

Decision No. R24-0767-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0352CP

IN THE MATTER OF THE APPLICATION OF MINERS CREEK VENTURES, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION
GRANTING INTERVENTION, REQUIRING FILINGS AND
SETTING PREHEARING CONFERENCE**

Issued Date: October 24, 2024

I. STATEMENT

1. On August 21, 2024, Miners Creek LLC (“Miners Creek”) initiated the captioned proceeding by filing an application seeking a Certificate of Public Necessity and Convenience to Operate as a Common Carrier by Motor Vehicle for Hire (“Application”) with the Colorado Public Utilities Commission (“Commission”).

2. On September 9, 2024, the Commission provided public notice of the application by publishing a summary of the same in its Notice of Applications Filed:

For authority 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 within a 100-mile radius of the intersection of Main Street and 7th Street in Creede, State of Colorado.

3. On October 8, 2024, Wilderness Journeys Pagosa Inc. doing business as A1 Taxi (“A1 Taxi”) filed their Intervention and Entry of Appearance by Right through their owner Kevin Metzler. This filing did not attach any Commission Authority held by A1 Taxi.

4. On October 8, 2024, AEX Inc. (“AEX”) and San Miguel Mountain Ventures (“San Miguel”) filed their Notice of Intervention by Right Alternative Motion through their counsel. This filing attached the Commission Authority No. 12750 held by AEX and Commission Authority No. 1648 held by San Miguel.

5. On October 16, 2024, the Commission deemed the application complete and referred it by minute entry to the undersigned Administrative Law Judge (“ALJ”) for disposition.

II. INTERVENTIONS

6. Finding good cause, and in the absence of any objection from Applicant, the ALJ finds that AEX and San Miguel have established their standing as intervenors in accordance with the Commission’s Rules of Practice and Procedure.

7. As noted above, A1 Taxi failed to file any Commission authority with its intervention. A1 Taxi shall file copies of its Commission authority as required by 4 CCR 723-1-1401(e)(I) no later than November 8, 2024. Failure to do so shall result in the intervention being denied.

III. LEGAL REPRESENTATION

8. Under Rule 1201(b) 4 CCR 723-1, a party in an adjudicatory proceeding before the Commission shall be represented by an attorney *unless* the party is an individual appearing for the sole purpose of representing her/his own interests or for purposes of representing the interests of a closely held entity pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No.

04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

9. Miners Creek in its Application identified Matt Sliwowski as the Transportation Director of Miners Creek, stated the amount in controversy does not exceed \$15,000 and that Miners Creek is a closely held entity. Matt Sliwowski may represent the interests of Miners Creek in this proceeding.

10. The undersigned ALJ notes that the intervention of A1 Taxi was not executed by an attorney. The Intervention does not state that the person making the filing is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. It is unknown who intends to represent the interests of A1 Taxi.

11. A1 Taxi are not individuals and have not entered an appearance through counsel. Under Rule 1201(b) 4 CCR 723-1, a party in an adjudicatory proceeding before the Commission shall be represented by an attorney *unless* the party is an individual appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a closely held entity pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

12. Since A1 Taxi is not an individual, if it wishes to proceed in this matter without an attorney, it must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See*, Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S. It must also

demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer¹ may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.²

13. A1 Taxi shall be ordered either to obtain counsel or to show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

14. If A1 Taxi elect to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on November 8, 2024.

15. If A1 Taxi elect to show cause, then, on or before close of business on November 8, 2024, it must show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented by legal counsel in this matter. To show cause, each party must make a verified (“*i.e.*, sworn”) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (“including a statement explaining the basis for that assertion”); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party’s company; and (e) if the identified individual is not an officer of the party’s company, has appended to it a resolution from the party’s Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

¹ Section 13-1-127(1)(i), C.R.S., defines “Officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

² As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom management of a limited liability company is vested or reserved “shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status[.]”

16. A1 Taxi is advised, and is on notice, that if it fails either to show cause or to have legal counsel file an entry of appearance on or before close of business on November 8, 2024, then the ALJ may dismiss the Intervention.

17. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as an attorney

IV. REMOTE PREHEARING CONFERENCE

18. Given the procedural posture of the case, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including, but not limited to, deadlines for witness lists, exhibits, and a date(s) for a hearing on the Application.

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 the web-hosted service, 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.

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 with the

Commission for this Proceeding. As such, it is important that all parties ensure that the Commission has the correct email address for them.

21. Parties are on notice that failure to appear at the prehearing conference may result in dismissing the Application without prejudice or dismissing an intervention. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of any objection to the rulings made during the prehearing conference.

22. A prehearing conference in this matter will be scheduled as ordered.

V. ORDER

A. It Is Ordered That:

1. The interventions of AEX Inc. and San Miguel Mountain Ventures are granted.
2. Wilderness Journeys Pagosa Inc. doing business as A1 Taxi ("A1 Taxi") shall file its Commission Authority on or before close of business on November 8, 2024.

3. A1 Taxi shall make the filing concerning legal representation described in ¶ 15 above on or before close of business on November 8, 2024.

4. Alternatively, in the event that A1 Taxi elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before close of business on November 8, 2024.

5. A prehearing conference in this proceeding is scheduled as follows:

DATE: November 13, 2024

TIME: 10:00 a.m.

PLACE: Join by videoconference using Zoom

6. 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.

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

8. The Parties shall be held to the advisements in this Decision.

9. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director