

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0170CP

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN AMPHICAR ADVENTURES LLC DOING BUSINESS AS ROCKY MOUNTAIN AMPHICAR ADVENTURES FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ON REPRESENTATION AND
SCHEDULING A PREHEARING CONFERENCE**

Mailed Date: June 7, 2019

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I. STATEMENT

A. Procedural History.

1. On April 2, 2019, Rocky Mountain Amphicar Adventures, LLC (Applicant) filed the above-captioned proceeding with the Public Utilities Commission of the State of Colorado (Commission) and commenced this proceeding.

2. On April 3, 2019, Applicant filed an Amendment to the application, adding a clearer statement of the proposed authority and adding a restriction that the proposed authority would be restricted to the use of Amphicar Model 770 vehicles.

3. On April 8, 2019, the Commission issued a Notice of Applications Filed, including the application in this proceeding, stating that the application is:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand sightseeing service

between all points within a 2-mile radius of the intersection of Grand Avenue and Vine Street in Grand Lake, State of Colorado.

RESTRICTION:

This [authority] is restricted to the use of Amphicar Model 770 vehicles.

The 30-day intervention deadline set by the Notice ended on May 8, 2019, and no motions for permissive intervention were filed. The deadline for an intervention by Staff of the Public Utilities Commission of the State of Colorado (Staff) was May 15, 2019.

4. On May 10, 2019, Staff filed a Notice of Intervention as of Right by Staff, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401 (Intervention). Staff's Intervention requests that the application be set for hearing and lists a number of Staff's concerns with the application. On May 17, 2019, Staff amended its Intervention to add two more Advisory Staff members.

5. Staff's intervention as of right is acknowledged.

6. As of the date of this Decision, no public comments have been filed in this proceeding.

7. The Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S., on May 22, 2019, and referred it to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

B. Representation

8. The application states that Applicant is a Colorado limited liability company (LLC). The application was signed by Kathy Bevins, as the Manager. Rocky Mountain Amphicar Adventures, LLC, is the Applicant, and it is not represented by counsel in this proceeding.

9. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulation* (CCR) 723-1 (2015), requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, unless certain exceptions are satisfied. To prove in a Commission adjudicatory proceeding that a non-attorney managing member¹ of an LLC can represent its interests, under the criteria of Rule 1201(b)(II), 4 CCR 723-1, the LLC must show the Commission that: (1) it is a closely-held entity, (that is, an entity with no more than three owners);² (2) no more than \$15,000 is in controversy in this proceeding; and (3) the managing member has the authority to represent the interests of the LLC.³ The Commission has emphasized that this requirement is mandatory and has found, if a party does not meet the criteria of this Rule, that a filing made by a non-attorney on behalf of that party is void and of no

¹ As pertinent here, § 13-1-127(2.3)(c), C.R.S., states that a "person in whom the 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[.]"

² Section 13-1-127(1)(a), C.R.S.

³ Section 13-1-127(2.3)(c), C.R.S.

legal effect and that a non-attorney may not represent a party in Commission adjudicative proceedings.⁴

10. This proceeding is an adjudicatory proceeding before the Commission.

11. Applicant has the burden to prove that Rocky Mountain Amphicar Adventures, LLC, meets the criteria of Rule 1201(b)(II), 4 CCR 723-1, and is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant is required do the following: **First**, Applicant must establish that it is a closely-held entity. This means that Applicant must establish that it has “no more than three owners.” Section 13-1-127(1)(a), C.R.S. **Second**, Applicant must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer⁵ 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.⁶

12. The original application filed by Applicant establishes sufficient facts to demonstrate all of the criteria described in the foregoing paragraph satisfactorily.⁷ Therefore, the ALJ finds and concludes that Applicant is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1, and that Kathy Bevins may represent Applicant in this proceeding.

⁴ 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.

⁵ 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.

⁶ See § 13-1-127(2.3)(c), C.R.S.

⁷ See Application filed on April 2, 2019, ¶ 20(f) at page 7 of 7, and the Amendment filed on April 3, 2019.

C. Prehearing Conference, Procedural Schedule, and Hearing Dates.

13. Staff requests an evidentiary hearing on the Application. It is appropriate to hold a prehearing conference, pursuant to Rule 1409 of the Rules of Practice and Procedure, 4 CCR 723-1. **A prehearing conference will be scheduled for June 13, 2019 at 1:30 p.m.**

14. All parties must appear at the prehearing conference. Failure to attend or to participate in the prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the prehearing conference.

15. On April 3, 2019, Applicant filed two Petitions for Waiver/Variance of Rule 6213(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (2017), regarding age of motor vehicles (Petition or Petitions). Those Petitions were docketed by the Commission as Proceeding Nos. 19V-0176CP and 19V-0177CP. Each Petition seeks a waiver of Rule 6213(a) for different Amphicar Model 770 vehicles, both of which are 52 model years of age.

16. *At the prehearing conference*, the parties must be prepared to discuss whether this proceeding should be consolidated with Proceeding Nos. 19V-0176CP and 19V-0177CP.

