

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.

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

Mailed Date: March 30, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Summary.

1. This Decision approves the Stipulation and Conditional Withdrawal of Intervention, including the restrictive amendment to the Application proposed therein, and grants Pedal the Peaks Durango LLC's (Pedal the Peaks) Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application), as amended.

B. Background, Findings, Analysis, and Conclusions.

2. This matter concerns Pedal the Peak's verified Application to which San Miguel Mountain Ventures, LLC, (San Miguel) objects.¹ San Miguel is the only intervener in this proceeding. Thus, Pedal the Peaks and San Miguel are the only parties in this matter.

¹ Only the procedural history necessary to understand this Decision is included.

3. 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 and is restricted to service originating and terminating at the following trailheads: SpurLine, Hermosa Creek, Twin Buttes, Colorado Trail, Molas Pass, Coal Bank Pass, Dry Fork, Slide Rick, and Kennebec Pass. Application at ¶ 10.

4. On March 25, 2020, San Miguel filed a “Stipulation and Conditional Withdrawal of Intervention” (Stipulation) which explains that the parties have reached an agreement to resolve this matter by seeking to restrictively amend the Application to prohibit service to and from airports, and to restrict service to cyclists. If the proposed amendments are approved, the Application would seek:

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 within a 45 mile radius of the intersection of Main Avenue and College Drive, State of Colorado.

Restrictions:

- (A) To service that originates at or terminates at the following bicycle trailheads: (a) SpurLine; (b) Hermosa Creek; (c) Twin Buttes; (d) Colorado Trail; (e) Molas Pass; (f) Coal Bank Pass; (g) Dry Fork; (h) Slide Rock; and, (i) Kennebec Pass.
- (B) To the transportation of cyclists.
- (C) Against the provision of service to and from airports.

Stipulation at ¶ 3.

5. The Stipulation states that San Miguel does not object to the Commission granting the Application with the proposed restrictive amendments, and that it withdraws its intervention under such circumstances. *Id.* The Stipulation also states that Pedal the Peaks

agrees to the restrictive amendments, and supports Commission approval of the parties' Stipulation. *Id.* at ¶ 5.

6. As an initial matter, the ALJ waives the response time to the Stipulation because all parties to this proceeding have agreed to it. *See* Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. To be acceptable, changes to an application's requested authority must be restrictive in nature, clear and understandable, and 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.

8. The ALJ finds that the proposed amendments are restrictive, clear and understandable, and enforceable. The ALJ concludes that the proposed amendments meet the remaining requirements discussed above. Consequently, the ALJ approves the Stipulation. The Application is amended as detailed in ¶ 4 above. Because the Application is amended as proposed in the Stipulation, San Miguel no longer objects to it, and withdraws its intervention. *See* Stipulation at ¶ 3. As such, the ALJ concludes that the amended Application is unopposed.

9. Because the Application is uncontested and 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 amended

Application, based on the record without a hearing. § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1.

10. The record shows that Pedal the Peaks is a Colorado limited liability corporation in good standing. Certificate of Fact of Good Standing. The Application indicates that Pedal the Peaks already has an established outdoor-minded business with a store-front and office space from which it will run the proposed shuttle service. Application at ¶¶ 11-12. Pedal the Peaks 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 Confidential Bank Statements (filed with the Application). One of Pedal the Peak's owners, David Howard, has been a manager or business owner for his "entire adult life." Application at ¶ 14. That includes starting up and managing Pedal the Peaks from 1992 to 2002, then working as a manager for a car dealership before returning to manage Pedal the Peaks. *Id.* Based on all of this and the record as a whole, the ALJ finds that Pedal the Peaks is managerially fit to operate under the requested authority. A review of the verified Application indicates a need for the proposed service. *Id.* at ¶ 11. Finally, Pedal the Peaks 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 at ¶ 22.

11. Based on the foregoing and the record, the ALJ concludes that Pedal the Peaks 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.

12. 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. Consistent with the above discussion, the Stipulation and Conditional Withdrawal of Intervention is approved. The Application is amended as set forth in ¶ 4 above, and San Miguel Mountain Ventures LLC's Intervention is withdrawn.

2. Pedal the Peaks Durango LLC's (Pedal the Peaks) Application, as amended by this Decision, is granted subject to the conditions identified below. Pedal the Peaks 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

Transportation of

passengers in call-and-demand shuttle service

between all points within a 45 mile radius of the intersection of Main Avenue and College Drive, State of Colorado.

RESTRICTIONS:

This Authority is restricted as follows:

(I) To service that originates or terminates at the following bicycle trailheads:

(a) SpurLine;

(b) Hermosa Creek;

(c) Twin Buttes;

(d) Colorado Trail;

(e) Molas Pass;

(f) Coal Bank Pass;

(g) Dry Fork;

(h) Slide Rock; and

- (i) Kennebec Pass;
 - (II) To the transportation of cyclists; and
 - (III) Against service to and from airports.
- 3. Pedal the Peaks must operate in accordance with all applicable Colorado laws and Commission rules.
- 4. Pedal the Peaks 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, Pedal the Peaks 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 Pedal the Peaks 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 Pedal the Peaks in writing when the Commission's records demonstrate compliance with ordering paragraph 4.

7. The May 19, 2020 hearing and the deadlines established by Decision No. R20-0197-I are vacated.

8. Proceeding No. 20A-0036CP is closed.

9. 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.

10. 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.

11. If exceptions to this Recommended Decision are filed, they may 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

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge