

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0215CP

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
AMENDING APPLICATIONS, DISMISSING
INTERVENTIONS, GRANTING PERMANENT
AUTHORITY AS MODIFIED SUBJECT TO CONDITIONS,
AND SHORTENING RESPONSE TIME TO EXCEPTIONS**

Mailed Date: January 20, 2023

I. STATEMENT

A. 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 (Green Jeep's Notice), wherein the Commission established a 30-day intervention period and gave notice of the authority sought through Green Jeep's Application as follows:

(1) Sightseeing service, on call and demand, between all points within the area comprised of (a) the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado, (b) all of Rocky Mountain National Park beyond the 20-mile radius of the intersection of [sic] [Moraine and Elkhorn, Estes Park, and (c) all points within the 10-mile area beyond the boundary of Rocky Mountain National Park beyond the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado;

(2) Sightseeing service, on schedule, between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and all points within the area comprised of both Rocky Mountain National Park and all points in the 10-mile area beyond the boundary of Rocky Mountain National Park on the other hand;

(3) Shuttle service, on call and demand, between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and Denver International Airport, Denver, Colorado, including all points within a five-mile radius thereof, on the other hand;

(4) Shuttle service, on call and demand, between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and Union Station, Denver, Colorado, including all points within a one-mile radius thereof, on the other hand.

(5) Shuttle service, on schedule, between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and Denver International Airport, Denver, Colorado, including all points within a five-mile radius thereof, on the other hand, serving the intermediate points of Union Station in Denver, Colorado and the Boulder Transit Center in Boulder, Colorado.

RESTRICTIONS:

1. Items 1, 2 and 5 are restricted to the use of vehicles with a rated seating capacity of eight passengers or more including the driver;
2. Items 1 and 2 are restricted to the use of vehicles with a rated seating capacity of 15 passengers or less including the driver;
3. Items 1 and 2 are restricted to the use of open air vehicles with convertible tops;
4. Items 1 and 2 are restricted to transportation service that originates and terminates at the same point;

5. Items 2 and 5 are restricted to serving points named in carrier's schedule.
Applicant has not filed its testimony and exhibits with its application and is seeking a Commission decision within 250 days.

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

4. On June 29, 2022, Wild Side 4 X 4 Tours LLC (Wild Side) filed a Permanent Authority 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 (Wild Side's Notice), through which the Commission established a 30-day intervention period and gave notice of the authority sought through Wild Side's 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 West Elkhorn Avenue and Moraine Avenue in Estes Park, Colorado. This application is restricted: (a) to providing transportation services in customized Wild Side 4 x 4 tour vehicles, and (b) to using vehicles with a seating capacity of 15 passengers or less, including the driver. Applicant has not filed its testimony and exhibits with its application, and is seeking a Commission decision within 250 days.

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 8, 2022, the undersigned ALJ consolidated Proceeding Nos. 22A-0215CP and 22A-0310CP and designated Proceeding No. 22A-0215CP the primary proceeding.

9. By Interim Decision No. R22-0589-I, issued September 29, 2022, the undersigned ALJ required Green Jeep, Wild Side, Estes Park Charters, and Estes Park Trolleys (collectively Parties) to file exhibit lists and exchange exhibits by December 19, 2022, and scheduled an evidentiary hearing in this matter for January 18-20, 2023.

10. By Interim Decision No. R22-0825-I, issued December 19, 2022, the ALJ granted the Parties' Unopposed Joint Motion to Extend Deadline to File Witness and Exhibit Lists and Exchange Exhibits.

11. On December 27, 2022, the Parties filed a stipulation and joint motion to seeking to restrictively amend Green Jeep's Application and Wild Side's Application (together Applications) and conditionally withdraw the Intervenors' interventions (Motion to Amend).

12. As stated in Appendix A to the Motion to Amend, the parties seek to amend the authority sought through Green Jeep's Application as follows:

(1) Sightseeing service, on call and demand, between all points within the area comprised of (1) the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado, (2) all of Rocky Mountain National Park beyond the 20 mile radius of the intersection of [sic] Moraine and Elkhorn, Estes Park, and (3) all points within the 10-mile area beyond the boundary of Rocky Mountain National Park beyond the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado;

(2) Sightseeing service, on schedule, between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and all points within the area comprised of both Rocky Mountain National Park and all points in the 10-mile area beyond the boundary of Rocky Mountain National Park on the other hand.

RESTRICTIONS:

1. Items 1 and 2 are restricted to the use of vehicles with a rated seating capacity of eight passengers or more plus the driver;
2. Items 1 and 2 are restricted to the use of vehicles with a rated seating capacity of 15 passengers or less including the driver;
3. Items 1 and 2 are restricted to the use of open air vehicles with convertible tops;
4. Items 1 and 2 are restricted to transportation service that originates and terminates at the same point.
5. Items 2 is restricted to serving points named in carrier's schedule.

13. As stated in Appendix B to the Motion to Amend, the parties seek to amend the authority sought through Wild Side's Application as follows:

Sightseeing Service, on call-and-demand, between all points within a 20-mile radius of the intersection of West Elkhorn Avenue and Moraine Avenue in Estes Park, Colorado.

RESTRICTIONS:

1. To providing transportation services in open air or convertible top vehicles;
2. To using vehicles with a rated seating capacity of no more than 15 passengers or less, including the driver;
3. To using vehicles with a rated seating capacity of eight passengers or more plus the driver;
4. To providing only those scheduled trips and call-and-demand trips listed in its tariff on file with the Colorado Public Utilities Commission.

14. By Decision No. R23-0022-I, issued January 9, 2023, the ALJ vacated the evidentiary hearing scheduled for January 18-19, 2023. The remainder of any relief requested in the Motion to Amend is addressed by this Recommended Decision.

B. Motion to Amend

15. The Motion to Amend was jointly filed by the parties. Consistent with the discussion above and below, the Motion to Amend will be granted.

C. Green Jeep's and Wild Side's Proposed Stipulated Authorities

16. As indicated above, through the Motion to Amend, the parties stipulated to Green Jeep's and Wild Side's, respective authorities (stipulated authorities). To be granted, the stipulated authorities, including any restrictions on each such authority, must be clear and understandable, administratively enforceable, and contained wholly within the scope of the authority sought in each of the noticed Applications.

17. The ALJ finds that each of the stipulated authorities is wholly contained within (i.e., restrictive of) the each of the authorities sought through each of the Applications.

18. The ALJ further finds that Wild side's proposed stipulated authority, as set forth in the Motion to Amend, is clear and understandable, and administratively enforceable.

19. However, the ALJ finds that Green Jeep's proposed stipulated authority, as set forth in the Motion to Amend, is partially ambiguous and not administratively enforceable as written. Pursuant to paragraph 2 of Green Jeep's proposed authority, Green Jeep seeks authority that includes "Sightseeing service, on schedule..."¹ First, Rule 6000(000) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR), 723-6, defines Sightseeing Service as a 'Call-and-Demand' service and not a 'Scheduled Service.'² Second, even if Green Jeep were granted authority to provide a *scheduled* Sightseeing Service, such authority would not be administratively enforceable because the "schedule" would not be on file with the Commission and available to Staff of the Commission.³ Similarly, the use of the phrase "carrier's schedule" in restriction No. 5 of Green Jeep's proposed stipulated authority creates ambiguity as to whether Green Jeep's authority extends to Scheduled Service. Accordingly, Green Jeep's

¹ Appendix A to the Motion to Amend at 1.

² See Rule 6000(III), 4 CCR 723-6.

³ Pursuant to Rule 6209, 4 CCR 723-6, a Common Carrier that has been granted Authority to provide Scheduled Service, must file its time Schedules with the Commission.

proposed authority will be modified to delete the words “on schedule”⁴ from paragraph No. 2 of Green Jeep’s proposed stipulated authority, and the word “schedule” will be replaced with the word “tariff”⁵ in Restriction No. 5 to Green Jeep’s proposed stipulated authority.

D. Interventions and Uncontested Proceeding

20. The Motion to Amend states that Intervenors would withdraw their intervention upon the Commission’s finding that the restrictive amendments identified in the stipulated authorities are administratively acceptable. As amended and modified by this Recommended Decision, the stipulated authorities are administratively acceptable.

21. Withdrawal of the interventions and dismissal of Intervenors leaves the Applications, as amended by the Motion to Amend and modified herein, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the Applications may be processed under the modified procedure, without a formal hearing.

22. The Applications, as amended by the Motion to Amend, establish that Applicants are familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agree to be bound by, and to comply with, those Rules.

23. The Applications, including supporting documentation, establish that Applicants have sufficient equipment with which to render the proposed service and are financially fit to conduct operations under the authority requested. In addition, the verified Applications including supporting documents (*e.g.*, support letters) indicate a public need for the proposed service. Therefore, because Applicants are fit, financially and otherwise, to perform the proposed

⁴ The deletion of the words “on schedule” from Green Jeep’s authority does not mean that Green Jeep would not be able to operate pursuant to its predetermined schedule under its call-and-demand sightseeing authority; rather, the purpose of the deletion of these words is to remove ambiguity and ensure administrative enforceability.

