

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0343CP

IN THE MATTER OF THE APPLICATION OF STRAWBERRY PARK HOT SPRINGS SHUTTLE LLC 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
ROBERT I. GARVEY
GRANTING INTERVENTION, REQUIRING
FILING, AND SETTING PREHEARING CONFERENCE**

Mailed Date: August 6, 2019

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I. STATEMENT

1. On June 18, 2019, Strawberry Park Hot Springs Shuttle LLC (Applicant) filed an Application seeking a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission).

2. On the same date, 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 in Routt County, State of Colorado.

3. On July 2, 2019, Alpine Taxi/Limo, Inc., doing business as Alpine or Go Alpine (Go Alpine) filed its Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance through its counsel, Mark Valentine. This filing attached Commission Authority No. 26246 held by Go Alpine.

4. On July 16, 2019, Sweet Pea Tours SBS, Inc., doing business as Sweet Pea Tours (Sweet Pea) filed its Petition for Leave to Intervene through Jorge Espinosa. This filing did not identify Mr. Espinosa as an owner or member, nor did it include a Commission authority held by Sweet Pea.

5. On July 17, 2019, Hot Springs Shuttle LLC, doing business as the Hot Springs Shuttle (Hot Springs) filed its Notice of Intervention by Right and Entry of Appearance through Daniel W. White. Mr. White is identified as the owner in the filing. This filing attached Commission Authority No. 55857 held by Hot Springs.

6. On July 25, 2019, the Commission deemed the Application complete and referred it to the undersigned Administrative Law Judge (ALJ) for disposition.

II. INTERVENTIONS

7. Finding good cause, and in the absence of any objection from Applicant, the ALJ finds that Go Alpine has established its standing as an intervenor in accordance with the Commission's Rules of Practice and Procedure.

8. As noted above, Sweet Pea failed to file any Commission authority with its intervention. Sweet Pea shall file a copy of its Commission authority as required by 4 *Code of Colorado Regulations* (CCR) 723-1-1401(e)(I) of the Rules of Practice and Procedure, no later than August 26, 2019. Failure to do so will result in the Intervention being denied.

9. As discussed below, the interventions of Sweet Pea and Hot Springs were neither executed by an attorney nor show cause why Rule 1201, 4 CCR 723-1 does not require representation by legal counsel in this matter.

III. LEGAL COUNSEL/SELF REPRESENTATION

A. Legal Representation of Sweet Pea and Hot Springs

10. The undersigned ALJ notes that the interventions of Sweet Pea and Hot Springs were not executed by an attorney. The Interventions do 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 Sweet Pea and Hot Springs.

11. Sweet Pea and Hot Springs 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 Sweet Pea and Hot Springs are not individuals, if they wish to proceed in this matter without an attorney, they 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. Sweet Pea and Hot Springs 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 Sweet Pea and Hot Springs elect to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on August 26, 2019.

15. If Sweet Pea and Hot Springs elect to show cause, then, on or before close of business on, August 26, 2019, 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

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[.]"

an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, the filing should have 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.

16. Sweet Pea and Hot Springs are advised, and are on notice, that if they fail either to show cause or to have legal counsel file an entry of appearance on or before close of business on August 26, 2019, then the ALJ may dismiss the Interventions.

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. 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. All parties are expected to appear at the hearing. However, any party may appear by telephone by calling (303) 869-0599 a few minutes prior to the scheduled start of the hearing.

20. Failure to appear for the prehearing conference may result in dismissal of the respective Application or intervention.

21. A pre-hearing conference in this matter will be scheduled as ordered.

V. ORDER

A. It Is Ordered That:

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

DATE: September 10, 2019
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. All Parties are required to appear for the prehearing conference, but may appear by phone by calling (303) 869-0599 a few minutes before 9:00 a.m.

3. If Parties experience difficulties calling into the prehearing conference, please call the Colorado Public Utilities Commission main line at 303-894-2000 for assistance.

4. The Intervention filed on July 2, 2019 by Alpine Taxi/Limo, Inc., doing business as Alpine or Go Alpine, Estes Valley Transport, LLC is granted.

5. Sweet Pea Tours SBS, Inc., doing business as Sweet Pea Tours (Sweet Pea) shall file its Commission Authority on or before close of business on August 26, 2019.

6. Sweet Pea and Hot Springs Shuttle LLC, doing business as the Hot Springs Shuttle (Hot Springs) shall make the filing concerning legal representation described in ¶ 15 above on or before close of business on August 26, 2019.

7. Alternatively, in the event that Sweet Pea, or Hot Springs, elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before close of business on August 26, 2019.

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 "Doug Dean".

Doug Dean,
Director