

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0056CP

IN THE MATTER OF THE APPLICATION OF TOUR ESTES PARK 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
CONOR F. FARLEY
SCHEDULING HEARING, ESTABLISHING PROCEDURAL
SCHEDULE, AND PROVIDING FURTHER
INSTRUCTIONS**

Mailed Date: August 17, 2023

I. STATEMENT

A. Background

1. On February 15, 2023, Tour Estes Park LLC (Tour Estes Park) filed the amended application described in the caption above (Application).

2. On February 21, 2023, the Commission issued public notice of the authority sought by Tour Estes Park in the Application as follows:

For 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 within a 20-mile radius of the intersection of State Highway 7 and Fish Creek Way in the Town of Estes Park, Larimer County, Colorado. Applicant has not filed its testimony and exhibits with its application, and is seeking a Commission decision within 250 days.

3. On March 23, 2023, Green Jeep Tours, LLC (Green Jeep Tours) filed a Petition for Leave to Intervene (Petition) and Wild Side 4 X 4 Tours LLC (Wild Side) filed a Notice of

Intervention as of Right or, in the Alternative, Motion to Intervene (Notice) (Green Jeep Tours and Wild Side shall be referred to as Intervenors). In the Petition, Green Jeep Tours stated that it had been granted Certificate of Public Convenience and Necessity (CPCN) in Decision No. R23-0051, but that the CPCN had not yet issued because it had not completed “certification requirements at th[at] time.”¹ Green Jeep Tours further asserted that that authority, once granted, would conflict with the authority sought in the Application in this proceeding, thus providing Green Jeep Tours with standing to intervene in this proceeding. In the Notice, Wild Side stated that it operates pursuant to CPCN No. 55983 that permits it to offer call-and-demand sightseeing service “between all points within a 20-mile radius of the intersection of West Elkhorn Avenue and Moraine Avenue in Estes Park, Colorado.” Wild Side asserts that CPCN No. 55983 provides it with standing to intervene in this proceeding.

4. On March 29, 2023, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge. The proceeding was subsequently assigned to the undersigned ALJ.

5. On April 25, 2023, the Commission issued CPCN No. 55984 to Green Jeep Tours, which authorizes Green Jeep Tours to offer, among other things, “[s]ightseeing service, on call and demand, between all points within the area comprised of [] the 20 mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado.”

B. Petition to Intervene

6. The authority sought in the Application and the authority granted in CPCN No. 55983 overlap. For this reasons, the ALJ finds and concludes that this proceeding “may substantially affect the pecuniary or tangible interests” of Green Jeep Tours and that Green Jeep

¹ Petition at 2.

Tours’ “interests would not otherwise be adequately represented.”² Accordingly, Green Jeep Tours’ Petition will be granted.

C. Hearing

7. Tour Estes Park has requested that the hearing take place in Estes Park or Loveland, which the ALJ construes as a request for an **in-person** hearing in either of those locations. In their interventions, neither Green Jeep Tours nor Wild Side address the location or the method of conducting the hearing.

8. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission’s hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

9. Based upon the relatively widespread locations of the parties, their attorneys, the ALJ and support Commission staff, and likely witnesses, it is appropriate to conduct the hearing as a hybrid hearing. The hearing will take place on **September 21, 2023**.

10. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hybrid hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and

² Rule 1401(c) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

smooth electronic evidence presentations at the hybrid hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

11. To minimize the potential that the video-conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

12. Any party with a scheduling conflict or that wants the hearing to be conducted by a different method must file a motion to reschedule and/or to modify the method of conducting the hearing by **August 28, 2023**. Before filing the motion, the filing party must confer with the other parties about whether any other party opposes the motion and the dates that all parties are available during the week of September 18, 2023. The motion to reschedule must then: (a) state whether it is opposed or unopposed; (b) identify the dates that all of the parties are available for a hearing during the week of September 18, 2023; and (c) identify the number of days that the parties anticipate the remote hearing will take.

D. Procedural Schedule

13. To facilitate the orderly and efficient litigation of this proceeding, the ALJ finds and concludes that a procedural schedule should be adopted, so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at the hearing. Therefore, this Decision will order the parties to file, and to serve on each other, a list of witnesses, a summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

14. On or before **September 1, 2023**, Tour Estes Park will be ordered to file and serve on the Intervenor: (a) a list that identifies the witnesses Tour Estes Park intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Tour Estes Park will present at the hearing.

15. On or before **September 13, 2023**, Intervenor will each be ordered to file and serve on Tour Estes Park: (a) a list that identifies the witnesses the filer intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits the filer will present at the hearing.

16. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party or parties to the proceeding. Service must be accomplished pursuant to Rule 1205 of the Commission's Rules of Practice and Procedure.³ The Commission's Rules (including Rule 1205) are available on the Commission's website and in hard copy from the Commission.

17. All parties must establish through a certificate of service that they have served a filed document on all other parties in the proceeding. A certificate of service is a statement indicating how and when a document was served on the other party (*e.g.*, the filing was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).⁴

³ 4 CCR 723-1.

⁴ See Rule 1205(e), 4 CCR 723-1.

18. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3). Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties shall work together to ensure that there are no overlaps in the numbering of the exhibits.

19. The filing of an exhibit with the Commission does not, by itself, admit an exhibit into the evidentiary record of the hearing.

20. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

21. The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

E. Exhibits

22. Given that the hearing will be a hybrid hearing in which the parties, witnesses, and attorneys can participate remotely or in-person, exhibits must be presented electronically. The Public Utilities Commission utilizes Box.com to manage exhibits in hybrid hearings. Attachment B to this Decision provides detailed instructions for the preparation and presentation of exhibits at the hearing through Box.com.

23. Each party will receive an email containing an invitation to sign up for a free Box.com account. Once signed-up, each party will be invited to share a folder with (only) the

staff in the Administrative Hearings Section, Commission advisors, and potentially Commissioners and Commission counsel. The party may share access to its Box.com account with others as they choose.

F. Additional Advisements

24. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

II. ORDER

A. It Is Ordered That:

1. The Petition for Leave to Intervene filed by Green Jeep Tours, LLC (Green Jeep Tours) on March 23, 2023, is granted. Tour Estes Park LLC (Tour Estes Park), Green Jeep Tours, and Wild Side 4 X 4 Tours LLC (Wild Side) are parties in this proceeding (Green Jeep Tours and Wild Side shall be referred to as Intervenors).

2. A hybrid hearing is scheduled as follows:

DATE: September 21, 2023

TIME: 9:00 a.m. to 5:00 p.m.

PLACE: In-person: Commission Hearing Room, 1560 Broadway, Suite 250, Denver, Colorado

By video conference: using the Zoom web conferencing platform at a link to be provided to the participants by email.⁵ By video

⁵ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All participants are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

conference: using the Zoom web conferencing platform at a link be provided to the participants by email.⁶

3. On or before **August 28, 2023**, any party that cannot attend the hearing on September 21, 2023, or that wishes to modify the method of conducting the hearing, must file a motion to reschedule the hearing, as described above.

4. On or before **September 1, 2023**, Tour Estes Park shall file and serve on the Intervenor: (a) a list that identifies the witnesses Tour Estes Park intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Tour Estes Park will present at the hearing.

5. On or before **September 13, 2023**, Intervenor shall each file and serve on Tour Estes Park: (a) a list that identifies the witnesses the filer intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits the filer will present at the hearing.

⁶ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All participants are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director