

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ACKNOWLEDGING WITHDRAWAL
OF THE APPLICATION AND
CLOSING THIS PROCEEDING**

Mailed Date: July 7, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS

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. A detailed procedural history of the above-captioned proceeding is set forth in Decision No. R20-0453-I (mailed on June 22, 2020), issued in this Proceeding and is repeated here as necessary to put this Decision into context.

6. In Decision No. R20-0453-I, the ALJ acknowledged the intervention by right of Pali-Tours LTD. (Pali-Tours), filed on May 27, 2020. The ALJ granted permissive intervention to Rapid Creek Cycles & Sports, LLC (Rapid Creek), which late-filed a Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance and Request for Hearing on June 1, 2020. The ALJ also found that the Notice of Intervention by Right and Alternative Petition for Intervention and Entry of Appearance and Request for Hearing, filed by Absolute Prestige Limousine Service Ltd. (Absolute Prestige) on May 12, 2020, failed to attach PUC certificates Absolute Prestige claimed to have. Rule 1401(e)(I) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires that a notice of intervention by right must attach the certificate held by the putative intervenor. Without the certificates, Absolute Prestige could not establish that the Application would overlap or be in conflict with its

¹ See § 40-6-109.5(2), C.R.S.

authority and that it could intervene by right. Absolute Prestige failed to argue specifically any alternative reasons to grant permissive intervention, pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1; for example, it did not argue why this proceeding may substantially affect its tangible or pecuniary interests. Therefore, the ALJ denied Absolute Prestige's Alternative Petition for Intervention.²

7. Hermosa, Pali-Tours, and Rapid Creek are the Parties to this proceeding. All are limited liability companies (LLCs). However, none of the Parties is represented by counsel.

8. 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.³ In Decision No. R20-0453-I, the ALJ found that, the Application satisfactorily met Hermosa's burden of proof to establish that Hermosa is entitled to proceed without an attorney, pursuant to Rule 1201(b)(II), 4 CCR 723-1, and that Matthew McFee, its President, may represent Hermosa in this proceeding. The ALJ also found that the intervention pleadings filed by Pali-Tours and Rapid Creek satisfactorily demonstrated that non-attorneys could represent each. The ALJ authorized Dave Smith to represent Pali-Tours and Rondo Buecheler to represent Rapid Creek in this proceeding.⁴

² Decision No. R20-0453-I, Ordering Paragraphs Nos. 1 through 4 at pages 18 and 19.

³ Under the criteria of Rule 1201(b)(II), 4 CCR 723-1, the exceptions are and the LLC must show the Commission that: (1) it is a closely-held entity, (that is, an entity with no more than three owners);³ (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

⁴ Decision No. R20-0453-I, Ordering Paragraphs Nos. 5 through 7 at pages 19 and 20.

9. Finally, Decision No. R20-0453-I found that an evidentiary hearing was needed and ordered Mr. McFee to confer with Messrs. Smith and Buecheler regarding dates for the evidentiary hearing. The Decision required Messrs. McFee, Smith, and Buecheler to file a Joint Status Report, no later than July 6, 2020, informing the ALJ of the results of their conferral, including the number of days needed for the hearing and the agreed-upon hearing date(s).⁵

B. Withdrawal of the Application.

10. Rule 1309(d) of the Rules of Practice and Procedure, 4 CCR 723-1, concerns withdrawal of application and provides that:

A party may withdraw an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.

11. On July 6, 2020, Applicant filed a Withdrawal of Application, stating it was withdrawing the Application for Common Carrier Authority. Applicant states that its attorney has advised that Hermosa does not need this authority to operate self-guided mountain bike tours on US Forest Service and Bureau of Land Management lands and that its authority with the US Department of Transportation authorizes it to conduct no-charge roadway transportation.⁶

12. Since the ALJ has not yet scheduled an evidentiary hearing on the Application, pursuant to Rule 1309(d), Hermosa may withdraw the Application upon notification to the Commission and all parties. Applicant's filing of the Withdrawal of Application satisfies the requirement of notification to the Commission. The Details of Filing in the Commission's E-

⁵ *Ibid*, Ordering Paragraphs Nos. 9 through 13 at pages 20 and 21.

⁶ Withdrawal of Application, at page 1.

Filings System includes the Certificate of Service for this filing, which demonstrates notification to all Parties.

13. The ALJ will acknowledge the withdrawal of the Application. However, the ALJ makes no findings or conclusions regarding whether or not the reasons stated in the Withdrawal of Application are correct.

14. This Decision will close this proceeding.

II. ORDER

A. The Commission Orders That:

1. The Withdrawal of Application filed on July 6, 2020 by Hermosa Tours, LLC (Applicant) is acknowledged, consistent with the findings and conclusions in this Decision.

2. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed by Applicant on April 23, 2020, has been withdrawn.

3. Proceeding No. 20A-0179CP is closed.

4. 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.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the 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 basic findings 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.

5. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director