

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0339CP

IN THE MATTER OF THE APPLICATION OF PAGOSA ADVENTURE DOING BUSINESS
AS WOLF CREEK TAXI 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
ROBERT I. GARVEY
GRANTING INTERVENTIONS, REQUIRING
FILINGS, AND SETTING PREHEARING CONFERENCE**

Mailed Date: October 8, 2020

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I. STATEMENT

1. On August 18, 2020, Pagosa Adventure, doing business as Wolf Creek Taxi filed an Application seeking a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission).

2. On August 24, 2020, the Commission provided public notice of the Application by publishing a summary of the same in its Notice of Applications Filed:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of
passengers in call-and-demand taxi service and call-and-demand shuttle service
between all points in the Counties of Archuleta, La Plata, and Mineral, State of Colorado.

3. On August 25, 2020 Pagosa Cab filed its Intervention through George Brown. This filing did not identify Mr. Brown as an owner or member of Pagosa Cab nor did it identify Mr. Brown as an attorney. The filing did it include a Commission authority held by Pagosa Cab.

4. On August 26, 2020, Wilderness Journeys Pagosa, Inc., doing business as A1 Taxi (A1 Taxi) filed its Intervention and Entry of Appearance through Kevin Metzler. The filing identified Mr. Metzler as an owner of A1 Taxi but did not identify Mr. Metzler as an attorney. The filing included Commission Authority No. 16400 held by A1 Taxi.

5. On August 27, 2020, San Juan Sentry, LLC, doing business as Durango Cab (Durango Cab) filed its Notice of Intervention by Right through Edward Gilbert. This filing did not identify Mr. Gilbert as an owner or member of Durango Cab, nor did it identify Mr. Gilbert as an attorney. This filing attached Commission Authority No. 14196 held by Durango Cab.

6. On September 30, 2020, the Commission deemed the Application complete and referred it to the undersigned Administrative Law Judge (ALJ) for disposition.

II. INTERVENTIONS

7. As noted above, Pagosa Cab failed to file any Commission authority with its intervention. Pagosa Cab shall file a copy of its Commission authority as required by 4 *Code of*

Colorado Regulations (CCR) 723-1-1401(e)(I) of the Rules of Practice and Procedure, no later than October 23, 2020. Failure to do so shall result in the Intervention being denied.

8. As discussed below, the interventions of Pagosa Cab, A1 Taxi, and Durango Cab were neither executed by an attorney nor show cause why Rule 1201, 4 CCR 723-1 does not require representation by legal counsel in this matter.

III. LEGAL COUNSEL/SELF REPRESENTATION

A. Legal Representation

9. The undersigned ALJ notes that the interventions of Pagosa Cab, A1 Taxi, and Durango Cab were not executed by an attorney. The Interventions do not state that the person making the filing is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. It is unknown who intends to represent the interests of Pagosa Cab, A1 Taxi, and Durango Cab.

10. Pagosa Cab, A1 Taxi, and Durango Cab are not individuals and have not entered an appearance through counsel. Under Rule 1201(b) 4 CCR 723-1, a party in an adjudicatory proceeding before the Commission shall be represented by an attorney *unless* the party is an individual appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a closely-held entity pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

11. Since Pagosa Cab, A1 Taxi, and Durango Cab are not individuals, if they wish to proceed in this matter without an attorney, each of them must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See*, Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S. It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer¹ 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.²

12. Pagosa Cab, A1 Taxi, and Durango Cab shall be ordered either to obtain counsel or to show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

13. If Pagosa Cab, A1 Taxi, and Durango Cab elect to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on October 23, 2020.

14. If Pagosa Cab, A1 Taxi, and Durango Cab elect to show cause, then, on or before close of business on, October 23, 2020, each of them must show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented by legal counsel in this matter. To show cause, each party must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed

¹ 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.

² As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom 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[.]”

\$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, the filing should have appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

15. Pagosa Cab, A1 Taxi, and Durango Cab are advised, and are on notice, that if they fail either to show cause or to have legal counsel file an entry of appearance on or before close of business on October 23, 2020, then the ALJ may dismiss the Interventions.

16. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as an attorney.

IV. PREHEARING CONFERENCE

17. In anticipation of scheduling an evidentiary hearing, the ALJ will schedule a prehearing conference, in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. A prehearing conference, via video platform, will be scheduled for October 29, 2020 at 9:00 a.m.

18. Holding the prehearing conference remotely is consistent with current public health orders and advisories to prevent the spread of coronavirus (COVID-19) in Colorado. The Parties may **not** appear at the Commission in person to attend the prehearing conference. Instead, Parties and their counsel shall appear at the prehearing conference from remote locations, either by video conference, or by telephone, using the link and instructions provided in this Decision. The ALJ encourages the Parties and their counsel to attend by video conference.

19. Attachment A to this Decision provides the requirements and information addressing how to use the GoToMeeting platform for participating in the hearing.

20. The parties are advised, and are on notice, that the ALJ will deem a Party's failure to appear or to participate in the prehearing conference to be a waiver of that Party's objection to the rulings made, the procedural schedule established, and the hearing dates scheduled during the prehearing conference. Failure to appear may also lead to a party being excused from the proceeding.

V. ORDER

A. It Is Ordered That:

1. A prehearing conference in this proceeding is scheduled as follows:

DATE: October 29, 2020

TIME: 9:00 a.m.

WEBCASTS: Commission Hearing Room B

METHOD: By video conference using GoToMeetings at the link provided to parties by email prior to the prehearing conference

2. Pagosa Cab shall file its Commission Authority on or before close of business on October 23, 2020.

3. Pagosa Cab, Wilderness Journeys Pagosa, Inc., doing business as A1 Taxi (A1 Taxi), and San Juan Sentry, LLC, doing business as Durango Cab (Durango Cab) shall make the filing concerning legal representation described in ¶ 14 above on or before close of business on October 23, 2020.

4. Alternatively, in the event that Pagosa Cab, A1 Taxi, or Durango Cab, elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before close of business on October 23, 2020.

5. Attachment A is incorporated into this Decision.

6. The Parties shall be held to the advisements in this Decision.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director