17. *At the prehearing conference*, the parties also must be prepared to discuss: (a) the date by which Applicant will file its list of witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that it intends to offer into evidence at the hearing; (b) the date by which Staff will file its lists of witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that Staff intends to offer into evidence at the hearing; (c) acceptable dates for the evidentiary hearing on the Application (including how many hearing

days are needed); and (d) whether the Parties wish to file simultaneous post-hearing statements of position, or whether they wish to make oral closing arguments.⁸

18. In considering proposed hearing dates, the Parties are reminded that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter must be issued on or before December 18, 2019. **The evidentiary hearing in this Proceeding must be concluded no later than August 29, 2019.** If a reasonable and workable procedural schedule cannot be negotiated to allow adequate time for the foregoing procedural dates, preparation and issuance of the recommended decision, filing of exceptions, filing of responses to exceptions, and preparation and issuance of the Commission's decision on exceptions, the ALJ will extend the time for the decision by an additional 90 days, pursuant to § 40-6-109.5(1), C.R.S.⁹

19. *At the prehearing conference*, the parties must be prepared to discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 1405, 4 CCR 723-1 are not sufficient.

20. *At the prehearing conference*, the parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 1100 and 1101, 4 CCR 723-1, are not adequate. This discussion will include the treatment of information for which extraordinary protection is or may be sought, there may be such information.

⁸ If post-hearing statements of position are filed, they should be due no later than 14 calendar days from the conclusion of the evidentiary hearing.

⁹ To assist the Parties in selecting proposed hearing dates, as of the date of this Interim Decision, the ALJ is *not* available on the following dates: July 8 to 10, 15, 17, 22, and 23, 2019; and August 19, 2019.

21. *At the prehearing conference*, a Party may raise any additional issues relevant to this Proceeding.

22. The Parties must consult prior to the prehearing conference with respect to the matters to be discussed at the prehearing conference and are encouraged to present, if possible, a procedural schedule and hearing date(s) that are acceptable to all Parties. The ALJ will order counsel for Staff to coordinate these discussions.

23. If the Parties are able to reach agreements on a procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision, those agreements should be presented at the prehearing conference.

D. Other Advisements.

24. **The parties are advised, and are on notice, that they must be familiar with, and abide by, the Rules of Practice and Procedure, found at 4 CCR 723 Part 1.** These Rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>)¹⁰ and in hard copy format from the Commission.

25. **The Parties are advised and are on notice** that they are each responsible for filing pleadings and other documents with the Commission. Pursuant to Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, a filing is made when the Commission receives the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is not filed with the Commission in a timely manner. Pleadings and other documents are filed with the Commission either by using its E-filings System or by filing a

¹⁰ This link will take you to the Commission's Home Page. Then scroll down to the link to "PUC Rules" in the Regulatory Information tab. When you arrive at the PUC Rules page, scroll down to the link "723-1 Practice and Procedure. By clicking on that link, you will find a PDF version of the currently effective Rules of Practice and Procedure.

paper document, including the original and three copies. If you email pleadings and other documents to the Commissioners, the Director of the Commission, an ALJ, or other employees of the Commission **you have not properly filed your pleading**, as required by Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

26. **Each party is specifically advised** that all filings with the Commission must also be served upon all other Parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

27. **Each party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, responding Parties in this proceeding (*i.e.*, the Parties that did not file a motion) have a procedural right to file a written response to the motion within 14 days after service of the motion, unless the Commission or the ALJ shortens the response time.

28. **The parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at www.dora.colorado.gov/puc.

29. Other advisements may be provided in subsequent interim decisions.

II. ORDER

A. **It Is Ordered That:**

1. The Notice of Intervention as of Right by Staff, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401, filed by Staff of the Public Utilities Commission of the State of Colorado (Staff) on May 10, 2019, is acknowledged.

2. Rocky Mountain Amphicar Adventures, LLC (Applicant), has satisfied its burden of proof under Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colorado*

Regulations 723-1, that it is entitled to proceed without an attorney. Kathy Bevins may represent Applicant in this proceeding.

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

DATE: June 13, 2019
TIME: 1:30 p.m.
PLACE: Commission Hearing Room B
1560 Broadway, 2nd Floor
Denver, Colorado

4. Consistent with the discussion above in Section I.C of this Interim Decision at pages 5 through 7, the matters identified there will be discussed at the prehearing conference. Counsel and representatives of the Parties attending the prehearing conference must be prepared to address those matters and must have authority to agree to a procedural schedule, to the resolution of other procedural matters, and to dates for the evidentiary hearing.

5. Failure of any party to attend or to participate in the prehearing conference shall constitute a waiver of any objections to the rulings made, to the procedural schedule established, to the hearing dates scheduled, or the matters decided during the prehearing conference.

6. Consistent with the discussion in ¶¶ I.C.22 and 23 at page 7 of this Interim Decision, prior to the prehearing conference, counsel for Staff shall consult with the representative of Applicant regarding the procedural schedule, hearing date(s), and other procedural matters addressed in this Interim Decision. Counsel for Staff shall coordinate those discussions.

7. If the Parties are able to reach agreements on the procedural schedule, hearing date(s), and the other procedural matters addressed in this Interim Decision, those agreements shall be presented at the prehearing conference.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director