

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING PERMANENT AUTHORITY
SUBJECT TO CONDITIONS**

Mailed Date: August 13, 2019

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Summary.

1. This Decision grants the Joint Motion to Amend Application to Modify Requested Authority (Joint Motion) and grants Pali-Tours Ltd.'s (Pali) Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application), as amended by this Decision.

B. Background, Findings, Analysis, and Conclusions.

2. This matter concerns Pali's verified Application to which San Miguel Mountain Ventures, LLC, doing business as Telluride Express (TEX) objects. TEX is the only intervener in this proceeding. Thus, Pali and TEX are the only parties in this matter.

3. 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.

Decision No. R19-0488-I at ¶ 10. The Administrative Law Judge (ALJ) notes that Pali submitted a “Revision to Amended Application” (Revision) on June 18, 2019, seeking to further amend the authority sought. The ALJ has not ruled on that. The ALJ notes that the Revision sought to again modify the proposed authority (above) in a manner that was had no practical legal effect. The ALJ finds that this Decision moots the Revision.

4. On July 30, 2019, Pali’s made another filing requesting to amend (Request to Amend) the authority sought by the Application. On August 8, 2019, the ALJ denied the Request to Amend, finding that the July 30, 2019 proposed amendments were internally inconsistent, confusing, and vague, and thus unenforceable. Decision No. R19-0677-I. 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 encouraged the parties to review their agreement, and submit a new filing that lacks the type of issues identified in Decision No. R19-0677-I, and which

presents a clear and understandable picture of the parties' agreement, including potential amendments to the Application. Decision No. R19-0677-I.

5. On August 12, 2019, the parties submitted the Joint Motion. The Joint Motion requests that the Application's proposed authority be amended as set forth in Exhibit A to the Joint Motion. Joint Motion at ¶ 3. The Joint Motion states that TEX does not object to amending the authority as requested. *Id.* at ¶ 4.

6. As the Joint Motion is submitted by all parties to the proceeding, the ALJ will waive the response time to it, as permitted by Commission Rule 1400(b). Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The Joint Motion proposes to amend the Application to seek authority to operate as a common carrier by motor vehicle for hire for the:

(I) Transportation of passengers in call-and-demand shuttle service between all points in Mesa County, State of Colorado, that are located within a 30-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.

Restrictions:

(1) Item (I) is restricted to providing transportation service 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 at 451 Pendleton Street, Palisade, Colorado;

C) The following four sections of the James M. Robb State Park:

i) Connected Lakes;

ii) Corn Lake;

iii) Fruita State Park; and

iv) Island Acres.

D) the following trailheads managed by the Bureau of Land Management:

i) 18 Road (at 18 Road north of Fruita, Colorado);

ii) Coal Creek (on Canal Road north of Interstate 70 at Cameo Exit 46);

iii) Horse Mountain (on 39 Road south of U.S. Highway 6);

iv) Kokopelli (at the junction of Hawkeye Road and Kokopelli southwest of Loma, Colorado)

- v) Lunch Loops (at the intersection of Monument Road and Glad Park Road);
and
- vi) Palisade Rim (at the intersection of U.S. Highway 6 and Rapid Creek Road).
 - E) the following trailheads managed by the United States Forest Service:
 - i) County Line, Mesa Top, Skyway, and West Bench (each located along Colorado Highway 65 in Grand Mesa); and
 - ii) Wild Rose (off Land's End Road).

(II) Transportation of passengers in call-and-demand sightseeing service between all points located within a 30 mile radius of the intersection of 3rd and Main Street in Palisade, Colorado.

Joint Motion, Exhibit A.

8. 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.

9. The ALJ finds that the proposed amendments are restrictive, clear and understandable, and administratively enforceable. The ALJ concludes that the proposed amendments meet the remaining requirements discussed above. Consequently, the ALJ grants the Joint Motion, and amends the Application as detailed in ¶ 7 above.

10. The Joint Motion also indicates that if the proposed authority is amended as requested, that the disputes between the parties is resolved and there is no need for an evidentiary hearing. Joint Motion at ¶¶ 5-6. It also states that if the Joint Motion is granted (*i.e.*, the

proposed authority is amended as requested), that TEX “anticipates withdrawing its Intervention.” *Id.* at ¶ 7. Based on these statements, the ALJ concludes that the Application, as amended by this Decision, is unopposed.

11. Because the Application is uncontested, is verified, includes sufficient facts to make a determination on the relief sought, is supported by the required documents and information, and a hearing is not required or requested, the ALJ will consider the Application, as amended by this Decision, based on the record without a formal hearing. § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1.

12. The record shows that Pali is a Colorado limited liability corporation organized in Colorado. Articles of Organization. The verified Application establishes that Pali is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. Application, ¶ 21. The verified Application establishes that Pali has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. *Id.* at ¶¶ 10 and 13. One of Pali’s owners, Dave Smith, has over two decades of experience in the hospitality business, including supervisory and management experience. *Id.* at ¶ 14. Based on this, the ALJ finds that Pali is managerially fit to operate under the requested authority. Finally, a review of the verified Application indicates a need for the proposed service. *Id.* at ¶ 11.

13. Based on the foregoing and the record, the ALJ concludes that because Pali is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the authority, as amended by this Decision, should be granted, subject to the below conditions.

14. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Amend Application to Modify Requested Authority is granted. Pali-Tours Ltd.'s (Pali) Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) is amended as set forth in ¶ 7 above.

2. Consistent with the above discussion, Pali's Application, as amended by this Decision, is granted subject to the conditions identified below. Pali is granted a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle as follows:

Authority to operate as a common carrier by motor vehicle for hire for the

(I) Transportation of
passengers in call-and-demand shuttle service

between all points in Mesa County, State of Colorado, that are located within a 30-mile radius of the intersection of 3rd Street and Main Street in Palisade, Colorado.

RESTRICTIONS:

(1) Item (I) above is restricted to providing transportation service 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 at 451 Pendleton Street, Palisade, Colorado;
- C) The following four sections of the James M. Robb State Park:
 - i) Connected Lakes;
 - ii) Corn Lake;

- iii) Fruita State Park; and
 - iv) Island Acres.
- D) The following trailheads managed by the Bureau of Land Management:
- i) 18 Road (at 18 Road north of Fruita, Colorado);
 - ii) Coal Creek (on Canal Road north of Interstate 70 at Cameo Exit 46);
 - iii) Horse Mountain (on 39 Road south of U.S. Highway 6);
 - iv) Kokopelli (at the junction of Hawkeye Road and Kokopelli southwest of Loma, Colorado)
 - v) Lunch Loops (at the intersection of Monument Road and Glad Park Road); and
 - vi) Palisade Rim (at the intersection of U.S. Highway 6 and Rapid Creek Road).
- E) The following trailheads managed by the United States Forest Service:
- i) County Line, Mesa Top, Skyway, and West Bench (each located along Colorado Highway 65 in Grand Mesa); and
 - ii) Wild Rose (off Land's End Road).
- (II) Transportation of
passengers in call-and-demand sightseeing service
between all points located within a 30 mile radius of the intersection of
3rd and Main Street in Palisade, Colorado.
3. Pali must operate in accordance with all applicable Colorado laws and Commission rules.
4. Pali may not commence operation under the authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:
- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;

- (b) paying to the Commission, the motor vehicle fee for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. To this end, Pali must file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff must be filed as a new Advice Letter proceeding and must comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at www.colorado.gov/pacific/dora/common-carriers); and
- (d) paying the applicable issuance fee.

5. If Pali does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit will be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

6. The Commission will notify Pali in writing when the Commission's records demonstrate compliance with ordering paragraph 4.

7. Proceeding No. 19A-0124CP is closed.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the

Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

- b. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge