

Decision No. R24-0609-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0283CP

IN THE MATTER OF THE APPLICATION OF HUNDREDTH FLOOR GROUP INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION
SCHEDULING REMOTE PREHEARING CONFERENCE,
ACKNOWLEDGING INTERVENTION, AND REQUIRING
APPLICANT TO MAKE FILING**

Mailed Date: August 21, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision schedules a fully remote prehearing conference for September 9, 2024 at 2:00 p.m.; requires Hundredth Floor Group, Inc. (“Applicant”) to either have counsel enter an appearance on its behalf or make a filing establishing that it is eligible to be represented by a non-attorney on or by September 4, 2024; acknowledges Colorado Jeep and Off Road Tours, Inc. (“Colorado Jeep”) as a party; and grants Colorado Jeep’s request to be represented by a non-attorney in this matter.

B. Procedural History

2. On Jun 20, 2024, Applicant initiated this matter by filing the above-captioned Application (Application).

3. On July 1, 2024, the Public Utilities Commission Transportation Section issued a letter to Applicant identifying deficiencies in the Application and requiring that the deficiencies be addressed within 10 days.

4. On July 5, 2024, Applicant filed a second Application with attachments (“Amended Application”). The Amended Application seeks a Certificate of Public Convenience and Necessity (“CPCN”) to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service between all points in Salida, Colorado, and between said points, on the one hand, and all points in the City of Colorado Springs, the City of Denver (including but limited to Red Rocks Park and Amphitheatre), the City of Aspen, the Town of Vail, and the Town of Breckenridge, State of Colorado, on the other hand, using U.S. Highways 285, 24, and 50 and Colorado State Highways 82, 9, and 115.¹

5. On July 8, 2024, the Public Utilities Commission (the Commission) provided public notice of the Application, per § 40-6-108(2), C.R.S., which requires that interventions be filed no later than 30 days.²

6. On July 29, 2024, Colorado Jeep filed a Petition for Intervention and Entry of Appearance filed July 29, 2024 (“Intervention”) with a copy of its Letter of Authority.

7. On August 14, 2024, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (“ALJ”) for disposition by minute entry.

¹ Amended Application at 8. *See* Notice of Applications and Petitions filed July 8, 2024 (Notice) at 2.

² *See* Notice at 1-2.

II. RELEVANT LAW

8. As relevant here, a party with a legally protected right that may be impacted by the proceeding may intervene as of right.³ To intervene of right, a carrier's intervention must: identify the basis for the claimed legally protected right that may be impacted by the proceeding; include a copy of the carrier's letter of 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.⁴

9. Generally, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado.⁵ However, an individual may appear without an attorney on behalf of a company after establishing its eligibility to do so.⁶ To be eligible to be represented by a non-attorney, all the below conditions must be met:

- The company must not have more than three owners;
- The amount in controversy must not exceed \$15,000; and
- The non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating that person's authority to represent the company in the proceeding.⁷

10. 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 A written resolution from a company

³ Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 *See* § 40-6-109(a), C.R.S.; *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

⁴ Rule 1401(b) and (f)(I), 4 CCR 723-1.

⁵ Rule 1201(a), 4 CCR 723-1.

⁶ Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S.

⁷ Rule 1201(b)(II), § 13-1-127(2) and (2.3)(c), C.R.S.

⁸ § 13-1-127(2) and (2.3)(c), C.R.S.

specifically authorizing the individual to represent the company's interests in the proceeding may also be relied upon as evidence of the individual's authority to represent the company.⁹

III. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Applicant's Legal Representation

11. The Amended Application states that attorney Leo Flangas with the Flangas Civil Law Firm will represent the Applicant in this Proceeding.¹⁰ However, to date, counsel has not entered an appearance on Applicant's behalf. In addition, the Amended Application states that Applicant wishes to be represented by a non-attorney in this Proceeding but does not provide information establishing that Applicant is eligible to be represented by a non-attorney consistent with the above legal standards.¹¹ All of this creates confusion as to whether Applicant will be represented by counsel or whether it seeks to be represented by a non-attorney in this Proceeding. For the reasons discussed, the ALJ will require Applicant to either have counsel enter an appearance on its behalf or make a filing establishing that it is entitled to be represented by a non-attorney by the deadline established below. If Applicant seeks to be represented by a non-attorney, its filing must establish that it meets the above legal requirements to be represented by a non-attorney; identify the non-attorney that Applicant seeks to represent it here; and establish that the identified person is authorized to represent it here, consistent with the legal standards discussed above.¹²

⁹ § 13-1-127(3). C.R.S.

¹⁰ Amended Application at 1.

¹¹ *Id.* at 7. *See supra*, ¶¶ 9-10.

¹² *See supra*, ¶¶ 9-10.

B. Colorado Jeep's Intervention and Legal Representation

12. Colorado Jeep's Intervention states that it may intervene of right because the authority sought here conflicts and overlaps with its authority, PUC No. 55976.¹³ In support, Colorado Jeep states that its PUC No. 55976 allows it to provide call-and-demand shuttle and charter service between all points in Fremont County, and between all points on the one hand, and all points in the Counties of Chafee, Custer, Douglas, El Paso, Pueblo, and Teller, State of Colorado, on the other hand, which overlaps with the geographical territory for the authority sought here.¹⁴ Colorado Jeep's Letter of Authority and the Amended Application confirm this.¹⁵ Colorado Jeep asserts that because the Amended Application seeks to provide service that overlaps with its authority, it has a legally protected right that will be affected by the outcome of this Proceeding, and that granting the requested authority will harm it by diverting traffic from it and endangering its investments.¹⁶ Colorado Jeep requests that the Commission set the matter for a hearing and deny the Amended Application.¹⁷

13. Colorado Jeep is not represented by an attorney, and seeks to be represented by non-attorney, Mr. William Colon.¹⁸ In support. Colorado Jeep states that it is a closely held entity which has no more than three owners; the amount in controversy does not exceed \$15,000; and that Mr. Colon is authorized to represent it as its president and owner.¹⁹

14. Based on Colorado Jeep's Intervention and Letter of Authority, and the service territory at issue in the Amended Application, the ALJ concludes that Colorado Jeep has properly

¹³ See Colorado Jeep's Intervention at 1.

¹⁴ See *id.*

¹⁵ Colorado Jeep's Letter of Authority filed July 29, 2024 ("Letter of Authority") at 2; Amended Application at 8.

¹⁶ See Colorado Jeep's Intervention at 1-2.

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ *Id.*

intervened as of right, consistent with the above authority. As such, Colorado Jeep is acknowledged as a party in this Proceeding. As to its legal representation, based on Colorado Jeep's Intervention and the record, the ALJ finds that Colorado Jeep has established that it is eligible to be represented by a non-attorney, and that its identified representative, Mr. William Colon, has authority to represent it here, consistent with the above legal authority. As such, Mr. Colon is permitted to represent Colorado Jeep in this Proceeding.

C. Remote Prehearing Conference

15. To move this matter forward, and in anticipation of a hearing on the Amended Application, the ALJ is scheduling a remote prehearing conference per Rule 1409(a), 4 CCR 723-1. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established (*e.g.*, deadlines to file exhibits, exhibit lists, and witness lists). In addition, the ALJ will address the manner and location in which the hearing will be held, that is, in-person, remote, or hybrid. If the hearing is in-person, the parties, counsel, witnesses, and the ALJ appear in person. If the hearing is remote, the parties, counsel, witnesses, and the ALJ appear remotely via videoconference using the web-based platform, Zoom. If the hearing is hybrid, the parties, counsel, and witnesses may appear in person at a Commission hearing room in Denver or remotely by Zoom and the ALJ will appear in person at a Commission hearing room in Denver, Colorado.²⁰ At least one party has to appear in person for a hybrid hearing to be scheduled.

16. The Commission strives to accommodate parties' requests to hold hearings in requested locations. Here, the Amended Application asks that the hearing be held in Colorado

²⁰ The ALJ cannot hold a hybrid hearing in a location other than Denver because specialized equipment is required and cannot be removed from the Commission's offices in Denver. Thus, under the hybrid option, all those wishing to appear in person must do so at a hearing room at the Commission's offices in Denver.

Springs, Colorado.²¹ Given the potential challenges associated with securing an appropriate hearing location in Colorado Springs, the relatively short distance from Colorado Springs to Denver, the Commission's busy hearing schedule, the increased expense, time, and resources required to hold a hearing in Colorado Springs, and the available options for parties and witnesses to appear at the hearing remotely, if Applicant still wishes for the hearing to be held in Colorado Springs, it must establish good cause for this during the prehearing conference.

17. Other issues relevant to this Proceeding may be raised or addressed during the prehearing conference.

18. Before the prehearing conference, the parties must confer with each other on the issues that will be addressed during the prehearing conference and must be prepared to address those issues during the prehearing conference. At minimum, the parties must confer on all issues discussed herein. When conferring on a hearing date, the parties should discuss the appropriate number of days for the hearing, and plan on a hearing being held no later than December 16, 2024, unless Applicant waives the statutory deadline for a final Commission decision to issue per § 40-6-109.5(3), C.R.S.

19. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

²¹ Amended Application at 6.

20. 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. Parties will receive an email with information needed to join the hearing at the email addresses on file in this Proceeding. As such, it is important that all parties ensure that the Commission has the correct email address for them.

21. Any party or counsel who has not registered with the Commission's E-Filing System ("E-Filings") is strongly encouraged to do so. Parties and counsel registered with E-Filings receive decisions and other filings in near-real time through E-Filings. This will avoid delay associated with receiving filings (*e.g.*, service via U.S. mail). Interested persons may register with E-Filings (available at no cost) at the following link:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

22. *The parties are on notice* that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek; dismissing Colorado Jeep as a party (and its Intervention); and dismissing or granting the Amended Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

23. *The parties are on notice* that non-attorneys representing a party will be held to the same standard as an attorney, including complying with any orders arising out of this Proceeding, 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). Both sets of Rules are available for free on the Commission’s website at: <https://puc.colorado.gov/pucrules>.

IV. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Colorado Jeep and Off Road Tours, Inc. (“Colorado Jeep”) is acknowledged as an intervening party in this Proceeding.

2. Mr. William Colon, a non-attorney, is permitted to represent Colorado Jeep in this Proceeding.

3. **No later than 5:00 p.m. on September 4, 2024**, Hundredth Floor Group, Inc. (“Applicant”) must either have its attorney enter an appearance on its behalf in this Proceeding or make a filing establishing that it is eligible to be represented by a non-attorney, consistent with the legal authority discussed in ¶¶ 9-10 above. This filing must also identify the non-attorney that Applicant wishes to represent it in this Proceeding and establish that the identified person has authority to represent it here, consistent with the legal authority discussed in ¶¶ 9-10 above.

4. A fully remote prehearing conference in this Proceeding is scheduled as follows:

DATE: September 9, 2024

TIME: 2:00 p.m.

PLACE: Join by videoconference using Zoom

5. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

7. The parties must confer with each other prior to the prehearing conference consistent with the above discussion.

8. 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