

Decision No. R19-0477-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0176CP

IN THE MATTER OF THE PETITION OF ROCKY MOUNTAIN AMPHICAR
ADVENTURES FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF
THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

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

Mailed Date: June 7, 2019

I. STATEMENT

A. Procedural History.

1. On April 3, 2019, Rocky Mountain Amphicar Adventures, LLC (Petitioner) filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission), seeking a waiver of Rule 6213(a) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2017), regarding age of motor vehicles for an Amphicar Model 770 vehicle, which is 52 model years of age.

2. On April 2, 2019, Petitioner had filed an application with the Commission for authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand sightseeing service. That application was docketed as Proceeding No. 19A-0170CP. On April 3, 2019, Petitioner filed an Amendment to that application, clarifying its 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. Also on April 3, 2019, Petitioner filed a second Petition with the Commission, seeking a waiver of Rule 6213(a), 4 CCR 723-6 (2017), regarding age of a second Amphicar Model 770 vehicle, which is also 52 model years of age. That Petition was docketed as Proceeding No. 19V-0177CP.

4. On May 10, 2019, in the instant proceeding, Staff of the Public Utilities Commission (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 Petition be set for hearing and lists a number of Staff's concerns with the Petition. 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. Staff has also intervened as of right in Proceeding Nos. 19A-0170CP and 19V-0177CP.

7. During the Commission's weekly meeting held on May 22, 2019, the instant proceeding was referred to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ. This ALJ has been assigned to all three proceedings filed by Petitioner.

8. By Decision No. R19-0474-I (mailed on June 7, 2019), the ALJ scheduled a prehearing conference in Proceeding No. 19A-0170CP for June 13, 2019 at 1:30 p.m.

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

9. Staff requests an evidentiary hearing on the Petition. 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.**

10. For the sake of efficiency, the prehearing conference will be heard together with prehearing conferences in Proceeding Nos. 19A-0170CP and 19V-0177CP.

11. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 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 a limited liability company (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

12. *At the prehearing conference*, Petitioner will have 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.

13. *At the prehearing conference*, the Parties must be prepared to discuss whether this proceeding should be consolidated with Proceeding Nos. 19A-0170CP and 19V-0177CP.

14. If these three proceedings are consolidated for purposes of hearing and decision, the procedural dates, for the filing by the Parties of lists of witnesses, detailed summaries of the

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.

testimony of their witness, and copies of the exhibits that they intend to offer into evidence at the hearing, and the hearing dates will be the same.

15. *At the prehearing conference*, the Parties also must be prepared to discuss: (a) the date by which Petitioner 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 Petition (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.⁴

16. *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.

17. *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.

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

⁴ 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.

19. 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.

20. 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.

21. 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.

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. 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

3. Consistent with the discussion above in Section I.B of this Interim Decision at pages 2 through 5, 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.

4. Consistent with the discussion in ¶¶ I.B.20 and 21 at page 5 of this Interim Decision, prior to the prehearing conference, counsel for Staff shall consult with the representative of Rocky Mountain Amphicar Adventures, LLC regarding the procedural schedule, hearing date(s), and other procedural matters addressed in this Interim Decision. Counsel for Staff shall coordinate those discussions.

5. 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.

6. 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

Doug Dean,
Director