

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0179CP

IN THE MATTER OF THE APPLICATION OF HERMOSA TOURS, 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
STEVEN H. DENMAN
REGARDING INTERVENTIONS AND
REPRESENTATION; REQUIRING PARTIES
TO CONFER AND FILE JOINT STATUS REPORT
ON HEARING DATES**

Mailed Date: June 22, 2020

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I. STATEMENT

A. Procedural History.

1. On April 23, 2020, Hermosa Tours, LLC (Applicant or Hermosa) filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On April 27, 2020, the Commission issued its Notice of Application Filed (Notice). As originally noticed, the Application was:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle service

between the Palisade Rim Trailhead, Palisade, Colorado, on the one hand, and the Mesa Top Trailhead, Grand Mesa, Colorado, on the other hand.

The 30-day intervention deadline set by the Notice expired on May 27, 2020.

3. During the Commission's weekly meeting held on June 3, 2020, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

4. Applicant did not file testimony and exhibits with its Application and, therefore, seeks a Commission decision within 210 days, or no later than December 30, 2020.¹

5. This proceeding is governed by the Commission's Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (CCR) 723-1 (2015).² The ALJ expects all Parties to comply with these rules. Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, allows persons to file electronic documents through the Commission's E-Filings System.

¹ See § 40-6-109.5(2), C.R.S.

² The Rules of Practice and Procedure are available on the Commission's website (<http://www.dora.colorado.gov/puc>), as well as in hard copy from the Commission upon request.

Hermosa and the interested persons who have filed intervention pleadings have all filed documents electronically through the E-Filings System.

B. Intervention Pleadings.

1. Absolute Prestige.

6. On May 12, 2020, Absolute Prestige Limousine Service Ltd. (Absolute Prestige) filed a Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance and Request for Hearing (Absolute Prestige's Intervention). While Absolute Prestige claimed it "owns and actively operates" Certificate PUC Nos. 01035 and 01716, it failed to attach the alleged Certificates to its Intervention.³ Absolute Prestige argues that those Certificates authorize it "to provide, among other services, transportation of passengers and their luggage in charter service and call-and-demand shuttle service between all points in between 'Palisade Rim Trailhead, Palisade, Colorado, on the one hand, and the Mesa Top Trailhead, Grand Mesa, Colorado.'" Absolute Prestige also argues that Applicant's proposed service territory overlaps with the territory granted to Absolute Prestige in its Certificates and that Applicant would serve in the same territories and to and from the same locations as Absolute Prestige, which would cause it harm if the Application is granted. Absolute Prestige requests a hearing on the Application.⁴

7. On May 21, 2020, Hermosa filed a timely response to Absolute Prestige's Intervention.⁵ Hermosa argues *inter alia* that (1) because Absolute Prestige lacks the

³ See Absolute Prestige Intervention, page 1. The Commission's Operating Rights Records reveal that Absolute Prestige hold only a luxury limousine permit – LL-01035. There is no record showing that Absolute Prestige holds a Certificate with the number 01716.

⁴ *Id.*

⁵ Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, Applicant had the procedural right to file a written response to the motion no later than 14 days after service of the motion, or no later than June 4, 2020.

Commercial Outfitting/Guiding permits required by the federal agencies that control the trailheads it claims to serve under its Certificates, Absolute Prestige cannot actively provide the services in the territory in which Applicant seeks authority to provide its service, and thus Applicant could not be in direct competition with Absolute Prestige; (2) Applicant's proposed scope of service does not overlap Absolute Prestige's services, because Absolute Prestige holds a Luxury Limousine permit and does not advertise or provide the mountain bike shuttle service for which Applicant seeks authority; and (3) since Absolute Prestige does not operate or provide a mountain bike shuttle service in the territory for which Applicant seeks authority, there would be no direct competition or harm to Absolute Prestige from granting the Application.⁶

8. Rule 1401(e)(I) of the Rules of Practice and Procedure, 4 CCR 723-1, requires that, "A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted." The requirement in Rule 1401(e)(I) that intervenors must file a copy of their Certificate or letter of authority with their intervention eliminates the need for the ALJ to rely on an intervenor's arguments about the nature of its authority.

9. Moreover, without the attachment of the Certificate to a pleading claiming an intervention by right, the ALJ cannot determine the veracity of an intervenor's allegations or that it is entitled to intervene by right. That is the situation here. Because Absolute Prestige failed to include copies of the Certificates it claims to hold, the ALJ cannot determine whether any overlap or conflicts exists between its claimed authority and the authority sought by Hermosa.

