

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0089CP

IN THE MATTER OF THE APPLICATION OF POWDERHORN PACIFIC 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
ADDRESSING PALI'S REPRESENTATION,
SCHEDULING REMOTE EVIDENTIARY HEARING,
AND ESTABLISHING PROCEDURES AND DEADLINES**

Mailed Date: May 14, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Procedural History.

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

This matter concerns Powderhorn Pacific LLC's (Powderhorn) Application for New Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

2. On March 31, 2020, Pali-Tours Ltd. (Pali) filed an Entry of Appearance and Intervention (Pali's Intervention) seeking to intervene of right in this proceeding. Although Pali's Intervention was filed by a non-attorney, (Mr. Dave Smith), it did not address whether Pali is eligible to be represented by a non-attorney in this matter. *See generally*, Pali's Intervention.

3. In anticipation of the evidentiary hearing on the Application, the Administrative Law Judge (ALJ) scheduled this matter for a remote prehearing conference for May 12, 2020 at 2:00 p.m. Decision No. R20-0324-I, issued May 1, 2020. The ALJ also found that Pali failed to establish that it may be represented by a non-attorney in this proceeding. *Id.* As such, the ALJ ordered that by May 11, 2020, Pali must either have counsel enter an appearance or make a filing

establishing it is eligible to be represented by a non-attorney, per Commission Rule 1201, 4 *Code of Colorado Regulations* 723-1 of the Rules of Practice and Procedure, and § 13-1-127, C.R.S.

4. On May 11, 2020, Pali made a filing titled “Legal Representation for Pali-Tours Ltd.” (Pali’s Representation filing). In that filing, Pali seeks to be represented by non-attorney Mr. Dave Smith, and addresses the requirements in Rule 1201 and § 13-1-127, C.R.S., to be represented by a non-attorney.

B. Matters Addressed During Remote Prehearing Conference.

5. The ALJ called the matter for the remote prehearing conference as noticed on May 12, 2020. Powderhorn appeared through a representative and through counsel; Mr. Smith appeared for Pali. During the prehearing conference, the ALJ first addressed Pali’s Representation filing. Mr. Smith clarified that he is Pali’s sole owner. The ALJ found that Pali established it is eligible to be represented by a non-attorney, Mr. Smith, and ordered that Mr. Smith may represent Pali in this proceeding. Specifically, Pali established that it is a closely-held entity with only one owner, that less than \$15,000 are at issue here, and that the person whom Pali seeks to represent it, Mr. Smith, has authority to do so as Pali’s sole owner.

6. The ALJ next addressed the manner in which the evidentiary hearing will be held. The parties agreed that they are capable and willing to hold the evidentiary hearing by video-conference. The ALJ scheduled the remote evidentiary hearing and established procedural deadlines, to which the parties agreed (set forth below). This Decision reiterates and expands on requirements for the remote hearing that were discussed during the remote prehearing conference.

C. Remote Evidentiary Hearing.

7. The ALJ finds that given the uncertainty which the COVID-19 pandemic creates on future public gatherings, it is in the parties' interests to hold a remote evidentiary hearing and that doing so is consistent with public health advisories to prevent the spread of COVID-19.

8. This Decision's requirements are intended to ensure that the remote evidentiary hearing proceeds efficiently without technical problems. It is vitally important that the parties follow all requirements in this Decision in order to facilitate holding the hearing remotely. Failing that, difficulties may arise during the hearing which may cause unnecessary delay and wasted resources.

9. The Commission will use the web-hosted video conferencing service GoToMeeting to hold the remote evidentiary hearing. This is the same tool that was used to hold the remote prehearing conference in this matter. GoToMeeting allows participants to take part in the hearing by video-conference using a computer, or by telephone. Video-conference participation allows for evidence to be presented in a manner most similar to that which occurs during in-person hearings. For example, participating by video-conference allows parties and witnesses to view and display exhibits on the video-conference screen while the exhibits are being testified to and offered into evidence. For these reasons, the parties will be required to participate in the hearing by video-conference. It is strongly preferred that witnesses also participate by video-conference. Witnesses unable to participate by video-conference may testify by telephone if the parties comply with all other requirements of this Decision.

10. To minimize the potential that the video-conference hearing may be disrupted by non-parties, the parties may not distribute the GoToMeeting link, access or ID code, and

telephone number to anyone not participating in the hearing.¹ As explained in Attachment A, the ALJ will take additional steps to avoid disruptions.²

11. *All parties are on notice that* failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek. This may include dismissing the Application for having failed to prosecute it, granting the authority the Application seeks, or dismissing an intervener as a party for abandoning its intervention.

II. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, Pali-Tours Ltd. (Pali) may be represented by Mr. Dave Smith in this matter.

2. A remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATE: June 30, 2020

TIME: 9:00 a.m.

METHOD: Join by video-conference online at:
<https://app.gotomeeting.com/?meetingId=486761309>

OR

Join by telephone:
Dial ++1 (571) 317-3122, and
when prompted, enter access or ID code: 486-761-309

¹ The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those simply wishing to observe the hearing may do so without joining the hearing through the link or by telephone.

² Attachment A is a much different attachment than that provided for the remote prehearing conference. The parties must carefully review Attachment A, as they will be held to comply with it.

3. The parties may not distribute the above GoToMeeting link, access or ID code, and telephone number to anyone not participating in the hearing. Parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations, consistent with the requirements of this Decision, including Attachment A to this Decision. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated. Attachment A includes important requirements to facilitate the hearing, and technical information on participating in the evidentiary hearing through GoToMeeting.

4. **Video-Conference Participation.** The parties are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties must ensure they are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using GoToMeeting. Parties whose witnesses will participate in the hearing by video-conference are also responsible for ensuring their witnesses are ready and able to use GoToMeeting. To join the hearing by video-conference, participants must use a computer with a microphone and internet access. It is preferred, though not mandated, that parties and witnesses use computers which also have a video camera so that parties may see each other and the witnesses during the course of the hearing. Witnesses unable to participate by video-conference may testify by telephone if the parties comply with all other requirements of this Decision.

5. **Deadlines to File and Exchange Exhibits, Witness Lists, and Exhibit Lists.** Powderhorn Pacific LLC (Powderhorn) 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 June 9, 2020*. Pali 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 June 16, 2020*. The parties must make these filings using the Commission's free E-filing System, which may be found on the Commission's website at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

6. Unless good cause is shown, exhibits which are not pre-filed as required by this Decision may not be admitted into evidence during the hearing, except that nothing in this Decision requires the parties to pre-file exhibits that may be used for impeachment, to refresh recollection, or for rebuttal. Documents that have already been filed in this proceeding are not automatically exhibits for the hearing; any party wishing to use such documents as exhibits must follow the requirements in this Decision.

7. **Witness List Requirements.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

8. **Exhibit List Requirements.** Exhibit lists must include the hearing exhibit number or letter assigned to each exhibit, and a brief description of the exhibit.

9. **Exhibit Requirements.** These requirements apply to all exhibits that may be used during the hearing, but does not require exhibits used for impeachment, to refresh recollection, or for rebuttal to be filed before the hearing. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list, or to pre-mark and file such an exhibit. Duplicative exhibits are discouraged.

a. **Pre-Mark and Page Number Exhibits.** Each party must pre-mark all hearing exhibits with a hearing exhibit number or letter *before* filing and serving the exhibits. Powderhorn is assigned hearing exhibit numbers starting with hearing exhibit 1; Pali is assigned hearing exhibit letters, starting with hearing exhibit A. For example, Powderhorn should pre-mark its first exhibit as "Hearing Exhibit 1," and Pali should mark its first exhibit as

“Hearing Exhibit A.” The parties must sequentially 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.

b. Exhibits Must Be Available to Parties and Witnesses During Hearing.

Powderhorn must ensure it has access to both its and Pali’s exhibits during the hearing. Pali must ensure that it has access to both its and Powderhorn’s exhibits during the hearing. As the parties will be served with each other’s exhibits through the Commission’s E-Filing System, they may download and print an electronic pre-marked copy of each other’s exhibits from the Commission’s E-Filing System at no cost. Powderhorn is responsible for ensuring that any witness testifying on its behalf has access to both its and Pali’s exhibits during the hearing. Pali is responsible for ensuring that any witness testifying on its behalf has access to both its and Powderhorn’s exhibits during the hearing.

c. Parties and Witnesses Must Be Able to Electronically Receive Exhibits

During Hearing. Because exhibits which may be used for impeachment, to refresh recollection, or for rebuttal are not pre-filed, all parties must be able to electronically receive exhibits or documents during the hearing. Any party wishing to use exhibits or documents for impeachment, to refresh recollection, or for rebuttal must: (a) have an electronic copy of such exhibits available during the hearing; (b) mark the electronic document with a hearing exhibit number or letter as required by this Decision; and (c) have the ability to electronically file with the Commission’s E-Filing System and email such exhibits *during the hearing*. For the same reasons, each party is responsible for ensuring that any witness testifying on their behalf are able to receive exhibits electronically during the hearing. At a minimum, this means that witnesses must have access to the internet and email during the hearing.

10. **Deadline to File Settlement Agreement.** The parties must file any settlement agreement they reach *on or by the close of business on June 24, 2020*.

11. **Deadline to File Statements of Position.** In lieu of verbal closing arguments, the parties are permitted to file a statement of position, limited to 30 pages. Any party wishing to file a statement of position must do so *on or by the close of business on July 14, 2020*. No responses to statements of position are permitted.

12. This Decision is effective immediately.

(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