⁵ This modification is made with the intention of mirroring, to the extent possible, Restriction No. 4 in Wild Side’s proposed stipulated authority, while keeping intact as much of the proposed stipulated authority language as possible. *See* Appendix B to the Motion to Amend at 1.

service and because the other prerequisites have been met, the requested certificates of public convenience and necessity will be granted.

24. Based on the foregoing, in accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. It Is Ordered That:

1. The parties' Motion to Restrictively Amend Applications and to Withdraw Interventions and for Other Relief, filed December 27, 2022 (Motion to Amend) is granted, as modified by this Recommended Decision.

2. Estes Park Charters Corp.'s and Fun Tyme Trolleys, LLC d/b/a Estes Park Trolleys' interventions are dismissed.

3. The Application of Green Jeep Tours, LLC (Green Jeep), for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed on May 23, 2022, as amended by the Motion to Amend, and modified herein (Green Jeep's Application), is granted.

4. The Application of Wild Side 4 X 4 Tours LLC (Wild Side), for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed on June 29, 2022, as amended, (Wild Side's Application), is granted as modified by this Recommended Decision.

5. Conditioned upon Green Jeep's full compliance with the requirements contained in Ordering Paragraph No. 7, Green Jeep is granted authority to operate as a common carrier by motor vehicle for hire as follows:

- (1) Sightseeing service, on call and demand, between all points within the area comprised of (1) the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado, (2) all of Rocky Mountain National Park beyond the 20-mile radius of the

intersection of Moraine and Elkhorn, Estes Park, and (3) all points within the 10-mile area beyond the boundary of Rocky Mountain National Park beyond the 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado;

(2) Sightseeing Service between all points within a 20-mile radius of the intersection of Moraine and Elkhorn, Estes Park, Colorado on the one hand and all points within the area comprised of both Rocky Mountain National Park and all points in the 10-mile area beyond the boundary of Rocky Mountain National Park on the other hand.

RESTRICTIONS:

1. Items 1 and 2 are restricted to the use of vehicles with a rated seating capacity of eight passengers or more plus the driver;
2. Items 1 and 2 are restricted to the use of vehicles with a rated seating capacity of 15 passengers or less including the driver;
3. Items 1 and 2 are restricted to the use of open air vehicles with convertible tops;
4. Items 1 and 2 are restricted to transportation service that originates and terminates at the same point.
5. Items 2 is restricted to serving points named in carrier's tariff.

6. Conditioned upon Wild Side's full compliance with the requirements contained in Ordering Paragraph No. 7, Wild side is granted authority to operate as a common carrier by motor vehicle for hire as follows:

Sightseeing Service, on call-and-demand, between all points within a 20-mile radius of the intersection of West Elkhorn Avenue and Moraine Avenue in Estes Park, Colorado.

RESTRICTIONS:

1. To providing transportation services in open air or convertible top vehicles;
2. To using vehicles with a rated seating capacity of no more than 15 passengers or less including the driver;
3. To using vehicles with a rated seating capacity of eight passengers or more plus the driver;
4. To providing only those scheduled trips and call-and-demand trips listed in its tariff on file with the Colorado Public Utilities Commission.

7. Green Jeep and Wild Side (Applicants) shall each not be granted a Certificate of Public Convenience and Necessity (CPCNs) and shall not commence operations until each has respectively and fully complied with the following conditions: (a) cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission; (b) pay to the Commission, the motor vehicle fee (\$50.00) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement; (c) file with the Commission and have an effective, publicly available tariff. The tariff should comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The tariff shall be filed in a new Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the proposed effective date; (d) submit a Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection must be done in accordance with Rules 6103 and 6104 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6; and the inspection must show that the vehicle passed the inspection. The inspection report may be found at: <https://puc.colorado.gov/common-carriers>; (e) register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system (E-Filings) and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at: www.dora.state.co.us/pls/efi/EFI.homepage; and (f) pay the applicable fee for the issuance of the authority.

8. No CPCN shall be issued, and neither Applicant shall operate under the requested CPCN authority, unless the respective Applicant complies with all the conditions set forth in Ordering Paragraph No. 7.

9. If applicant does not comply with each requirement in Ordering Paragraph No. 7, within 60 days of the effective date of this Decision, the CPCN requested by such applicant is denied without further action of the Commission. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

10. Applicants shall operate in accordance with all applicable statutes, orders, and rules of the Commission. The Commission may issue an order to cease and desist or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112 (1), C.R.S.

11. Proceeding Nos. 22A-0215CP and 22A-0310CP are closed.

12. Response time to any exceptions filed to this Recommended Decision is shortened to seven calendar days from the date of service of such exceptions.

13. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above. a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S. b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

14. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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 black ink, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director