

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
DISMISSING SWEET PEA TOURS AS A PARTY**

Mailed Date: April 28, 2020

I. STATEMENT, BACKGROUND, FINDINGS, ANALYSIS, AND CONCLUSIONS

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 related matters. Decision No. R20-0203-I, issued March 30, 2020. The 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) failed to appear.

2. Because Sweet Pea's failure to appear at the remote status conference raised concerns about whether it abandoned its Petition to Intervene (Intervention) in this proceeding, Sweet Pea was ordered to make a filing by close of business on April 27, 2020 showing cause why it should be permitted to continue to participate in this proceeding. Decision No. R20-0227-I issued April 7, 2020. In the order requiring Sweet Pea to show cause, the ALJ noted that in prior orders scheduling hearings in this matter, Sweet Pea was warned 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. *Id.* at ¶ 8, *see e.g.*, Decision Nos. R20-0061-I issued January 28, 2020 and R20-0030-I issued January 14, 2020. The ALJ found that 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. *Id.* at ¶ 8. Given the extraordinary circumstances caused by the COVID-19 virus, rather than immediately dismissing Sweet Pea as a party for failing to appear at the hearing, the ALJ allowed Sweet Pea an opportunity to show cause why it should be permitted to continue to participate in this proceeding despite its failure to appear. *Id.* Sweet Pea was warned that if it fails to make a show cause filing as required, that 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. *Id.* at ¶ 9.

3. The Decision scheduling the remote status conference and the Decision ordering Sweet Pea to make a show cause filing were served on Sweet Pea through the Commission's E-Filing System. *See* Certificates of Service for Decision Nos. R20-0203-I and R20-0227-I. Because Sweet Pea is a registered filer with the Commission's E-Filing System, and Decision Nos. R20-0203-I and R20-0227-I were served on Sweet Pea through the Commission's E-Filing System, the ALJ concludes that Sweet Pea received proper notice of the remote status conference, and the order requiring it to show cause. Rule 1205(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

4. Despite being given two weeks to make an electronic show cause filing through the Commission's E-Filing system, Sweet Pea failed to do so. In fact, Sweet Pea has not

participated in this matter since appearing at the January 28, 2020 prehearing conference. *See* Decision No. R20-0061-I issued January 28, 2020.

5. Sweet Pea's inaction is contrary to a party with a substantial pecuniary or tangible interest in this proceeding. Based on Sweet Pea's failure to appear at the April 6, 2020 remote status conference, and its failure to make a show cause filing or any other filing since it failed to appear, the ALJ concludes that Sweet Pea has abandoned or withdrawn its Intervention in this proceeding.

6. Sweet Pea has the burden to pursue its Intervention. Its failure to pursue its Intervention warrants dismissing it as a party, particularly given the circumstances here. That is, Sweet Pea failed to appear at a hearing despite prior orders warning that failure to appear may result in dismissal of an intervention, and then, after being specifically warned that failing to make a show cause filing would result in dismissing it as a party, Sweet Pea still failed to act. Sweet Pea assumed the risk that it would be dismissed as a party if it failed to make a show cause filing as required. Decision No. R20-0227-I. For all of these reasons, the ALJ concludes that Sweet Pea should be dismissed as a party.

II. ORDER

A. It Is Ordered That:

1. Sweet Pea Tours SBS Inc. is dismissed as a party to this proceeding.

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