

Decision No. R23-0454-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
GRANTING JOINT MOTION TO MODIFY PROCEDURAL
SCHEDULE AND REQUEST FOR WAIVER
OF RESPONSE TIME AND EXPEDITING RULING**

Mailed Date: July 13, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision grants the parties' Joint Motion to Modify Procedural Schedule and Request for Waiver of Response Time and Expediting Ruling (Joint Motion). Pursuant to the parties' joint request, the deadline for Intervenor to file its Exhibits, Witness Lists, and Exhibit Lists will be extended up to and including July 14, 2023. Likewise, the deadline for Applicant to file her Amended Exhibits, Witness Lists, and Exhibit Lists will be extended up to and including July 28, 2023.

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 or Intervenor), filed its Entry of Appearance and 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.

¹ See Notice of Applications and Petitions filed on March 6, 2023 (Notice), p. 2.

² *Id.*

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.

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. Pursuant to Decision No. R23-0289-I, a prehearing conference was held on June 6, 2023., At the prehearing conference, the undersigned ALJ and the parties discussed the procedural schedule which would govern this Proceeding. By Decision No. R23-0400-I, issued June 9, 2023, the undersigned ALJ established a procedural schedule and scheduled an evidentiary hearing to be held on **August 17, 2023**. The procedural schedule adopted by Decision No. R23-0400-I set the following deadlines:

- **June 16, 2023:** Applicant’s Exhibits, Witness Lists, and Exhibit Lists
- **July 7, 2023:** Intervenor’s Exhibits, Witness Lists, and Exhibit Lists
- **July 25, 2023:** Applicant’s Amended Exhibits, Witness Lists, and Exhibit Lists
- **September 1, 2023:** Statements of Position

10. Applicant filed thirteen exhibits, along with her Witness and Exhibit List on June 16, 2023.

11. On July 6, 2023, the parties filed their Joint Motion requesting that the deadlines for Intervenor’s Exhibits, Witness Lists, and Exhibit Lists and Applicant’s Amended Exhibits, Witness Lists, and Exhibit Lists be extended.

II. JOINT MOTION TO MODIFY PROCEDURAL SCHEDULE

12. In their Joint Motion, the parties indicate that they have conferred and agreed that “personal extenuating circumstances” will make it difficult for them to meet the existing procedural deadlines.³ They concluded that it would be “mutually beneficial to jointly request minor modifications” to the procedural deadlines.⁴

13. Specifically, Intervenor requests that the deadline for it to file its Exhibits, Witness Lists, and Exhibit Lists be extended from July 7, 2023, to July 14, 2023. Because this extension will shorten Applicant’s time to prepare and file any additional exhibits as well as an Amended Witness and Exhibit List, Applicant requests that this deadline likewise to be extended, from July 25, 2023, to July 28, 2023. The parties represent that extending these deadlines will adequately accommodate both of their schedules and the extenuating circumstances.

14. Here, the parties have agreed to the proposed extension of procedural deadlines and the Joint Motion is unopposed.

15. The ALJ finds and concludes that the parties have established good cause for the extension of these procedural deadlines. The deadline for Intervenor to file its Exhibits, Witness Lists, and Exhibit Lists will therefore be extended up to and including July 14, 2023, and the deadline for Applicant to file additional Exhibits and an Amended Witness and Exhibit List will be extended up to and including July 28, 2023.

³ Joint Motion to Modify Procedural Schedule and Request for Waiver of Response Time and Expedited Ruling, filed July 6, 2023, ¶ 7, p. 3.

⁴ *Id.*

III. WAIVER OF RESPONSE TIME

16. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, a responding party “shall have 14 days after service of the motion . . . in which to file a response.” Thus, under Rule 1400(b), any response to the parties’ Joint Motion is currently due on or before July 20, 2023.

17. However, Rule 1308(b), 4 CCR 723-1, permits the Commission to “shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence. . . . The Commission can act immediately where response time is waived and after expiration of the shortened response time.”

18. An unopposed motion such as this Joint Motion may be granted before expiration of the time within which to respond to the motion. *See* Rule 1400(a)(II), 4 CCR 723-1. As the Joint Motion to modify the procedural schedule is unopposed, the ALJ finds that waiving the response time to the Joint Motion will not prejudice either party. The ALJ will therefore waive response time to the Unopposed Motion to Vacate Trial Date.

IV. ORDER

A. **It Is Ordered That:**

1. The Joint Motion to Modify Procedural Schedule and Request for Waiver of Response Time and Expediting Ruling is granted.

2. **Deadlines for Witness Lists, Exhibit Lists, and Exhibits:**

- Marketing Services, Inc., of Pueblo (Marketing Services or Intervenor), 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 14, 2023.**

- Amanda Rapp, doing business as Rapp Tour Adventures (Rapp Tours) may supplement her witness and exhibit lists in response to Intervenor’s witness and exhibit list by filing and serving amended witness and exhibit lists, and any additional exhibits not already filed **by the close of business on July 28, 2023.**

3. Response time to the Joint Motion to Modify Procedural Schedule and Request for Waiver of Response Time and Expediting Ruling filed by the parties on July 6, 2023, is waived.

4. All other procedural requirements and deadlines established by and ordered in Decision Nos. R23-0289-I and R23-0400-I remain in effect.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director