

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0088CP

IN THE MATTER OF THE APPLICATION OF RAPP TOUR ADVENTURES 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
ALENKA HAN
GRANTING MOTION TO APPROVE SETTLEMENT,
APPROVING SETTLEMENT, ACKNOWLEDGING
WITHDRAWAL OF INTERVENTION, AND GRANTING
APPLICATION AS AMENDED**

Mailed Date: September 22, 2023

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I. STATEMENT AND PROCEDURAL HISTORY

1. On February 22, 2023, Amanda Rapp, doing business as Rapp Tour Adventures LLC (Rapp Tours or Applicant) initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application). On February 27, 2023, the Applicant filed two Amendments to the Application.

2. On March 6, 2023, the Public Utilities Commission (the Commission) provided public notice under § 40-6-108(2), C.R.S., of the Application, describing the authority sought here,

consistent with the February 27, 2023, Amendments to the Application.¹ As noticed, the Application seeks authority to:

operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand sightseeing service between all points in Colorado Springs, Colorado, on the one hand, and on the other hand, all points (a) on the Pikes Peak Highway; (b) in Pike National Forest; (c) in Manitou Springs, Colorado; (d) in the Eleven Mile Canyon Recreation Area; (e) the Eleven Mile Reservoir and State Park; and (f) the Paint Mines Interpretive Park in Calhan, Colorado.²

3. On March 24, 2023, Marketing Services, Inc., of Pueblo (Marketing Services or Intervenor), filed its Entry of Appearance and Intervention. Marketing Services' Intervention was signed and filed by Greg Wellens, President of Marketing Services. A copy of Marketing Services' Letter of Authority was filed with its Intervention.

4. Its Letter of Authority authorizes Marketing Services to transport "passengers and their baggage, in sightseeing service, between all points in the Counties of El Paso, Fremont, Park, Pueblo, and Teller, State of Colorado," but restricts the service provided as follows:

1. All passengers must be dropped off at the same location as the location at which they were picked up;
2. Baggage shall not include suitcases; and
3. Restricted against providing any transportation service that originates at or terminates at the Colorado Springs Municipal Airport, Colorado Springs, Colorado.

5. On April 12, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

¹ See Notice of Applications and Petitions filed on March 6, 2023 (Notice), p. 2.

² Id.

6. On April 24, 2023, Taylor G. Minshall of RELEVANT LAW – Colorado Springs entered an appearance as counsel on behalf of Applicant Rapp Tours.

7. Thereafter, on May 31, 2023, Lauren E. S. Caliendo of Wilkinson Barker Knauer LLP entered her appearance as counsel for Intervenor Marketing Services.

8. By Decision No. R23-0289-I, issued May 2, 2023, the undersigned ALJ scheduled a prehearing conference which was held on June 6, 2023, at 10:30 a.m.

9. At the prehearing conference, the parties, through their respective counsel, agreed to participate in a fully remote evidentiary hearing on August 17, 2023. By Decision No. R23-0400-I, issued June 12, 2023, the ALJ scheduled the evidentiary hearing for August 17, 2023, and established a procedural schedule to govern the Proceeding.

10. On July 6, 2023, the parties jointly moved to amend the procedural schedule to extend by one week the deadlines for Intervenor to file its witness and exhibit lists and its exhibits, and for Applicant to file its amended witness and exhibit lists as well as any additional or amended exhibits. That request was granted by Decision No. R23-0454-I, issued July 13, 2023. Marketing Services and Rapp Tours then filed their exhibits and lists on July 14 and July 25, 2023, respectively, in compliance with the amended procedural schedule.

11. On August 14, 2023, three days before the evidentiary hearing was to be held, the parties jointly advised the undersigned ALJ that they had reached a tentative settlement agreement resolving their dispute. They requested that they be granted additional time to complete their settlement documents and that the evidentiary hearing scheduled for August 17, 2023, be vacated.³

³ Joint Notice of Settlement and Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time, ¶¶ 9-15, pp. 2-4, filed August 14, 2023.

12. By Decision No. R23-0544-I, issued August 15, 2023, the undersigned ALJ granted the parties' request, vacated the August 17, 2023 evidentiary hearing, and established a deadline of September 1, 2023, by which the parties were to file their settlement documents.

13. On August 15, 2023, Rapp Tours filed its Third Amendment to its Application. The Third Amendment seeks to modify and restrict the scope of Rapp Tours' Application as follows:

1. Rapp Tours Adventures is restricted to operating two unconverted vehicles with passenger capacity of five (5) passengers or less.
2. Rapp Tours Adventures is restricted from operating in or applying for permits in any national forest in Colorado with the following exceptions:
 - a) Rapp Tour Adventures may apply for national forest permits to operate in Florissant, Colorado (80816)
 - b) Rapp Tour Adventures may apply for national forest permits to operate in Lake George, Colorado (80827).
3. Rapp Tour Adventures is restricted from operating on Gold Camp Road and North Cheyenne Canyon Road in Colorado Springs, Colorado.

14. Subsequently, on August 24, 2023, Marketing Services filed a Notice of Withdrawal of its Intervention. In its Notice, Intervenor represents that during the pendency of this Proceeding, the parties conducted good faith settlement negotiations, which "resulted in a Settlement Agreement whereby Applicant will restrictively amend its Application and Intervenor will withdraw its Intervention and opposition to the Application upon a Commission finding that those restrictive amendments are administratively acceptable."⁴ Marketing Services specified that with the restrictions proposed in Applicant's Third Amendment to its Application, it no longer opposed Rapp Tours' Application.⁵

⁴ Notice of Withdrawal of Intervention of Marketing Services Inc. of Pueblo, ¶ 9, p. 2, filed Aug. 24, 2023.

⁵ *Id.* at ¶ 16, p. 3.

15. On the same date that Intervenor filed its Notice of Withdrawal, the parties filed their Joint Motion for Approval of Settlement Agreement. Contemporaneously therewith, the parties submitted their Settlement Agreement and requested that the Commission approve the Settlement Agreement.⁶

16. The Application as amended by the parties' Settlement Agreement and Applicant's Amendment to its Application is now uncontested.

17. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT AND CONCLUSIONS

18. Given that the Application as amended is now unopposed, the matter will be considered and processed pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

19. A proposed restricted amendment to an application for authority to operate as a contract carrier or common carrier by motor vehicle for hire must be restrictive in nature, clear and understandable, and administratively enforceable. The proposed restriction and authority must be unambiguous and must be contained entirely within the authority granted.

20. As amended and restricted, Rapp Tours seeks:

authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand sightseeing service between all points in Colorado Springs, Colorado, on the one hand, and on the other hand, all points (a) on the Pikes Peak Highway; (b) in Pike National Forest; (c) in Manitou Springs, Colorado; (d) in the Eleven Mile

⁶ Joint Motion for Approval of Settlement Agreement, ¶ 20, p. 5, filed Aug. 24, 2023.

Canyon Recreation Area; (e) the Eleven Mile Reservoir and State Park; and (f) the Paint Mines Interpretive Park in Calhan, Colorado.

RESTRICTIONS: This authority is restricted as follows:

1. Rapp Tours Adventures is restricted to operating two unconverted vehicles with passenger capacity of five (5) passengers or less.
2. Rapp Tours Adventures is restricted from operating in or applying for permits in any national forest in Colorado with the following exceptions:
 - a. Rapp Tour Adventures may apply for national forest permits to operate in Florissant, Colorado (80816).
 - a) Rapp Tour Adventures may apply for national forest permits to operate in Lake George, Colorado (80827).
3. Rapp Tour Adventures is restricted from operating on Gold Camp Road and North Cheyenne Canyon Road in Colorado Springs, Colorado.

21. The Settlement Agreement filed jointly by the parties states that the parties have agreed that the above proposed authority, with the incorporated restrictions, is acceptable to both parties. The parties represent that the Settlement Agreement is just, reasonable, and consistent with the public interest.

22. The restrictive amendment filed by Rapp Tours on August 24, 2023, is clear, unambiguous, and administratively enforceable. The restrictive amendment achieves the purposes sought by Rapp Tours and Marketing Services by protecting Marketing Services' existing authority while allowing Rapp Tours to provide the substance of the service it seeks to offer. As a result, the restrictive amendment which restricts Applicant's proposed authority to operate as a common carrier by motor vehicle for hire will be accepted.

23. The Intervention filed by Marketing Services will be deemed withdrawn.

24. In completing and submitting the Application, Rapp Tours represented that it is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agreed to comply with those Rules to the extent applicable to it.

25. Additionally, the information provided by Applicant establishes that Applicant possesses sufficient equipment to provide the proposed service and is financially viable to conduct operations under the authority requested. The Application and the supporting information attached demonstrate that a need exists for the proposed service.

26. It is found that Applicant Rapp Tours is fit to provide the proposed transportation service as restrictively amended and the Application with the proposed restrictive amendments is reasonable, in the public interest, and should be granted.

27. Applicant will be granted, subject to conditions, a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier of passengers by motor vehicle for hire as set forth in the Appendix attached to this Decision, conditioned upon Applicant's full compliance with the requirements contained in this Decision.

28. If Applicant fails to comply with the prerequisites required by Ordering Paragraph No. 6 within 60 days of the effective date of the Decision, the requested CPCN will be deemed denied and Applicant will not be granted the requested permanent authority; the CPCN shall not be issued; and Applicant shall not be permitted to operate under the requested CPCN authority. No further action of the Commission is required.

29. For good cause shown, the Commission may grant additional time for compliance with Ordering Paragraph No. 6 if the request for additional time is filed within 60 days of the effective date of this Decision.

30. The Commission will notify Applicant in writing when the Commission's records demonstrate Applicant has fully complied with the requirements of Ordering Paragraph No. 6. Applicant shall not begin operations without the receipt of written notification of compliance from the Commission.

31. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Joint Motion for Approval of Settlement Agreement filed by Amanda Rapp, doing business as Rapp Tours Adventures LLC and Marketing Services Inc. of Pueblo on August 24, 2023, is granted.

2. The Settlement Agreement filed jointly by Amanda Rapp, doing business as Rapp Tours Adventures LLC and Marketing Services Inc. of Pueblo on August 24, 2023, is approved.

3. The Application and the amended restrictions to the Application of Amanda Rapp, doing business as Rapp Tours Adventures LLC, filed on February 22, 2023, and August 15, 2023, respectively, are granted consistent with the discussion above.

4. The Intervention of Marketing Services Inc. of Pueblo, filed March 24, 2023, is deemed withdrawn.

5. A Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire as set forth in Appendix A attached to this Decision is granted to Applicant Amanda Rapp, doing business as Rapp Tour Adventures LLC, subject to Applicant's full compliance with the requirements in Ordering Paragraph No. 6.

6. Applicant Rapp Tours shall not be granted the authority described above and shall not commence operations until it has fully complied with the following conditions:

- (a) cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;

- (b) pay to the Commission, the motor vehicle fee (\$50.00) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) file with the Commission and have an effective, publicly available tariff (and time schedule if applicable). The tariff should comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The tariff shall be filed in a *new* Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the proposed effective date;
- (d) submit a Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection must be done in accordance with Rules 6103 and 6104 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6; and the inspection must show that the vehicle passed the inspection. The inspection report may be found at:
<https://puc.colorado.gov/common-carriers>;
- (e) register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system (E-Filings) and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at:
www.dora.state.co.us/pls/efi/EFI.homepage; and
- (f) pay the applicable fee (\$5.00) for the issuance of the authority.

7. If Applicant Rapp Tours does not comply with each requirement in Ordering Paragraph No. 6, within 60 days of the effective date of this Decision, the authority granted herein will be deemed denied without further action of the Commission. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

8. Applicant Rapp Tours shall continue to operate in accordance with all applicable statutes, orders, and rules of the Commission. The Commission may issue an order to cease and desist

or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112 (1), C.R.S.

9. Proceeding No. 23A-0088CP is closed.

10. 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.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- 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.

12. If exceptions to this 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)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge