

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0652CP

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
MELODY MIRBABA
CONTINUING AND RESCHEDULING HEARING,
ESTABLISHING NEW DEADLINES, AND
REQUIRING SWEET PEA TOURS TO SHOW CAUSE**

Mailed Date: April 7, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Evidentiary Hearing.

1. The Administrative Law Judge (ALJ) scheduled a remote status conference for April 6, 2020 to discuss how to manage the May 7, 2020 hearing and other related matters. Decision No. R20-0203-I, issued March 30, 2020. Parties were required to appear remotely for the status conference, either online by video conference, or by telephone. *Id.* The ALJ called the status conference as noticed. Mr. Abdullah Batayneh appeared on behalf of Strawberry Park Hot Springs Shuttle LLC by telephone; and Mr. Daniel White appeared on behalf of Hot Springs Shuttle LLC by video conference. Sweet Pea Tours SBS Inc. (Sweet Pea Tours) failed to appear.

2. During the hearing, the parties discussed the feasibility of moving forward with the current hearing date, whether a hearing could be held by video conference, and other related matters. Mr. White expressed concerns about holding an evidentiary hearing by video conference and while Mr. Batayneh was willing to hold the hearing by video conference, he agreed that the hearing should be held in the manner the ALJ deems most appropriate.

3. The ALJ considered the parties' positions, issues impacting the evidentiary hearing, such as the number of witnesses that may testify, and the number of documents that parties may wish to present during the hearing. The ALJ also considered Colorado and Routt County public health orders, Governor Polis's stay-at-home order, public safety issues, and whether it is feasible to hold an in-person hearing in the near future or a video-conference hearing. Based on all of these considerations, the ALJ determined that based on current information, it will be especially challenging to hold a video-conference evidentiary hearing, and that an in-person evidentiary hearing should be held. For many of the same reasons discussed in Decision No. R20-0203-I, the ALJ concluded that the hearing cannot proceed on May 7, 2020 as scheduled. The May 7, 2020 hearing date will be continued.

4. With the parties' approval, the ALJ scheduled a new in-person hearing date for September 10, 2020, and set new procedural deadlines to better align with the September hearing date. The ALJ enters additional appropriate orders to effectuate the new hearing date.

5. The September hearing date was chosen to allow enough time to pass to increase the likelihood that the relevant public health orders and related executive orders may not be in place, and that in-person gatherings may not present public health risks. Even so, it is still uncertain whether conditions will improve enough to allow for an in-person hearing as planned. As such, depending on how conditions develop, the ALJ may schedule a status conference before the deadlines to file and serve witness and exhibit lists and exhibits.

B. Final Telephone Prehearing Status Conference.

6. The ALJ and a court reporter must travel to Steamboat Springs for the September 10, 2020 hearing. To confirm that an evidentiary hearing remains necessary, the ALJ will schedule a final telephone prehearing status conference to take place the week of the

September 10, 2020 hearing date. Indeed, a similar hearing is scheduled for May 5, 2020, a few days before the May 7, 2020 hearing date. That hearing will be continued to the new final telephone prehearing status conference date, as set forth below. All parties are expected to appear for this final prehearing status conference.

C. Deadline for Final Commission Decision to Issue.

7. Given the circumstances and associated uncertainty, during the status conference, the ALJ also expressed concerns about the deadline under § 40-6-109.5, C.R.S., for a final Commission decision to issue. In response, Mr. Batayneh waived the statutory deadline under § 40-6-109.5, C.R.S., for a final Commission decision to issue.

D. Sweet Pea Must Show Cause.

8. Sweet Pea's failure to appear at the status conference raises concerns about whether Sweet Pea has abandoned its intervention in this proceeding. Indeed, in prior orders scheduling hearings in this matter, the ALJ warned Sweet Pea that failing to appear may be deemed abandoning or withdrawing its intervention, or that failing to appear may result in decisions adverse to its interests. *See e.g.*, Decision Nos. R20-0061-I issued January 28, 2020 and R20-0030-I issued January 14, 2020. Given those warnings, Sweet Pea should have reasonably expected the same to occur should it fail to appear at the April 6, 2020 status conference. Nonetheless, given the extraordinary circumstances caused by the COVID-19 virus, the ALJ will allow Sweet Pea an opportunity to show cause why it should be permitted to continue to participate in this proceeding despite its failure to appear at the April 6, 2020 hearing.

9. Sweet Pea will be ordered to make a show cause filing using the Commission's E-Filing system.¹ If Sweet Pea fails to do so, the ALJ will deem its failure to appear at the April 6, 2020 status conference and failure to make the show cause filing as abandoning or withdrawing its intervention in this proceeding, and will dismiss Sweet Pea as a party.

10. In addition, the parties are on notice that failure to appear at any hearing (including status conferences) may result in a decision adverse to their interests, including dismissing interventions and the Application as abandoned or withdrawn, or granting the ultimate relief opposing parties seek in this proceeding.

II. ORDER

A. It Is Ordered That:

1. The statutory deadline under § 40-6-109.5, C.R.S., for a final Commission decision to issue is waived.

2. The telephonic status conference scheduled for May 5, 2020 at 9:00 a.m. is continued and rescheduled as set forth below. The evidentiary hearing scheduled for May 7, 2020 at 9:00 a.m. is continued, and rescheduled as set forth below. The deadlines established by Decision No. R20-0061-I are vacated.

3. A final telephone prehearing status conference is scheduled as follows:

DATE:	September 8, 2020
TIME:	10:00 a.m.
CALL:	+1 (262)563-8416; When prompted, Enter PIN: 275 441 424#

¹ Sweet Pea is ordered to make the filing electronically through the Commission's E-Filing system because the Commission's offices are currently closed, and thus, it is unclear when the Commission will be able to process mailed filings. The ALJ notes that the record demonstrates that Sweet Pea is a registered user of the Commission's free E-Filing system; thus, requiring the filing to be made using this system does not create a burden on Sweet Pea.

4. An evidentiary hearing on the merits of the Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire in this proceeding is scheduled as follows:

DATE: September 10, 2020
TIME: 9:00 a.m.
PLACE: Routt County Combined Courthouse
1955 Shield Drive
Steamboat Springs, Colorado 80487

5. **Deadlines for Witness Lists, Exhibit Lists and Exhibits.** Strawberry Park Hot Springs Shuttle LLC (Strawberry Park) must file with the Commission and serve on all parties its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on August 20, 2020.** The Interveners must file with the Commission and serve on all parties their pre-marked exhibits, witness lists, and exhibit lists **by the close of business on August 27, 2020.**

6. **Requirements for Witness Lists.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

7. **Requirements for Exhibit Lists.** Exhibit lists must include the hearing exhibit number assigned to each exhibit and a brief description of the exhibit. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

8. **Requirements for Exhibits.**

a. **Assigned Hearing Exhibit Numbers & Pre-Marking Exhibits.** Strawberry Park is assigned hearing exhibit numbers 1 through 99; Hot Springs Shuttle LLC is assigned hearing exhibit numbers 100 through 199; and Sweet Pea Tours SBS, Inc. (Sweet Pea Tours) is assigned hearing exhibit numbers 200 through 299. For example, Strawberry Park should pre-mark its first exhibit as "Hearing Exhibit 1." The parties must pre-mark the original, and all copies of their hearing exhibits before the evidentiary hearing is scheduled to begin with a hearing exhibit number,

consistent with the parties' assigned exhibit number blocks (listed above page-number each page of any hearing exhibit that is longer than two pages. The parties must number the first page of hearing exhibits as page 1, regardless of content.

c. **Copies of Exhibits.** At the September 10, 2020 hearing, the parties must bring an original and four copies of each exhibit they intend to introduce at the hearing (for a total of five), with each copy (and the original) pre-marked with a hearing exhibit number. The original will be the official hearing exhibit for the record; one copy is for the Administrative Law Judge; one copy is for the witness stand; and the remaining two copies are for the other parties in this proceeding.

9. **Sweet Pea Tours Must Show Cause.** On or by close of business **on April 27, 2020**, Sweet Pea Tours must make a filing with the Commission using the Commission's E-Filing system showing cause for its failure to appear for the properly noticed April 6, 2020 remote status conference, and showing cause why it should be permitted to continue to participate in this proceeding despite its failure to appear at the hearing.

10. 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