

Decision No. C19-0912

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0557CP

IN THE MATTER OF THE PETITION OF MARKETING SERVICES, INC. OF PUEBLO, DOING BUSINESS AS ADVENTURES OUT WEST, INC. FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6213(A) (AGE OF VEHICLES) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

DECISION GRANTING WAIVER IN PART

Mailed Date: November 12, 2019

Adopted Date: November 6, 2019

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a Petition for Waiver/Variance of Common/Contract Carrier Rules filed on October 15, 2019, by Marketing Services, Inc. of Pueblo, doing business as Adventures Out West, Inc. (Adventures Out West).

2. Adventures Out West requests a waiver of Rule 6117(c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (Age of Motor Vehicles).

3. The vehicle for which a waiver is requested is a 1982 Jeep Scrambler, VIN No. 1JCCN88E9CT013389. The waiver is requested from January 1, 2020 through January 1, 2023.

4. The Commission noticed this petition to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on October 21, 2019. Any person desiring to intervene in this Petition was required to file an appropriate pleading by October 31, 2019.

5. No petition to intervene or otherwise participate in this proceeding has been filed. This proceeding is therefore uncontested. Pursuant to § 40-6-109(5), C.R.S., this matter may be determined without a hearing.

6. Pursuant to Rule 1003 of the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions and orders for good cause. In making a determination, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

7. Rule 6117(c), 4 CCR 723-6, states that “[w]ith the exception of a Luxury Limousine which meets the definition of “Collector’s Vehicle” in subparagraph 6305(a)(IV), no Motor Vehicle operated under a Certificate or Permit shall be more than 15 years old regardless of condition or mileage.”

8. Adventures Out West, under Certificate of Public Convenience and Necessity PUC No. 55737, may provide sightseeing service between all points in the Counties of El Paso, Fremont, Pueblo, and Teller, Colorado.

9. The 1982 Jeep Scrambler named in this petition is obviously significantly older than the 15 model years allowed by Rule 6117(c). Thus, unless Adventures Out West is granted a waiver of Rule 6117(c) for the vehicle named in this petition, it may not provide sightseeing service with this vehicle.

10. In support of this petition, Greg Wellens the owner of Adventures Out West states:

This vehicle is indispensable for our business. It is one of 3 scramblers remaining in our fleet of the same make and body style. The vehicle is a unique style that is part of the adventure we sell. These vehicles are well maintained and in excellent mechanical condition. Total miles driven per tour are 5– 25 and total miles per year are about 3000. ... All vehicles pass a yearly PUC inspection in [addition] to

the quarterly inspections that are now required for vehicles of this age and are repaired accordingly.

This vehicle is used in Colorado Springs 100% of the time. It is used for local sightseeing tours on mixed use roads. The vehicle is in use for about three-four months a year. These "Extra" older vehicles in our fleet are used to supplement our fleet. The cost to replace this vehicle and modify a new one is over \$50,000.00. We do not claim financial hardship but it would be expensive to replace all three in addition to the two I did replace this [year].

11. Adventures Out West submitted six pictures of the interior and exterior of the vehicle. The pictures show that the Jeep Scrambler does not have any doors or windows except for the front windshield and is the type of vehicle frequently used to provide mountain sightseeing tours.

12. In consideration that the 1982 Jeep Scrambler:¹ a) is only driven around 3,000 miles per year; b) projects an image valued by Adventures Out West; and c) is not easily or inexpensively replaceable, the Commission finds that Adventures Out West has shown good cause to grant a waiver of Rule 6117(c). However, Adventures Out West's request for a waiver of Rule 6117(c) from January 1, 2020 through January 1, 2023, may be excessive for a vehicle of this age. Therefore, the waiver shall be granted from January 2, 2020² through January 10, 2022.

¹ The Commission is aware that the Jeep Scramblers were only manufactured from 1981 through 1986 and may be difficult to replace.

² Adventures Out West also submitted a petition for a waiver of Rule 6213(a) (Age of Motor Vehicles) for the 1982 Jeep Scrambler named in Proceeding No. 19V-0559CP on January 10, 2019 in Proceeding No. 19V-0035CP. Adventures Out West was granted a waiver of Rule 6213(a) for the 1982 Jeep Scrambler on February 26, 2019 by Decision No. C19-0196. The waiver was granted for the period of February 26, 2019 through January 1, 2020.

13. Adventures Out West is advised that the grant of the waiver of Rule 6213(a) for the vehicle named in this petition does not ensure that this vehicle will pass a future safety inspection by the Staff of the Commission.

II. ORDER

A. The Commission Orders That:

1. The petition of Marketing Services, Inc. of Pueblo, doing business as Adventures Out West, Inc. (Adventures Out West) for a waiver of Rule 6117(c) for the 1982 Jeep Scrambler, VIN No. 1JCCN88E9CT013389, is granted, in part, from January 2, 2020 through January 10, 2022.

2. Adventures Out West shall keep a copy of this Decision in the 1982 Jeep Scrambler named in this petition and shall provide this Decision immediately on request by any Commission enforcement official.

3. Adventures Out West shall have the 1982 Jeep Scrambler named in this petition inspected pursuant to Rule 6117(c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6 (Age of Motor Vehicles).

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 6, 2019.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners