

Decision No. C22-0573

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0386CP-TA

IN THE MATTER OF THE APPLICATION OF GREEN JEEP TOURS, LLC FOR TEMPORARY
AUTHORITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**COMMISSION DECISION DENYING
TEMPORARY AUTHORITY**

Mailed Date: September 28, 2022

Adopted Date: September 21, 2022

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. On September 2, 2022, Green Jeep Tours, LLC (Applicant) filed an application for temporary authority to operate as a common carrier of passengers by motor vehicle for hire. An amendment to the application was filed on September 2, 2022.

2. Applicant requests temporary authority for 180 days to transport passengers in scheduled service, between all points within the area comprised of the ten mile radius of the intersection of Moraine Avenue and Elkhorn Avenue, Estes Park, Colorado, all of Rocky Mountain National Park beyond the ten mile radius of the intersection of Moraine Avenue and Elkhorn Avenue, Estes Park, and all points within the five mile area beyond the boundary of Rocky Mountain National Park outside the ten mile radius of the intersection of Moraine Avenue and Elkhorn Avenue, Estes Park, Colorado. This proposed authority is restricted: (1) to the use of vehicles with a rated seating capacity of ten passengers or more including the driver; (2) to the use of open air vehicles with convertible tops; and (3) to serving points named in the carrier's filed schedule.

3. The Commission gave notice of the application on September 6, 2022, for a period of five days pursuant to § 40-10.1-204(4), C.R.S.

4. On September 8, 2022, a Notice of Intervention by Right and Alternative Motion for Intervention was filed jointly by Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Charters), and Fun Tyme Trolleys, LLC (Fun Tyme), which own Certificate of Public Convenience and Necessity (CPCN) PUC Nos. 54696 and 55845, respectively. On September 12, 2022, a Motion to Intervene was filed by Wild Side 4 x 4 Tours (Wild Side).

5. On September 20, 2022, Applicant filed a Motion to Strike Interventions by Right and Response in Opposition to Alternate ‘Motions for Intervention,’ and a Response in Opposition to Wild Side’s Motion to Intervene.

6. Pursuant to § 40-10.1-204(1), C.R.S., the Commission is authorized to grant temporary authority only when “there appears to be an immediate and urgent need to any point or within a territory having no such service capable of meeting the need.”

7. Therefore, Applicant must meet a two-fold test: first, that there is an immediate and urgent need for the transportation services, and second, that there is no existing carrier capable of meeting the need.¹ If Applicant fails to meet either test, the application must be denied.

8. Applicant states it has provided jeep tours within Rocky Mountain National Park (RMNP) since 2009 under a “gray area” of PUC jurisdiction. However, given the Commission’s decision in the Wild Side declaratory order proceeding, Applicant has now filed for common carrier authority.² Applicant currently has a limited regulation permit (PUC No. ORC-00204) to

¹ Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6204(a)(I).

² In Proceeding No. 20D-0521EC, on November 23, 2020, Wild Side filed for a declaratory order that the passenger transportation service it provided in Estes Park and RMNP was exempt from regulation by the PUC. By Recommended Decision No. R22-0233, mailed on April 19, 2022, the Administrative Law Judge denied the petition

provide Off-Road Scenic Charter service but that service only allows the transportation of a single chartering party “to scenic points within Colorado, originating and terminating at the same location and using a route that is wholly or partly off of paved roads.”³ Whereas, Scheduled Service allows for one-way trips and per-passenger fares. It is defined as “transportation of Passengers by a Common Carrier between fixed points and over designated routes at established times as specified in the Common Carrier’s Tariff filed with and approved by the Commission.”⁴

9. In support of the temporary authority, Applicant states, in part, the following:

Applicant turns down traffic on a daily basis from folks seeking a one way ride either into Rocky Mountain National Park (RMNP), for a point within Estes Park too far for the visitor to walk to, or to an RV park or campground outside of Estes Park and outside RMNP. The Estes Park area currently has a limited scheduled service operation which is seasonal. The town provides a scheduled service along the main street of town. It does not reach the outskirts where the RV parks and private campgrounds are located. Moreover, its operations will be ceasing in the near future. RMNP provides what is known as the Hiker’s Shuttle, which provides a limited service into one area of RMNP. It too is seasonal and about to shut down for the season. After these two services shut down, there will be no scheduled service until late spring of next year, assuming these entities decide to reinstate those services.

10. The application includes nine letters of public support: seven letters are from out-of-state individuals looking to travel to Estes Park in the future who generally state that they need a scheduled service option; a letter from an employee of Applicant who says tourists may be stranded when the local scheduled service stops; and a letter from a RV Resort business which supports other transportation options.

and found that Wild Side did require authority from the PUC to provide such passenger transportation service. The Commission denied exceptions to this recommended decision (Decision No. C22-0507, mailed on August 30, 2022).

³ See Commission Rule 6301(i) and § 40-10.1-301(12), C.R.S.

⁴ Commission Rule 6001(III).

11. In their Notice of Intervention and Alternative Motion for Intervention, Fun Tyme and Estes Park Charters assert that the authority sought by Applicant directly conflicts with and overlaps the authority set forth in the CPCNs held by Fun Tyme and Estes Park Charters. They state that they are able to serve additional passengers and provide year-round service, and they state they would be harmed by the diversion of passengers and revenue in the overlapping service territory if the application is granted and thus have financial and tangible interests in the subject matter of the Application. Fun Tyme and Estes Park Charters request that if the temporary application is not denied, the matter be set for hearing.

12. In its Motion to Intervene, Wild Side asserts it has a direct and substantial pecuniary interest in this Proceeding because the temporary authority sought by Applicant potentially overlaps or impedes the transportation operations provided by Wild Side and the permanent authority it currently seeks in a pending application. It also requests that if the temporary application is not denied, the matter be set for hearing.

13. On September 20, 2022, Applicant filed a motion to strike the interventions by right and responses to the requests for intervention. Applicant argues that Estes Park Charters and Fun Tyme Trolleys should not be granted intervention as of right because the CPCNs they hold grant authority for call-and-demand service, and are therefore not in conflict with the temporary authority for scheduled service sought by Applicant. Applicant argues that their request for permissive intervention should also be denied, noting that the companies did not submit proof that they are actually offering call-and-demand service, and stating that they do not have a sufficient pecuniary or tangible interest in the proceeding. Applicant argues that Wild Side's request for permissive intervention should be denied as well, stating that Wild Side has no scheduled service authority in conflict and that Wild Side's participation in the proceeding would broaden the issues.

14. Under Rule 1401(c), 4 CCR 723-1, persons seeking permissive intervention must demonstrate that the proceeding may substantially affect the pecuniary or tangible interests of the movant, and that the movant's interests would not otherwise be adequately represented. We are persuaded that the temporary authority sought by Applicant potentially overlaps the geographic areas in which the entities requesting intervention operate and may impede their transportation operations. We find that each of these entities has demonstrated that this proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 4 1401(c), and that their interests would not otherwise be adequately represented. Therefore, we grant the permissive intervention of Estes Park Charters, Fun Tyme Trolleys, and Wild Side.

15. Because we grant Estes Park Charters and Fun Tyme Trolleys permissive intervention, we do not reach the question of whether these companies meet the requirements for intervention as of right set forth in Rule 1401(b). For these reasons, we deny as moot Applicant's motion to strike the interventions by right.

16. Considering that there is common carrier service available within the requested geographic area and that there were only limited references to an immediate and urgent need for scheduled service, the Commission finds that the information submitted with this application does not support the granting of temporary authority. Such a result will be consistent with the previous requests for temporary authority from Applicant and Wild Side.⁵ Given the contentious nature of competing transportation providers in Estes Park, it is appropriate to have a consistent approach to

⁵ By Decision No. C22-0302, mailed on May 13, 2022, in Proceeding No. 22A-0178CP-TA, the Commission denied an application filed by Applicant for temporary authority to provide call-and-demand sightseeing service and *scheduled* service within the Estes Park region. By Decision No. C22-0416, mailed on July 18, 2022, in Proceeding No. 22A-0266CP-TA, the Commission denied an application filed by Wild Side for temporary authority to provide sightseeing service, on call-and-demand and *schedule*, within the Estes Park region.

similar requests for temporary authority. Thus, this application for temporary authority is not in the public interest and will be denied.

17. The Commission makes this decision without the need for further proceedings. Section 40-10.1-204(1), C.R.S., sets forth an abbreviated process for adjudicating an application for temporary authority. The statute allows the Commission to grant such authority, at its discretion, and without hearings or other proceedings. In these circumstances, we find that we have sufficient information before us to efficiently reach a decision on the merits of the application, without the need for a hearing.

18. The denial of this application creates no presumption about the final disposition of a permanent authority application. The permanent authority application will be determined on the evidence presented using the statutory criteria.

II. ORDER

A. The Commission Orders That:

1. The application for temporary authority filed on September 2, 2022, by Green Jeep Tours, LLC (Green Jeep Tours) is denied.

2. The Notice of Intervention by Right and Alternative Motion for Intervention filed on September 8, 2022, by Estes Park Charters Corp. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, is granted consistent with the above discussion.

3. The Motion to Intervene filed by Wild Side 4 x 4 Tours on September 8, 2022, is granted consistent with the above discussion.

4. The Motion to Strike Interventions by Right filed on September 20, 2022 by Green Jeep Tours is denied as moot, consistent with the above discussion.

5. 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 or serves this Decision.

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners