

Decision No. R20-0442-I

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 POWDERHORN'S HIGHLY
CONFIDENTIAL EXHIBIT AND ADDING REQUIREMENT
FOR REMOTE EVIDENTIARY HEARING**

Mailed Date: June 15, 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). The Administrative Law Judge (ALJ) scheduled this matter for a remote evidentiary hearing, to be held by video-conference on June 30, 2020. Decision No. R20-0364-I issued May 14, 2020. The ALJ also established filing deadlines and procedures to facilitate holding the hearing by video-conference. *Id.*

2. On June 9, 2020, Powderhorn filed its exhibits, consistent with the deadline to do so in Decision No. R20-0364-I. Among those exhibits, Powderhorn filed an exhibit which it designated as "highly confidential." *See* Powderhorn's Hearing Exhibit 1. At the same time, Powderhorn filed a redacted, public version of the exhibit. Powderhorn's certificate of service

indicates that it served the redacted version of the exhibit on all parties, but did not serve the unredacted version. Rule 1101 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, creates a process that parties must follow when seeking the Commission to afford extraordinary protection of information through a highly confidential designation. Powderhorn failed to comply with Rule 1101. Powderhorn is on notice that unless it complies with Rule 1101, and ensures that the exhibit is disclosed¹ to Pali-Tours Ltd., its highly confidential designation of Hearing Exhibit 1 will be rejected and the exhibit may not be admitted into evidence.

3. Powderhorn is reminded that the Commission's Rules of Practice and Procedure, 4 CCR 723-1, apply to this proceeding, and that it must comply with those rules.

4. Since this matter was set for a remote evidentiary hearing, the Commission has obtained an additional resource, a box.com account, to aid in electronic evidence presentation.² This resource allows parties to upload exhibits they intend to use during the hearing to a folder designated for each party; other parties may not access documents uploaded to a party's designated folder. Parties will be provided a link by email to their designated box.com folder, which they must use to upload exhibits before exhibits may be presented at the hearing. During the hearing, when a party seeks to present an exhibit, it will be displayed on the video-conference screen. The ALJ is entering orders that will facilitate this.

¹ Powderhorn may request that Pali sign a non-disclosure agreement, as contemplated by Rule 1101, prior to disclosing the exhibit.

² The Public Utilities Commission Administrative Hearings Section uses a web-based document sharing service, box.com. All parties must ensure they can access and use box.com. An email with more details will follow.

II. ORDER**A. It Is Ordered That:**

1. In addition to the requirements in Decision No. R20-0364-I, the parties must follow the requirements in this Decision. These requirements apply to *all* exhibits that may be used during the hearing, including those pre-filed pursuant to Decision No. R20-0364-I as well as those used solely to impeach, refresh recollection, or for rebuttal. Each party must: (a) mark all exhibits for identification with a hearing exhibit number as required by Decision No. R20-0364-I; and (b) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing. When exhibits are presented during the hearing, the Commission will receive them electronically from each party's folder.

2. All parties are responsible for ensuring they and their respective witnesses have access to all exhibits via a box.com link the Commission will provide and that they are able to download and view documents from box.com *during the hearing*.

3. 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