⁶ Response to Absolute Prestige Intervention, pages 1-3.

10. The ALJ concludes that Absolute Prestige’s Intervention fails to establish that it has an authority that overlaps or is in conflict with the Application. Hence, the ALJ concludes that Absolute Prestige’s Intervention fails to satisfy the requirements of Rule 1401(e)(I), 4 CCR 723-1. As a result, Absolute has not established that it may intervene by right.

11. Absolute Prestige’s pleading is also titled “Alternative Petition for Intervention.” Absolute Prestige may be alternatively requesting permissive intervention pursuant to Rule 1401(c), 4 CCR 723-1. A motion for permissive intervention must show, among other things, that the subject proceeding may substantially affect the tangible or pecuniary interests of the movant.⁷

12. The Commission and its ALJs have the discretion to grant or to deny motions for permissive intervention.⁸ Pursuant to Rule 1401(c), that discretion is based upon the ALJ’s determination of whether the person seeking permissive intervention has satisfied the required standards of Rule 1401(c). Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought and their motion’s compliance with the requirements of Rule 1401(c).⁹

13. However, Absolute Prestige does not specifically argue *any* alternative reasons to grant a permissive intervention. Absolute Prestige’s Intervention makes no argument about how

⁷ Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires *inter alia* that: “A motion to permissively intervene ... must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented.”

⁸ *Public Service Co. v. Trigen-Nations Energy Co., L.L.P.*, 982 P.2d 316, 327 (Colo. 1999).

⁹ Decision No. R20-0073-I (mailed on January 30, 2020), ¶ 25 at page 10, in Consolidated Proceeding Nos. 19F-0620E and 19F-0621E (Denying motions for permissive intervention for failure to satisfy the standards required by Rule 1401(c)).

why this proceeding may substantially affect its tangible or pecuniary interests. It does not even mention the words “substantially affect,” or “tangible interests,” or “pecuniary interests.” For this reason and the same reasons as discussed above, the ALJ finds that Absolute Prestige’s arguments have failed to establish that this Proceeding may substantially impact its pecuniary or tangible interests. Absolute Prestige has failed to establish that it may intervene permissively in this proceeding under Rule 1401(c). Because Absolute Prestige has failed to establish that it may intervene by right or permissively, the ALJ will deny Absolute Prestige’s Intervention. Absolute Prestige is not a party to this Proceeding.

2. Pali-Tours.

14. On May 27, 2020, Pali-Tours LTD. (Pali-Tours) filed an Entry of Appearance and Intervention (Pali-Tours’ Intervention), opposing the Application. Pali-Tours’ Certificate PUC No. 55945 was attached to Pali-Tours’ Intervention. Pali-Tours argues that the operating rights sought by Applicant would overlap the rights contained in its authority; that Pali-Tours has a legally protected right in the subject matter of the Application, which would be affected if the Application were to be granted; and that the Application should not be granted.¹⁰

15. After a review of Certificate PUC No. 55945 and the authority granted to Pali-Tours, the ALJ agrees that the Application seeks authority to provide the transportation of passengers in call-and-demand shuttle service in some of the same locations in which Pali-Tours operates under Certificate PUC No. 55945. To that extent, the authority sought in the Application does partially overlap the authority granted to Pali-Tours. The ALJ finds that Pali-Tours is an intervenor by right and a Party to this proceeding.

¹⁰ Pali-Tours’ Intervention, at pages 1 and 2.

3. Rapid Creek.

16. On June 1, 2020, Rapid Creek Cycles & Sports, LLC (Rapid Creek) filed a Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance and Request for Hearing (Rapid Creek's Intervention). Rapid Creek's Certificate PUC No. 55955 was attached to Rapid Creek's Intervention. Rapid Creek argues that the authority sought by Applicant would directly conflict with and overlap the rights contained in its authority; and that Rapid Creek has a legally protected right in the subject matter of the Application, which would be affected if the Application were to be granted. Rapid Creek argues that granting the requested authority to Applicant will harm Rapid Creek through the diversion of passengers and revenues from its services. Rapid Creek asks that the Application should be denied.¹¹

17. Rapid Creek's Intervention was filed through the Commission's E-Filings System. The Certificate of Service in the E-Filings System for Rapid Creek's Intervention shows that the pleading was served on Hermosa and Matt McFee through the E-Filings System on June 1, 2020 at 3:01p.m.

18. On June 2, 2020, Hermosa filed a timely response, arguing that Rapid Creek's Intervention should be dismissed, because it was filed on June 1, 2020, which is after the May 27, 2020 deadline in the Notice for filing interventions. Hermosa also stated that the Certificate of Service on Rapid Creek's Intervention claimed to have served Hermosa electronically on May 15, 2020, but that Hermosa did not receive the pleading either electronically or at its mailing

¹¹ Rapid Creek Intervention, at pages 1 and 2.

address on file with the Commission.¹² Hermosa did not address whether it was served with Rapid Creek's Intervention on June 1, 2020 through the E-Filings System.

19. On June 8, 2020, Rapid Creek filed a letter with the Commission, seeking acceptance of its late-filed intervention. The ALJ will construe this letter as a Motion to Accept Late-filed Intervention. Rapid Creek asserts that it attempted to file a Notice of Intervention on May 25, 2020, but the pleading was rejected due to an error in filing. Rapid Creek does not explain the nature of the filing error. Nor did Rapid Creek file a Notice of Technical Difficulty while attempting to make a filing through the E-Filings System, pursuant to Rule 1211(d) of the Rules of Practice and Procedure. Rapid Creek argues that its owner, Rondo Buecheler, was guiding in the wilderness from May 26 through June 1, 2020, and was unable to correct the rejection until June 1, 2020. Rapid Creek requests that the Commission accept its untimely intervention, "since the intent was there and an attempt was made to file in the correct time period."¹³ Even though it was filed after Hermosa's June 2, 2020 response, the Motion to Accept Late-filed Intervention fails to address the allegation that Rapid Creek's Intervention was not served on Hermosa.

20. On June 12, 2020, Hermosa filed a timely response to the Motion to Accept Late-filed Intervention. Hermosa reiterated its argument that Rapid Creek's Intervention was filed out-of-time; that Hermosa did not receive Rapid Creek's Intervention, contrary to the claim in the pleading's Certificate of Service; and that Rapid Creek's Intervention and the Motion to

¹² Response to Rapid Creek Intervention, at page 1. Hermosa did not explain how it knew about Rapid Creek's Intervention, even though Hermosa stated it did not receive Rapid Creek's pleading either electronically or by mail.

¹³ Motion to Accept Late-filed Intervention, at page 1. The Commission's file in this proceeding does not contain the rejection notice. The Motion to Accept Late-filed Intervention states that Rapid Creek's Intervention was rejected on May 26, 2020.

Accept Late-filed Intervention contain inconsistent dates and explanations. Finally, Hermosa argued that Rapid Creek, had a full 30-days to file an intervention correctly after the date of the Notice (April 27, 2020), but failed to do so. Hermosa again argued that Rapid Creek's Intervention should be dismissed.¹⁴ Hermosa again did not address whether it was served with Rapid Creek's Intervention on June 1, 2020 through the E-Filings System.

21. Rule 1205(a) of the Rules of Practice and Procedure, 4 CCR 723-1, requires that *copies of all filings* with the Commission must be served upon the other parties on the same day the document is filed. Service on the other parties can be through the E-Filings System or by email.¹⁵ Rule 1205(e) provides that "Proof of service of a filing shall be demonstrated through one or more certificates of service identifying the document served and filed with the Commission." Certificates of service may be filed in paper, filed through the Commission's E-Filings System, or they can be systematically created and attached in the filing process through the E-Filings System. Finally, Rule 1205(c) provides that, "To the extent of any conflict between information input in the e-filing process . . . , the information input in the e-filing process shall prevail."

22. In this proceeding both Hermosa and Rapid Creek have filed their pleadings through the E-Filings System. The Certificate of Service in the E-Filings System for Rapid Creek's Intervention, filed on June 1, 2020, shows that the pleading was served on Hermosa and Matt McFee through the E-Filings System on June 1, 2020. While Rapid Creek's Intervention was dated May 15, 2020 and its Certificate of Service on page 2 states that Hermosa was served on May 15, 2020, pursuant to Rule 1205(c), the date of service on the E-Filings System

¹⁴ Motion to Accept Late-filed Intervention, at page 1.

¹⁵ Rule 1205(a) provides that service may alternatively be made by email, unless the party to be served previously files a notice in the proceeding that service will not be accepted through email.

Certificate of Service controls. The ALJ finds that Rapid Creek's Intervention was served on Hermosa on June 1, 2020 through the E-Filings System.

23. Next the ALJ must resolve whether Rapid Creek's Intervention should be accepted even though it was late-filed. As relevant to this proceeding, Rule 1401(a) of the Rules of Practice and Procedure, 4 CCR 723-1, requires that notices of intervention by right (or motions to intervene by permission) may be filed within 30 days of notice of the proceeding. However, Rule 1401(a) provides that, "The Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements."

24. Here, Hermosa was served with Rapid Creek's Intervention through the E-Filings System on June 1, 2020. In the Motion to Accept Late-filed Intervention, Rapid Creek asserted that its attempt to file its Intervention on May 25, 2020 was rejected due to an error in filing. The Motion to Accept Late-filed Intervention confirms that Rapid Creek's attempted filing was rejected on May 26, 2020. Because Rapid Creek's owner, Rondo Buecheler, was guiding in the wilderness from May 26 through June 1, 2020, Rapid Creek asserts he was unable to correct the rejection until June 1, 2020. The ALJ finds that Rapid Creek has provided good cause to accept the filing of its intervention pleading, even though it was untimely.

25. Because Rapid Creek's attempt to intervene by right was untimely filed, the ALJ cannot consider its attempted intervention by right, but will instead consider the Alternative Petition for Intervention, pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

26. After a review of Certificate PUC No. 55955 and the authority granted to Rapid Creek, the ALJ agrees that the Application seeks authority to provide the transportation of passengers in call-and-demand shuttle service in some of the same locations in which Rapid

Creek operates under Certificate PUC No. 55955. To that extent, the authority sought in the Application does partially overlap the authority granted to Rapid Creek. Rapid Creek argues *inter alia* that granting the requested authority to Applicant will harm Rapid Creek through the diversion of passengers and revenues from its services.

27. Based on Rapid Creek's pleadings and Hermosa's responses, the ALJ finds that, as required by Rule 1401(c), Rapid Creek has stated the grounds relied upon for its intervention and its specific interest that justifies its intervention. The ALJ also finds that Rapid Creek has demonstrated that this proceeding may substantially affect its tangible or pecuniary interests and that its interests would not be adequately represented by another Party. Therefore, the ALJ finds that Rapid Creek is a permissive intervenor and a Party to this proceeding.

28. Hermosa, Pali-Tours, and Rapid Creek are the Parties to this proceeding.

C. Representation by Non-attorneys?

29. The Application states that Applicant is a Colorado limited liability company (LLC). The Application was signed by Matthew McFee, as Manager of the LLC and President.¹⁶ Hermosa is a Party and is not represented by counsel in this proceeding.

30. This Application is an adjudicatory proceeding before the Commission.

31. Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1, requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, unless certain exceptions are satisfied. To prove in a Commission adjudicatory proceeding that a non-attorney managing member¹⁷ of an

¹⁶ See Application filed on April 23, 2020, at pages 2 and 7.

¹⁷ As pertinent here, § 13-1-127(2.3)(c), C.R.S., states that a "person in whom the management of a limited liability company is vested or reserved" shall be "presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

LLC can represent its interests, under the criteria of Rule 1201(b)(II), 4 CCR 723-1, the LLC must show the Commission that: (1) it is a closely-held entity, (that is, an entity with no more than three owners);¹⁸ (2) no more than \$15,000 is in controversy in the proceeding; and (3) the managing member has the authority to represent the interests of the LLC.¹⁹ This requirement is mandatory. If a party does not meet the criteria of this Rule, any filing made by a non-attorney on behalf of that party is void and of no legal effect, and a non-attorney may not represent the party in Commission adjudicatory proceedings.²⁰

32. Applicant has the burden to prove that Hermosa meets the criteria of Rule 1201(b)(II), 4 CCR 723-1, and is entitled to proceed in this case without an attorney. To meet that burden of proof, Applicant must do the following: First, Applicant must establish that it is a closely-held entity. This means that Applicant must establish that it has “no more than three owners.”²¹ Second, Applicant must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer²² may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.²³

¹⁸ Section 13-1-127(1)(a), C.R.S.

¹⁹ Section 13-1-127(2.3)(c), C.R.S.

²⁰ *See, e.g.*, Decisions No. C05-1018 (issued August 30, 2005) in Proceeding No. 04A-524W; No. C04-1119 (issued September 28, 2004) in Proceeding No. 04G-101CP; and No. C04-0884 (issued August 2, 2004) in Proceeding No. 04G-101CP.

²¹ Section 13-1-127(1)(a), C.R.S.

²² Section 13-1-127(1)(i), C.R.S., defines “Officer” as “a person generally or specifically authorized by an entity to take any action contemplated by” § 13-1-127, C.R.S.

²³ *See* § 13-1-127(2.3)(c), C.R.S.

33. The Application satisfactorily met Hermosa's burden of proof and established that Hermosa is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1,²⁴ and that Matthew McFee, its President, may represent Hermosa in this proceeding.

34. Neither Pali-Tours nor Rapid Creek are represented as counsel and both seek to be represented by non-attorneys in this proceeding. The requirements of Rule 1201 of the Rules of Practice and Procedure, 4 CCR 723-1, and § 13-1-127, C.R.S., described in Paragraphs 29 and 30 above, regarding representation in Commission proceedings, also must be satisfied before the ALJ can determine whether those intervenors may be represented by non-attorneys.

35. Pali-Tours' Intervention states that it is eligible to be represented by a non-attorney, consistent with Rule 1201(b) of the Rules of Practice and Procedure, 4 CCR 723-1, and § 13-1-127(2), C.R.S., and requests that Dave Smith be authorized to represent it in this proceeding.²⁵ Pali-Tours states that it is a closely-held entity with no more than three owners; that the amount in controversy in this proceeding does not exceed \$15,000; and that Dave Smith is the owner of Pali-Tours. Mr. Smith signed the pleading.

36. The ALJ finds that statements in Pali-Tours' Intervention satisfactorily demonstrate that Pali-Tours has met its burden of proof and established that Pali-Tours is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1,²⁶ and that Dave Smith, its Owner, is authorized to represent Pali-Tours in this proceeding.

²⁴ See Application filed on April 23, 2020, at page 7.

²⁵ Pali-Tours Intervention, at pages 2 and 3.

²⁶ See Application filed on April 23, 2020, at page 7.

37. Rapid Creek's Intervention requests that it be represented by a non-attorney, consistent with Rule 1201(b) of the Rules of Practice and Procedure, 4 CCR 723-1, and § 13-1-127(2), C.R.S., and requests that Rondo Buecheler be authorized to represent it in this proceeding.²⁷ Rapid Creek states that it is a closely-held entity with no more than three owners; that the amount in controversy in this proceeding does not exceed \$15,000; and that Rondo Buecheler is the Owner of Rapid Creek. Mr. Buecheler signed the pleading.

38. The ALJ finds that statements in Rapid Creek's Intervention satisfactorily demonstrate that Rapid Creek has met its burden of proof and established that Rapid Creek is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1,²⁸ and that Rondo Buecheler, its Owner, is authorized to represent Rapid Creek in this proceeding.

39. If either Hermosa, Pali-Tours, or Rapid Creek decide to retain an attorney to represent them in this proceeding, the ALJ requests that the attorney(s) retained should enter their appearance within 14 days of the mailed date of this Decision, or no later than July 6, 2020.

40. **Hermosa, Pali-Tours, or Rapid Creek and their non-attorney representatives are advised and on notice that they will be bound by, and held to, the same procedural and evidentiary rules that all attorneys must follow in Commission proceedings. They will not be held to a lesser standard because they have each chosen not to be represented by an attorney in this proceeding.**

²⁷ Pali-Tours Intervention, at pages 2 and 3.

²⁸ See Application filed on April 23, 2020, at page 7.

D. Process for Setting a Procedural Schedule and Scheduling the Hearing.

41. It is necessary to schedule an evidentiary hearing in this proceeding. However, due to the global COVID-19 pandemic and public health orders issued by the State of Colorado, the Commission's offices have been closed to the public and in-person hearings have not been possible. Instead, the Commission has been holding evidentiary hearings by remote video-conference. The ALJ finds that, at this time it is in the best interests of the Parties, their witnesses and Commission personnel to plan and prepare for a remote video-conference evidentiary hearing. Doing so is consistent with public health advisories to prevent the spread of COVID-19, and will allow this proceeding to move forward. When the ALJ issues a decision setting the hearing, detailed instructions will be given to the Parties about how to participate in the remote Commission hearing by video-conference.

42. To schedule the hearing date and duration, the ALJ will order Mr. McFee, the representative of Hermosa, to confer with Messrs. Smith and Buecheler regarding how many days will be needed for the hearing and two sets of proposed hearing dates when the Parties and their witnesses will be available **during the weeks of September 7, 2020, and September 14, 2020.**²⁹

43. The non-attorney representatives for Hermosa, Pali-Tours, and Rapid Creek shall file a Joint Status Report, **no later than July 6, 2020**, informing the undersigned ALJ of the results of their conferral. If the Parties agree to a hearing date(s) within the date ranges noted above, the Joint Status Report shall identify the agreed-upon date(s). The Joint Status Report

²⁹ Please note that Monday, September 7, is the Labor Day Holiday, and the Commission is closed for the Holiday.

should also state the estimated number of days needed for the hearing. The ALJ will choose, if possible, one of the dates proposed in the Joint Status Report.

44. If either Messrs. Smith or Buecheler fails to confer with Mr. McFee, Hermosa shall file an individual Status Report, **no later than July 6, 2020**, stating: (a) the reasonable, good faith efforts made to confer with Messrs. Smith and Buecheler; and (b) Hermosa's available dates for the hearing within the date ranges noted above and the number of days needed for hearing.

45. If Mr. McFee fails to confer with Messrs. Smith and Buecheler, Messrs. Smith and Buecheler shall each file an individual Status Report, **no later than July 6, 2020**, stating that Mr. McFee did not confer with them and identifying their available dates for the hearing within the date ranges noted above and the number of days needed for hearing. The ALJ will choose, if possible, one of the dates proposed in the filed Status Report.

46. **The Parties are advised and are on notice that** failure to file the Joint Status Report, or individual Status Reports, or failure to agree on proposed hearing dates by the deadline ordered in this Decision will result in the ALJ selecting a hearing date without further input from the Parties. In that event, after scheduling the hearing, the ALJ will not consider future requests to reschedule the hearing, unless a motion is filed with a showing of good cause.

47. After selecting the date for the hearing, the ALJ will issue an Interim Decision that schedules the date(s) for the evidentiary hearing and adopts a procedural schedule for each Party to file its prehearing disclosures (*i.e.*, the Party's list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it intends to offer into evidence at the hearing). The dates for filing prehearing disclosures will allow sufficient time for the Parties to conduct discovery, to review discovery responses, and to prepare for the evidentiary hearing.

48. The April 27, 2020 Notice issued by the Commission established a schedule for filing lists of witnesses and copies of exhibits, consistent with Rule 1405(k) of the Rules of Practice and Procedure, 4 CCR 723-1. The Notice required Applicant to file and to serve its list of witnesses and copies of its exhibits not later than ten days after the conclusion of the notice period, or in this case by June 8, 2020.³⁰ The Notice required intervenors to file and to serve their list of witnesses and copies of its exhibits not later than 20 days after the notice period expires, or in this case by June 16, 2020. None of those filings were made.

49. Given the process adopted by the ALJ in this proceeding for scheduling the evidentiary hearing and establishing the procedural schedule, the ALJ will vacate the schedule for filing lists of witnesses and copies of exhibits set forth for this proceeding in the Notice dated April 27, 2020.

E. Additional Advisements. (Please read and understand these Advisements.)

50. **The Parties are advised and on notice** that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, Part 1. Even though Applicant and intervenors will be represented by non-attorneys, these rules apply equally to non-attorneys who may represent Parties in this proceeding. The ALJ expects all Parties to comply with these rules.

51. **The Parties are advised and are on notice** that they are each responsible for filing pleadings and other documents with the Commission. Pursuant to Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, a filing is made when the Commission receives the document. Thus, if a document is placed in the mail on the date on which the document is to be

³⁰ Since the ten-day deadline under Rule 1405(k) fell on Saturday, June 6, 2020, the filing deadline was extended by operation of law until the next business day, or until Monday, June 8, 2020. Section 40-6-121, C.R.S.

filed, the document is not filed with the Commission in a timely manner. Pleadings and other documents are filed with the Commission either by using the E-filings System or by filing a paper document, including the original and three copies. Emailing pleadings and other documents to the Commissioners, the Director of the Commission, an ALJ, or other employees of the Commission **does not** constitute proper filing under Rule 1204, 4 CCR 723-1.

52. **Each Party is specifically advised** that all filings with the Commission must also be served upon the other Party and counsel, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

53. **Each Party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the responding Party (*i.e.*, the Party that did not file a motion) has the procedural right to file a written response to the motion no later than 14 days after service of the motion.

54. **The Parties are advised and on notice** that, absent an enlargement of time or a waiver of § 40-6-109.5, C.R.S., the final Commission decision in this matter must be issued on or before December 300, 2020. This date will be considered by the ALJ in the event any party seeks an extension of time to make any filings or seeks a continuance of the hearing. The Parties are reminded that there must be sufficient time after the hearing for the issuance of a recommended decision, for filing of exceptions if needed, for filing of responses to any exceptions filed, and for the Commission to issue a decision on any filed exceptions.

II. ORDER

A. It Is Ordered That:

1. On May 12, 2020, Absolute Prestige Limousine Service Ltd. (Absolute Prestige) filed a Notice of Intervention by Right and Alternative Petition for Intervention and Entry of

Appearance and Request for a Hearing. Consistent with the findings and conclusions in this Decision, Absolute Prestige is not an intervenor by right. The Alternative Petition for Intervention filed by Absolute Prestige is denied, consistent with the findings and conclusions in this Decision. Absolute Prestige is not a party in this proceeding.

2. Pali-Tours LTD. (Pali-Tours) intervention by right, filed on May 27, 2020, is acknowledged. Pali-Tours is an intervenor by right and a Party in this proceeding.

3. The letter filed with the Commission by Rapid Creek Cycles & Sports, LLC (Rapid Creek) on June 8, 2020, seeking acceptance of its late-filed intervention, shall be construed as a Motion to Accept Late-filed Intervention. As so construed, the Motion to Accept Late-filed Intervention shall be granted.

4. The late-filed Alternative Petition for Intervention, filed by Rapid Creek on June 1, 2020, is granted, consistent with the findings and conclusions in this Decision. Rapid Creek is a permissive intervenor and a Party in this proceeding.

5. Hermosa Tours, LLC (Hermosa) is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and § 13-1-127, C.R.S. Matthew McFee, a non-attorney and its President, may represent Hermosa in this proceeding.

6. Pali-Tours is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and § 13-1-127, C.R.S. Dave Smith, a non-attorney and its Owner, may represent Pali-Tours in this proceeding.

7. Rapid Creek is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1,

and § 13-1-127, C.R.S. Rondo Buecheler, a non-attorney and its Owner, may represent Rapid Creek in this proceeding.

8. The schedule for filing documents by the Parties, established in the April 27, 2020 Notice of Applications Filed, is vacated.

9. As described in Paragraph Nos. 42 through 46 above, Hermosa shall confer with Messrs. Smith and Buecheler regarding how many days will be needed for the hearing and two sets of proposed hearing dates when the Parties and their witnesses will be available during the weeks of September 7, 2020, and September 14, 2020.

10. The non-attorney representatives for Hermosa, Pali-Tours, and Rapid Creek shall file a Joint Status Report, no later than July 6, 2020, informing the Administrative Law Judge (ALJ) of the results of their conferral. If the Parties agree to a hearing date(s) within the date ranges stated in Ordering Paragraph No. 9, the Joint Status Report shall identify the agreed-upon date(s). The Joint Status Report should also state the estimated number of days needed for the hearing.

11. If either Messrs. Smith or Buecheler fails to confer with Mr. McFee, Hermosa and the Party with whom he conferred shall file a Joint Status Report, no later than July 6, 2020, stating: (a) the reasonable, good faith efforts made to confer with the Party who failed to confer; and (b) Hermosa's, and the Party with whom he conferred, available dates for the hearing within the date ranges noted above and the number of days needed for hearing.

12. If Mr. McFee fails to confer with Messrs. Smith or Buecheler, the Party with whom he failed to confer shall file an individual Status Report, no later than July 6, 2020, stating that Mr. McFee did not confer with them and identifying their available dates for the hearing within the date ranges noted above and the number of days needed for hearing.

13. **The Parties are advised and are on notice that** any failure to file the Joint Status Report, or individual Status Reports, or failure to agree on proposed hearing dates by the deadline ordered in this Decision shall result in the ALJ selecting a hearing date without further input from the Parties. In that event, after scheduling the hearing, the ALJ shall not consider future requests to reschedule the hearing, unless a motion is filed with a showing of good cause.

14. The Parties shall comply with the requirements established in this Interim Decision and shall make the filings as required by this Decision.

15. Additional procedural requirements may be issued in future Interim Decisions.

16. This Interim Decision is effective immediately.



Doug Dean

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge