

Decision No. R23-0400-I

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ESTABLISHING DEADLINES AND
SCHEDULING EVIDENTIARY HEARING**

Mailed Date: June 12, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a fully remote evidentiary hearing for Thursday, August 17, 2023, at 9:00 a.m. and sets deadlines for other procedural matters.

B. Procedural History

2. On February 22, 2023, Amanda Rapp, doing business as Rapp Tour Adventures (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.

3. 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

4. On March 24, 2023, Marketing Services, Inc., of Pueblo (Marketing Services), filed its Entry of Appearance and Intervention. Marketing Service’s Intervention was signed and filed by Greg Wellens, President of Marketing Services. A copy of Marketing Service’s Letter of Authority was filed with its Intervention.

5. 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.

6. 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.*

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

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

9. By Decision No. R23-0289-I, issued May 2, 2023, the undersigned ALJ scheduled a prehearing conference at which procedural issues concerning the Application and evidentiary hearing would be discussed.

10. On June 6, 2023, at 10:30 a.m., the ALJ held the fully remote prehearing conference as scheduled. Mr. Minshall appeared on behalf of Applicant and Ms. Caliendo appeared on behalf of Intervenor.

II. SCHEDULING OF EVIDENTIARY HEARING

11. During the prehearing conference, the parties indicated their preference to hold the evidentiary hearing fully remotely. Accordingly, the ALJ scheduled a fully remote evidentiary hearing to be held Thursday, August 17, 2023, commencing at 9:00 A.M., via Zoom. With the parties' input, the ALJ scheduled the hearing and established procedural deadlines as detailed in the ordering paragraphs below.

12. **Instructions for Participating in, and Observing, the Remote Hearing:** Attachment A to this Decision provides the information addressing how to use the Zoom platform for participating in the remote hearing.

A. Informal Video-Conference Practice Session

13. The ALJ will hold an informal practice video-conference session if requested by either party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

14. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

15. The parties will receive information and a link to participate in the informal practice session by email.

B. Advisements

16. *All parties are on notice* that failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

17. Rapp Tours bears the burden of proof by a preponderance of the evidence that it should be granted the requested authority.³ The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary.⁴ That is, the fact finder must determine whether the existence of a contested fact is more probable than its non-existence.⁵

³ §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 *Colo. Code of Regulations* (CCR) 723-1.

⁴ *Mile High Cab, Inc. v. Colo. Pub. Utils. Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

⁵ *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

A party meets this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

18. *The parties are on notice* that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

19. *The parties are also on notice* that if circumstances change before the hearing date, the ALJ may modify this hearing to be held in person or hybrid (in person with the option for witnesses, parties, and/or representatives to appear virtually), or may enter such other orders as appropriate in the circumstances.

20. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 *Colorado Code of Regulations* (CCR) 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at:

<https://www.colorado.gov/pacific/dora/pucrules>

21. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

22. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

III. ORDER

A. It Is Ordered That:

1. A fully remote evidentiary hearing on the merits of the Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire in this proceeding is scheduled as follows:

DATE: August 17, 2023

TIME: 9:00 a.m.

PLACE: Join by video conference using Zoom

2. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

3. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in **Attachment A** to this order, which is incorporated into and made part of this order.

4. **Deadlines for Witness Lists, Exhibit Lists, and Exhibits:** Amanda Rapp, doing business as Rapp Tour Adventures (Rapp Tours), must file with the Commission and serve on all parties, her pre-marked exhibits, witness lists, and exhibit lists **by the close of business on June 16, 2023**. Marketing Services, Inc., of Pueblo (Marketing Services), must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on July 7, 2023**. Rapp Tours may supplement its witness and exhibit lists in response to Intervenor's witness and exhibit list but must do so by filing and serving amended

witness and exhibit lists, and any additional exhibits not already filed **by the close of business on July 25, 2023**. Any amended witness and exhibit lists filed by Rapp Tours on or before July 25, 2023, should list all the witnesses and exhibits that Rapp Tours intends to present at the hearing, including those listed in its previous witness and exhibit lists, and will supersede its prior witness and exhibit lists.⁶ As noted, the parties must mark their exhibits for identification *before* filing and serving them; additional information on marking exhibits for identification is set forth below.

5. **Requirements for Witness Lists.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

6. **Requirements for Exhibit Lists.** Exhibit lists must include the hearing exhibit number assigned to each exhibit and a brief description of the exhibit. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

⁶ This is intended to avoid Rapp Tours filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

7. **Requirements for Exhibits.**

- a. **Assigned Hearing Exhibit Numbers & Pre-Marking Exhibits.** The parties must mark hearing exhibits for identification using a number within their assigned hearing exhibit number block, as set forth below, and this proceeding number (23A-0088CP).

- **Rapp Tours** is assigned hearing exhibit numbers 1 through 99;
- **Marketing Services** is assigned hearing exhibit numbers 100 through 199.

By way of example, Rapp Tours should pre-mark its first exhibit as “Hearing Exhibit 1, Proceeding No. 23A-0088CP” and file and serve the pre-marked exhibit consistent with the above deadlines.

8. **Deadline to File Statements of Position:** After the evidentiary hearing, the parties may file their respective Statements of Position, in lieu of verbal closing arguments; any party wishing to do so must file with the Commission and serve on the opposing party their statement of position **by the close of business on September 1, 2023.**

9. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director