission's E-Filing System, and Decision No. R24-0464-I was served on Palmyra through the E-Filing System, the ALJ concludes that the Decision was properly served on Palmyra.²⁶

28. As noted, Decision No. R24-0464-I advises that the information to join the prehearing conference would be emailed to the parties at the address on file and that the parties must ensure that the Commission has their correct email addresses.²⁷ On July 2, 2024, Palmyra was provided the Zoom information to join the prehearing conference via email to the email address in its Application.²⁸

29. As discussed, Decision No. R24-0464-I specifically warns that failure to appear at the prehearing conference may result in the Application being dismissed.²⁹ Thus, when Palmyra failed to appear at the duly noticed prehearing conference, it assumed the risk that its Application could be dismissed.

30. Palmyra has the duty to prosecute (or pursue) its Application without unnecessary or unreasonable delay.³⁰ This is particularly the case given that final decisions in cases such as these must be issued by the statutory deadline outlined in § 40-6-109.5(1), C.R.S.

31. As noted, Palmyra was properly served with Decision No. R24-0464-I scheduling the prehearing conference; was given the information needed to join the prehearing conference; was on notice that failure to appear at the prehearing conference may result in its Application being dismissed; failed to appear at the prehearing conference; and failed to establish good cause for its failure to appear. Palmyra's failure to appear and establish good cause for this failure effectively

²⁶ Certificate of Service for Decision No. R24-0464-I.

²⁷ Decision No. R24-0464-I at 9.

²⁸ July 2, 2024 Email; Application at 1.

²⁹ Decision No. R24-0464-I at 9.

³⁰ See *People in the Interest of R.F.A.*, 744 P.2d at 1203.

results in indefinite delay in pursuing its Application, which is unreasonable. Indeed, this is akin to abandoning the Application. In determining whether to dismiss the Application, the ALJ has considered and weighed all the factors discussed in ¶ 19 above and concludes that Palmyra's failure to appear at the prehearing conference and failure to establish good cause for this amounts to abandoning or failing to prosecute or pursue its Application. For all these reasons, the ALJ dismisses the Application without prejudice.³¹

32. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Western Slope Rides LLC ("Western Slope") properly intervened as of right in this Proceeding, but its Intervention is dismissed for the reasons discussed above. Western Slope is not a party to this Proceeding.

2. Palmyra Limo LLC's above-captioned Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed May 2, 2024 is dismissed without prejudice, consistent with the above discussion.

3. Proceeding No. 24A-0201CP is closed.

4. 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.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

³¹ Dismissal without prejudice means that Palmyra may file a new application seeking the same or similar relief as the Application here, but that the Application in this Proceeding is rejected and dismissed.

6. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless this Recommended Decision is stayed by the Commission upon its own motion, this Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

7. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

8. If exceptions to this Recommended Decision are filed, they may 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director