

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0215CP & 22A-310CP

IN THE MATTER OF THE APPLICATION OF GREEN JEEP TOURS, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

PROCEEDING NO. 22A-0310CP

IN THE MATTER OF THE APPLICATION OF WILD SIDE 4 X 4 TOURS 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
AVIV SEGEV
DENYING MOTION TO JOIN, MOTION TO STRIKE, AND
REQUEST FOR LEAVE TO REPLY**

Mailed Date: December 9, 2022

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STATEMENT**A. Procedural Background**

1. On May 23, 2022, in Proceeding No. 22A-0215CP, Green Jeep Tours, LLC (Green Jeep) filed with the Commission a Permanent Authority Application (Green Jeep's Application), through which Green Jeep seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire. This filing commenced Proceeding No. 22A-0215CP.

2. On May 31, 2022, in Proceeding No. 22A-0215CP, the Commission issued its Notice of Applications Filed, wherein the Commission gave notice of Green Jeep's Application and established a 30-day intervention period.

3. On June 7, 2022, in Proceeding No. 22A-0215CP, Estes Park Charters Corp. and Fun Tyme Trolleys, LLC d/b/a Estes Park Trolleys (together Intervenors) timely intervened of right.

4. On June 29, 2022, Wild Side filed a Permanent Authority Application (Wild Side's Application), through which Wild Side seeks a CPCN to operate as a common carrier by motor vehicle for hire. This filing commenced Proceeding No. 22A-0310CP.

5. On July 5, 2022, in Proceeding No. 22A-0310CP, the Commission issued its Notice of Applications Filed, through which the Commission gave notice of Wild Side's Application and established a 30-day intervention period.

6. On July 6, 2022, the Commission, via a minute entry, deemed Green Jeep's Application complete and referred Proceeding No. 22A-0215CP to an Administrative Law Judge (ALJ) for disposition.

7. On August 17, 2022, the Commission, via a minute entry, deemed Wild Side's Application complete and referred Proceeding No. 22A-0310CP to an ALJ for disposition.

8. By Interim Decision No. R22-0527-I, issued September 7, 2022, the undersigned ALJ consolidated Proceeding Nos. 22A-0215CP and 22A-0310CP and designated Proceeding No. 22A-0215CP the primary proceeding.

9. On October 31, 2022, Intervenor filed their Motion to Join Explore Estes, LLC (Explore Estes) (Intervenor's Motion to Join Explore Estes).

10. On November 14, 2022, Wild Side filed its Response to Intervenor's Motion to join Explore Estes.

11. Also on November 14, 2022, Green Jeep filed its Motion to Strike Intervenor's Motion to Join Explore Estes, LLC (Green Jeep's Motion to Strike).

12. On November 15, 2022, Intervenor filed their Motion to reply to Wild Side response (Intervenor's Motion for Leave to Reply).

13. On November 21, 2022, Intervenor filed their Response to Green Jeep Motion to Strike (Intervenor's Response to Green Jeep's Motion to Strike).

B. Legal Standards

14. According to Rule 1500, 4 *Code of Colorado Regulations* (CCR) 723-1, the proponent of a Commission decision bears the burden of proof with respect to the relief sought.

15. According to Rule 1400(e) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, "A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate: (I) a material misrepresentation of a fact... or (IV) an incorrect statement or error of law."

16. When considering a motion for joinder, we turn to the Colorado Rules of Civil Procedure (C.R.C.P.) for guidance. *See* 4 CCR 723-1-1001 of the Commission's Rules of Practice and Procedure. C.R.C.P. 19(a) states in pertinent part:

(a) Persons to be Joined if Feasible. A person who is properly subject to service of process in the action shall be joined as a party in the action if:

- (1) In his absence complete relief cannot be accorded among those already parties, or
- (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
 - (A) As a practical matter impair or impede his ability to protect that interest or
 - (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest...

17. An interested person's right to intervene in a proceeding before the Commission does not make such person an indispensable party for purposes of C.R.C.P. 19(a). Decision No. C07-1083 in Proceeding No. 07A-265E, issued December 7, 2007.

C. Intervenor's Motion to Leave to Reply

18. In Intervenor's Motion to Leave to Reply, Intervenor asserts that they should be allowed to respond to Green Jeep's Motion to Strike because Green Jeep's Motion to Strike contained a misrepresentation of fact and an incorrect statement of law.¹

19. With respect to Wild Side's alleged misrepresentation of fact, Intervenor states that:

Wild Side... mischaracterizes Intervenor's position on Wild Side operations in the Estes Park market, and indicates that it has had to severely reduce its operations, conveniently omitting the fact that it was recently issued a CPAN by Commission enforcement staff for allegedly operating without a permit...

¹ Intervenor's Motion for Leave to Reply at 1.

Wild Side also mischaracterizes the reasons behind Intervenor's settlement with Explore Estes. The settlement was carefully considered, and it allowed for a new carrier to serve the Estes Park market. It should not be viewed as a sign that Intervenor or the Commission should now allow two additional carriers to enter the market, or perhaps more...²

20. With respect to Wild Side's alleged incorrect statement of law, Intervenor states that: "Wild Side... erroneously describes the interplay between C.R.S. §40- 6-109, and C.R.C.P. Rule 19, arguing that the statute precludes application of C.R.C.P. Rule 19, but at the same time stating that 'Applicability of C.R.C.P. 19 is at the ALJ's sole discretion...'"³ Intervenor further states:

Intervenor also wish to explain why Wild Side's view of Rule 19 is incorrect with regard to subsection (a)(1)(A). The question is not just whether granting two applications will harm Explore Estes, although it would. The question is also whether the public interest will be harmed by the addition of too many carriers into the market, that is, whether the Commission can 'accord complete relief among existing parties' without Explore Estes. The answer is no...⁴

21. The ALJ finds that any misrepresentations of a fact by Green Jeep, if any⁵, are not material because they are not germane to the primary issue raised in Intervenor's Motion to Join Explore Estes; namely, whether Explore Estes should be joined as an indispensable party pursuant to C.R.C.P. 19(a).

22. The ALJ further finds that what Intervenor consider as Green Jeep's misstatements of law are merely alternative legal interpretations to those offered by Intervenor.

² *Id.* at 1-2.

³ *Id.* at 2.

⁴ *Id.* at 3-4.

⁵ None of the findings contained in this Interim Decision are meant to address the question of whether Green Jeep's Motion to Strike contained a misrepresentation of fact. Such determination is unnecessary for purposes of rendering this Interim Decision.

23. Because Green Jeep's misrepresentations of fact, if any, are not material and because Green Jeep did not misstate the law in Green Jeep's Motion to Strike, Intervenor's Motion for Leave to Reply will be denied.

D. Green Jeep's Motion to Strike

24. In Green Jeep's Motion to Strike, as grounds for Striking Intervenor's Motion to Join Explore Estes, Green Jeep states that "[t]he PUC has no jurisdiction over... Explore Estes, LLC[;] Intervenor fails to state a claim upon which relief can be granted[; and] [g]ranting [Green Jeep's Motion to Strike] is in the public interest."⁶ In support of its contention that Intervenor fails to state a claim upon which relief can be granted, Green Jeep, states: "[u]nless and until Explore Estes becomes a party to this proceeding by seeking and being granted intervention, it cannot be forced to participate in an application proceeding..."

25. First, Explore Estes is a Commission-regulated transportation company,⁷ and as such, the Commission does, indeed, have jurisdiction over it. Second, while the ALJ agrees that Explore Estes cannot be forced to become a party to this application proceeding, the remedy sought by Green Jeep (the striking of Intervenor's Motion to Join Explore Estes) is improper. In addition, Intervenor's Motion to Join Explore Estes is addressed on its merits and denied by this Interim Decision,⁸ thereby obviating the need to strike it.

26. Because Green Jeep did not carry the burden of proving that the striking of Intervenor's Motion to Join Explore Estes is merited, Green Jeep's Motion to Strike will be denied.

⁶ Green Jeep's Motion to Strike at 1-3.

⁷ See PUC No. 55972.

⁸ See Section I.E., of this Interim Decision

E. Intervenor's Motion to Join Explore Estes

27. In Intervenor's Motion to Join Explore Estes, Intervenor states that: "Explore Estes [*sic*] participation in this matter is required because complete relief cannot be accorded among those already parties when addressing the public convenience and necessity."⁹ Intervenor further states that Explore Estes is the only entity who can protect its own interests and that its failure to intervene is not determinative as to whether it should be joined as an indispensable party.¹⁰

28. The ALJ disagrees that Explore Estes participation in this matter is 'required.' This proceeding involves two overlapping CPCN applications, wherein the proponent of each CPCN application is a party to the proceeding. While Explore Estes' interests might be *affected* by the partial or complete grant of either application consolidated in this proceeding, Explore Estes participation is not *required*. Holding differently would have the effect of forcing persons whose authority overlaps with an authority sought through a CPCN application proceeding to participate in the proceeding even if such person made a conscious decision not to intervene in the proceeding.¹¹ In addition, Explore Estes' ability¹² to protect its interests against the interests of Applicants, or intervene in this matter, is not determinative as to whether Explore Estes should be joined pursuant to C.R.C.P. 19(a). See Decision No. C07-1083 in Proceeding No. 07A-265E, issued December 7, 2007.

29. Because Explore Estes did not meet its burden of proving that Explore Estes should be joined as an indispensable party pursuant to C.R.C.P. 19(a), Intervenor's Motion to Join Explore Estes will be denied.

⁹ Intervenor's Motion to Join Explore Estes at 3.

¹⁰ *Id.* at 7 and 8.

¹¹ The ALJ is not speculating as to whether Explore Estes was made aware of this proceeding, or whether it made a conscious decision not to intervene in this proceeding. Rather, the ALJ is pointing the problem with accepting Intervenor's argument that Explore Estes is an indispensable party pursuant to C.R.C.P. 19(a).

¹² In this Interim Decision, the ALJ makes no findings with respect to whether Explore Estes could intervene of right if it so chose.

ORDER

A. It Is Ordered That:

1. Estes Park Charters Corp.’s and Fun Tyme Trolleys, LLC d/b/a Estes Park Trolleys’ (together Intervenor) Motion to Reply, filed on November 15, 2022, is denied.
2. Green Jeep Tours, LLC’s Motion to Strike the “Motion to Join Explore Estes, LLC,” filed on November 15, 2022, is denied.
3. Intervenor’s Motion to Join Explore Estes, LLC, filed on October 31, 2022, is denied.
4. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director