

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0036CP

IN THE MATTER OF THE APPLICATION OF PEDAL THE PEAKS DURANGO 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
MELODY MIRBABA
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: March 9, 2020

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I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On January 23, 2020, Pedal the Peaks Durango, LLC (Pedal) initiated this proceeding by filing a verified Application for New Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission. The Application seeks authority to operate as a common carrier for the transportation of passengers in call-and-demand shuttle service between all points within a

45-mile radius of Main Avenue and College Drive in Durango, Colorado. *Id.* and Application at ¶ 9.

2. The Application also states that Pedal wishes to be represented by a non-attorney, (David Howard), that Pedal has no more than three owners, and that less than \$15,000 are at issue in this proceeding. Application at ¶ 21. Two people own Pedal; Mr. Howard is one of the owners. *Id.* at ¶¶ 6 and 21.

3. The Commission gave public notice of the Application on January 27, 2020 consistent with Rule 1206 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

4. On January 31, 2020, San Miguel Mountain Ventures, LLC (San Miguel) filed a "Notice of Intervention of Right and Alternative Petition for Intervention and Entry of Appearance of San Miguel Mountain Ventures, LLC and Request for Hearing" (Intervention). At the same time, San Miguel also filed its letter of authority. *See* Attachment to Intervention. San Miguel objects to the Application, requests that the Commission deny it, and requests a hearing on the Application. Intervention at 2-3. As grounds to intervene, San Miguel explains that the Application seeks to provide transportation service over a geographical territory that is encompassed within its authority. Specifically, San Miguel asserts that it is authorized to provide taxi, shuttle, charter, and sightseeing service between points within a 100-mile radius of the post office in Telluride, Colorado and that radius includes areas within a 45-mile radius of Durango, Colorado (the area the Application seeks to cover). *Id.* at 1.

5. During the Commission's weekly meeting held March 4, 2020, the Commission deemed the Application complete and referred this matter to an administrative law judge (ALJ) for disposition.

A. Interventions

6. The ALJ finds that San Miguel has properly intervened of right, consistent with Commission Rule 1401(e)(I), 4 CCR 723-1, because its letter of authority includes at least one service territory in conflict with the authority Pedal seeks here. *See* Intervention, at 1; Attachment to Intervention, at 1. As a result, San Miguel is a party and intervener in this proceeding.

B. Pedal's Request to Be Represented by a Non-Attorney

7. The ALJ finds that Pedal established that it may be represented by a non-attorney in this proceeding, consistent with § 13-1-127(2), C.R.S. (2019), and Rule 1201(b)(II), 4 CCR 723-1. Specifically, the ALJ finds that Pedal is a closely-held entity with no more than three owners, the amount in controversy is less than \$15,000, and that the person identified to represent Pedal (Mr. Howard) has authority to do so. Application at ¶ 21. As such, the ALJ will allow Mr. Howard to represent Pedal in this proceeding.

C. Prehearing Conference

8. Because the Application is contested, the ALJ will hold an evidentiary hearing on whether the Application should be granted. In anticipation of the evidentiary hearing, the ALJ is scheduling a telephonic prehearing conference in accordance with Rule 1409(a), 4 CCR 723-1.

9. At the prehearing conference, a hearing date will be scheduled, and deadlines to file and exchange witness and exhibits lists and exhibits will be set. As a result, the parties must be prepared to discuss how much time they will require to present their evidence at hearing, the timing for a hearing, and the referenced deadlines. Any party may raise other issues relevant to this proceeding at the prehearing conference, including any agreements impacting this

proceeding. The ALJ encourages the parties to discuss and agree to a proposed procedural schedule and hearing date before the prehearing conference.

10. *Pedal is on notice that* failure to appear at the prehearing conference may result in a decision adverse to its interests, including deeming dismissing the Application for failing to pursue or prosecute it.

11. *San Miguel is on notice that* failing to appear at the prehearing conference may result in a decision adverse to its interests, including deeming their Interventions abandoned or withdrawn, and granting the Application.

12. *All parties are on notice that* the ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

D. Other Advisements

13. The Commission's Rules of Practice and Procedure, 4 CCR 723-1, and Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, apply to this matter. The ALJ expects the parties to be familiar with and comply with these Rules. Parties may obtain copies of the Rules from the Commission in paper form or on the Commission's web-site at:

<https://www.colorado.gov/pacific/dora/pucrules>.

14. As the party seeking a Commission-issued authority, Pedal bears the burden of proof by a preponderance of the evidence that all applicable legal requirements are met. §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500, 4 CCR 723-1; *see also* Rule 6203, 4 CCR 723-6. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence,

on the whole and however slightly, tips in favor of that party. *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986). Although the preponderance standard applies, the evidence must be substantial. Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion; it must be enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *City of Boulder v. Public Utilities Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000). As such, Pedal is responsible for identifying all relevant legal requirements for it to receive the requested authority, and for presenting sufficient evidence addressing those requirements.

II. ORDER

A. It Is Ordered That:

1. A prehearing conference is scheduled as follows:

DATE: March 18, 2020

TIME: 11:00 a.m.

CALL: (732) 419-7881; when prompted, enter PIN 364958#

2. San Miguel Mountain Ventures, LLC is an intervener of right in this proceeding.

3. Consistent with the above discussion, Mr. David Howard is authorized to represent Pedal the Peaks Durango, LLC in this proceeding.

4. 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