

Decision No. R20-0556

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0107CP

IN THE MATTER OF THE APPLICATION OF ORIGINAL GRAVITY BEER 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
MELODY MIRBABA
GRANTING PERMANENT AUTHORITY
SUBJECT TO CONDITIONS**

Mailed Date: July 31, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Summary.

1. This Decision grants Original Gravity Beer Tours LLC's (Original Gravity) amended Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire subject to conditions.

B. Background.

2. Only the procedural history necessary to understand this Decision is included. On March 17, 2020, Original Gravity initiated this proceeding by filing a verified Application for New Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission). On April 2, 2020, Original Gravity amended its Application.

3. On April 6, 2020, the Commission gave public notice of the amended Application consistent with Rule 1206 of the Commission's Rules of Practice and Procedure, 4 *Code of*

Colorado Regulations (CCR) 723-1. See Commission Notice of Applications and Petitions Filed, dated April 6, 2020 (Public Notice).

4. Estes Valley Transport, Inc. (Estes Valley) and Fun Tyme Trolleys LLC, doing business as Estes Park Trolleys, (Fun Tyme) both filed timely Interventions objecting to the Application. Estes Valley, Fun Tyme, and Original Gravity are the only parties to this proceeding.

5. On June 30, 2020, Original Gravity filed a Motion for Amendment of Application (Motion). The Motion seeks to amend the proposed authority with additional restrictions.

6. On July 9, 2020, Fun Tyme filed a “Statement of Position of Intervenor Fun Tyme Trolleys, LLC D/B/A Estes Park Trolleys” (Response to Motion). The Response to Motion states that if Original Gravity’s proposed amendments are accepted, that Fun Tyme’s interests will be satisfied, and requests that its Intervention be deemed withdrawn.

7. Estes Valley did not file a response to the Motion.

8. On July 15, 2020, the ALJ granted the Motion in part, and denied it in part. Decision No. R20-0516-I. The ALJ rejected multiple aspects of Original Gravity’s proposed amendments, and made minor modifications to remaining language that align with Original Gravity’s requested changes. See Rule 1408, 4 CCR 723-1. The ALJ found that as modified, the amendments to the proposed authority are restrictive, clear, understandable, and administratively enforceable. As such, the ALJ amended the Application. *Id.* at ¶ 17.

9. Given that the ALJ made modifications to Original Gravity’s proposed amendments to the Application, the ALJ delayed the effective date of the amendments to July 26, 2020. *Id.* at Ordering ¶ 1. The ALJ ordered that the amendments would not become effective if Original Gravity makes a filing on or by July 25, 2020, indicating that it disagrees with the modifications to proposed amendments. *Id.* at Ordering ¶ 2. The ALJ also ordered that if Fun Tyme no longer

wishes to withdraw its Intervention based on the modifications to the proposed amendments to the Application, that it must make a filing indicating this on or by the close of business on July 25, 2020. *Id.* at Ordering ¶ 3. Finally, the ALJ ordered that if Original Gravity and Fun Tyme do not make such filings by the dates specified, the amendments will be effective and Fun Tyme's Intervention will be deemed withdrawn (per its Response to Motion). *Id.*

10. On July 20, 2020, Estes Valley filed a "Withdrawal of Interventions" (Estes Valley's Withdrawal) stating that based on the current scope of the Application as provided in Decision No. R20-0516-I, that Estes Valley withdraws its Intervention. It also states that Fun Tyme withdraws its Intervention for the same reason. However, neither Fun Tyme nor its counsel executed Estes Valley's Withdrawal.¹

11. Also on July 20, 2020, a filing identical to Estes Valley's Withdrawal was made (Withdrawal). This Withdrawal is identical in every way to Estes Valley's Withdrawal, including the fact that neither Fun Tyme nor its counsel executed it. The only difference is the identity of the filing party in the Commission's E-Filing system: Fun Tyme is listed as the filing party for the Withdrawal while Estes Valley is listed as the filing party for Estes Valley's Withdrawal.

12. Original Gravity did not make a filing disagreeing with the changes to the amendments to the proposed authority. And, Fun Tyme made no filing indicating that it no longer wished to withdraw its intervention.

13. As such, the amendments to the Application outlined in Decision No. R20-0516-I and Fun Tyme's withdrawal of its Intervention became effective on July 26, 2020. Decision No. R20-0516-I, Ordering ¶¶ 1-3.

¹ Fun Tyme's counsel is Mr. Glenn Malpiede with Estes Legal Services, LLC, and Estes Valley's counsel is Mr. Charles Kimball with Kimball & Nespor, P.C. Mr. Kimball signed both Estes Valley's Withdrawal and the Withdrawal under a signature block listing both Fun Tyme and Estes Valley.

C. Findings and Conclusions.

14. Because Fun Tyme's withdrawal became effective on July 26, 2020, there is no need to address the Withdrawal purporting to be made on behalf of Fun Tyme.

15. Given that Fun Tyme and Estes Valley have both withdrawn their Interventions, the Application, as amended, is no longer contested. Because the amended Application is uncontested, is verified, includes sufficient facts to make a determination on the relief sought, is supported by the required documents and information, and a hearing is not required or requested, the ALJ will consider the amended Application based on the record without a formal hearing. § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1.

16. Original Gravity is a domestic limited liability corporation organized in Colorado. Application, ¶ 6. The verified Application establishes that Original Gravity is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. *Id.* at ¶ 22. The verified Application establishes that Original Gravity has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. *Id.* at ¶¶ 10 and 13; Confidential "Bank Account Balances" and "Checking Account Statement" filed on April 2, 2020. Combined, Original Gravity's owners and managers have: management experience, industry experience in the craft beer field (including providing in-person tours), experience managing budgets, experience transporting passengers, and customer service experience. *Id.* at ¶ 14.

17. Based on all of this and the record as a whole, the ALJ concludes that Original Gravity is managerially, operationally, and financially fit to operate under the requested authority. Based on the record and the foregoing, the ALJ concludes that Original Gravity has met all other prerequisites for receiving the requested authority. *See e.g.*, Rule 6203, 4 CCR 723-6. Finally, a

review of the verified Application indicates a need for the proposed service. Application, ¶ 11. For the foregoing reasons and authorities, the ALJ recommends that the amended Application be granted, subject to the below conditions.

18. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Original Gravity Beer Tours LLC's (Original Gravity) Application, as amended by Decision No. R20-0516-I, is granted subject to the conditions identified below. Original Gravity is granted a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle as follows:

Authority to operate as a common carrier by motor vehicle for hire for the

Transportation of

passengers in call-and-demand charter and shuttle service

to breweries, distilleries, tasting rooms, bars, and such other locations within the following geographic area:

originating from 2720 W. Council Tree Avenue #242, Fort Collins, Colorado 80525, or such other pickup locations designated from time to time within the city limits of Fort Collins, Loveland, and Greeley,

with service to

specified routes as designated from time to time, with such routes contained within the area starting at

the intersection of N. Overland Trail and W. Vine Dr. on a line northeast to the intersection of N. County Rd. 9. and E. Co. Rd. 66, Southeast to the intersection of Weld County Rd 43 and Colorado Highway 14, South to the intersection of W Co Rd 43 and E 37th Street, Southwest to the intersection of U.S. Highway 287 and W Co Rd 4, and finally north-northwest to the initial intersection and within an area extending of 2 miles beyond these indicated boundaries

in Larimer and Weld Counties, State of Colorado.

2. Original Gravity must operate in accordance with all applicable Colorado laws and Commission rules.

3. Original Gravity may not commence operation under the authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- b) paying to the Commission, the motor vehicle fee 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) having an effective tariff on file with the Commission. To this end, Original Gravity must file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff must be filed as a new Advice Letter proceeding and must comply with all applicable rules. 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 effective date. (Additional tariff information can be found on the Commission's website at www.colorado.gov/pacific/dora/common-carriers); and
- d) paying the applicable issuance fee.

4. If Original Gravity does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit will be void. 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.

5. The Commission will notify Original Gravity in writing when the Commission's records demonstrate compliance with Ordering Paragraph 3.

6. The August 20, 2020 hearing and all deadlines and procedural requirements established in this proceeding through prior decisions are vacated.

7. Proceeding No. 20A-0107CP is closed.
8. 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.
9. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.
10. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director