

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0124CP

IN THE MATTER OF THE APPLICATION OF PALI-TOURS LTD 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
MELODY MIRBABA
DENYING PALI'S REQUEST
TO AMEND APPLICATION**

Mailed Date: August 8, 2019

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Summary.

1. This Decision denies Pali-Tours Ltd.'s (Pali) July 30, 2019 request to amend the Application to modify the authority its seeks in this proceeding. As explained below, the request is denied because several of the proposed amendments are internally inconsistent and vague.

B. Background, Findings, Analysis, and Conclusions.

2. This matter concerns Pali's verified Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) to which San Miguel

Mountain Ventures, LLC, doing business as Telluride Express (TEX) objects. As amended by Decision No. R19-0488-I, the Application currently seeks:

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

in call-and-demand shuttle service and call-and-demand sightseeing service between all points within a 30-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.

RESTRICTIONS:

1. Call-and-demand shuttle service is restricted to providing transportation that originates or terminates within a 1.5 mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.
2. Call-and-demand shuttle service is restricted against transportation originating or terminating at the Walker Airfield in Grand Junction, Colorado.
3. This authority is restricted to providing transportation within the boundaries of Mesa County, Colorado.

3. Based upon TEX's "Unopposed Motion to Vacate Hearing . . ." (Motion) filed July 26, 2019, and Pali's ". . . Waiver of Statutory Deadline of Statutory Deadline for Final Commission Decision" (Waiver) filed July 29, 2019, the Administrative Law Judge (ALJ) vacated the evidentiary hearing scheduled for July 30, 2019. Decision No. R19-0639-I. The Motion and Waiver state that the parties have reached a settlement in principle and anticipate making filings which resolve this matter by July 30, 2019. Motion at 1; and Waiver at 1.

4. On July 30, 2019, Pali made a filing seeking to amend the Application to modify the authority sought (Request to Amend). Pali's Request to Amend states that it represents the "final agreement reached between" TEX and Pali. Request to Amend at 1. The ALJ construes

this to mean that the Request to Amend is unopposed. Based on this, the ALJ will waive the remaining response time to the Request to Amend. Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

5. The Request to Amend seeks to amend the Application to seek:

Authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers, in call-and-demand shuttle service and call-and-demand sightseeing service between all points within a 30-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.

RESTRICTIONS:

1. Call-and-demand shuttle service is restricted to providing transportation that originates or terminates within a 1.5 mile radius of the following locations:

- a) The intersection of 3rd Street and Main Street in Palisade Colorado;
- b) Riverbend Park (451 Pendleton Street, Palisade, Colorado);
- c) James M. Robb State Parks, including;
 - i) Connected Lakes, Corn Lake, Fruita State Park, and Island Acres.
- d) Bureau of Land Management Trailheads, including;
 - i) 18 Road (trailhead and campground at 18 Road, north of Fruita, Colorado),
 - ii) Coal Canyon (trailhead, on Canal Road north of Interstate 70 at "Cameo" Exit 46)
 - iii) Horse Mountain (trailhead on 39 Road, south of Highway 6),
 - iv) Kokopelli, (trailhead at the junction of Hawkeye Road & Kokopelli Trail, southwest of Loma, CO),
 - v) Lunch Loops (trailhead at the intersection of Monument Road and Glade Park Road), and
 - vi) Palisade Rim (trailhead and boat ramp at the intersection of Highway 6 and Rapid Creek Road).
- e) United States Forest Service "Grand Mesa" Trailheads including;
 - i) County Line, Mesa Top, Skyway, West Bench, (along Highway 65), and
 - ii) Wild Rose (off of Forest Service Road 100 – also known as Land's End Road).
- f) Any new Bureau of Land Management or United States Forest Service trailhead that is created after the date this authority is issued.

2. Call-and-demand shuttle service is restricted to providing transportation to, from, or between points located east of 32 Road (also known as Colorado State Highway 141), South of Interstate 70, west of the United States Forest Service Boundary, and north of the Bureau of Land Management Boundary.

3. Call-and-demand shuttle service is restricted against transportation originating or terminating at the Walker Airfield in Grand Junction, Colorado.

4. This authority is restricted to providing transportation within the boundaries of Mesa County, Colorado.

Request to Amend at 1-2.

6. All language in an authority must be read together. As is the case with the proposed language here, restrictions often build upon each other, further narrowing the scope of an authority. To identify an approved service territory, all of the language in the authority must be clear and understandable, including each restriction, and how they impact all other restrictions. For example, the Request to Amend proposes to restrict any service (shuttle and sightseeing) to the boundaries of Mesa County, Colorado, and to a 30-mile radius of 3rd and Main Street in Palisade, Colorado. Request to Amend. When read together, this restricts both shuttle and sightseeing service to points of the 30-mile radius of 3rd and Main Street that fall within Mesa County.¹ Although this is not difficult to understand, the Request to Amend proposes additional restrictions, that when read together, result in a proposed authority that is internally inconsistent, confusing, and vague.

7. Specifically, Pali proposes that shuttle service be to, from, or between “points located east of 32 Road (also known as Colorado State Highway 141), South of Interstate 70,

¹ The ALJ notes that proposed restrictions 1 (c) and (d) include points that are not within Mesa County; thus, even if they are within the 30-mile radius of 3rd and Main Street in Palisade, the proposed authority would not authorize service to such points.

west of the United States Forest Service Boundary, and north of the Bureau of Land Management Boundary” while also proposing language that would restrict shuttle service to or from points within a 1.5 mile radius of locations that are *west* of 32 Road, to wit, the locations identified in items 1 (c) and (d). Request to Amend (*compare* Restriction No. 2 with Restriction No. 1 (c) and (d). Thus, one proposed restriction is internally inconsistent with another. And, given the nature of the two referenced restrictions, attempting to read these restrictions together in harmony results in a confusing and unclear authority.

8. Proposed Restriction No. 2 includes vague language that cannot be understood without resorting to other materials. In particular, it does not identify where the United States Forest Service and the Bureau of Land Management boundaries are located, even though *all* call-and-demand shuttle service would be restricted to locations based upon those boundaries. Request to Amend (Restriction No. 2).

9. Even if proposed Restriction No. 2 identified the boundaries’ locations, when read in conjunction with the rest of the proposed amendments, it would still create unclear and confusing restrictions because each proposed shuttle service restriction builds upon other proposed shuttle service restrictions. For example, shuttle service would first be restricted to points within Mesa County that are within a 30-mile radius of the intersection of 3rd and Main Street, then further restricted to points originating or terminating within 1.5 miles of the identified locations, and then further restricted to points: (a) located east of 32 Road, (b) located south of Interstate 70, (c) located west of the United States Forest Service Boundary, and (d) located north of the Bureau of Land Management Boundary. It is difficult to imagine identifying such a service territory without resorting to other tools or documents.

10. The Request to Amend also includes the “James M. Robb State Parks, including” the listed parks, the “Bureau of Land Management Trailheads, including” the listed trailheads, and the “United States Forest Service ‘Grand Mesa’ Trailheads including” the listed trailheads. This language means that any James M. Robb State Parks (including those not listed), any Bureau of Land Management Trailheads (including those not listed), and any United States Forest Service Grand Mesa Trailhead (including those not listed) located within the service territory, as defined by reading the entire authority together (including the proposed restrictions), are included within the authority. Request to Amend (Restriction No. 1(c), (d), and (e)). Even though all these areas would be covered by the authority, the proposed language does not identify where all such trailheads and parks are located. As a result, this language is also vague.

11. The Request to Amend also seeks to include “new” Bureau of Land Management Trailheads or United States Forest Service Trailheads that are created after the authority is issued. This is vague because the locations do not exist, and therefore, cannot be identified.

12. To be acceptable, changes to an application’s requested authority must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

13. As discussed, the ALJ finds that the proposed amendments are vague, confusing, and internally inconsistent. For those reasons, the ALJ concludes that the proposed amendments are not clear, understandable, or administratively enforceable. Consequently, the ALJ denies Pali's Request to Amend.

14. Consistent with Rule 1408 of the Rules of Practice and Procedure, the ALJ encourages settlement. 4 CCR 723-1. In this case, Pali's Request to Amend was an attempt to follow-through with the "final agreement" between the parties. Request to Amend at 1. The ALJ encourages the parties to review their agreement, and submit a new filing that lacks the type of issues identified above, and which presents a clear and understandable picture of the parties' agreement, including potential amendments to the Application.

15. In addition, it is preferable for such a filing to be submitted or signed by both parties. If not, the filing must plainly indicate whether the requested relief is opposed by any party. In either case (signed by all or not), the filing must also indicate whether the proposed relief, if granted, resolves the disputes between the parties. Otherwise, even if future proposed amendments are approved, that does not render the disputes in the proceeding resolved.

16. The parties are on notice that, in order to move this matter forward, the ALJ will schedule a new evidentiary hearing on or before August 29, 2019 if a filing has not been submitted which resolves the parties' disputes.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Pali-Tours Ltd.'s July 30, 2019 request to amend the Application is denied.

2. 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 "Doug Dean".

Doug Dean,
Director