

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0088CP

IN THE MATTER OF THE APPLICATION OF AMANDA RAPP D/B/A RAPP TOUR ADVENTURES 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
REQUIRING FILINGS, ADDRESSING LEGAL
REPRESENTATION, AND SCHEDULING REMOTE
PREHEARING CONFERENCE**

Mailed Date: May 2, 2023

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 A. It Is Ordered That:6

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a remote prehearing conference for Tuesday, June 6, 2023, at 10:30 a.m. to move this matter forward.

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

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

² *Id.*

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.

7. On April 12, 2023, Richard G. Pearce, Jr., of Litchford, Pearce and Associates LLC entered his appearance as counsel on behalf of Marketing Services.

8. Subsequently, on April 24, 2023, Taylor G. Minshall of RELEVANT LAW — Colorado Springs entered an appearance as counsel on behalf of Applicant Rapp Tours.

II. RELEVANT LAW

9. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding

(permissive intervention).³ To intervene of right, a carrier's intervention must: state the basis for the claimed legally protected right that may be impacted by the proceeding; include a copy of the carrier's authority; show that the carrier's authority is in good standing; identify the specific parts of the authority that are in conflict with the application; and explain the consequences to the carrier and the public interest if the application is granted.⁴ A carrier's letter of authority provides the basis for the legally protected right which an intervenor claims may be impacted by the proceeding. Thus, it is important to determine whether the intervener's letter of authority shows that it has the right to operate in a manner that may be impacted by an application's requested authority.

III. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Marketing Services Intervention

10. Marketing Services has provided documentation showing that it holds a certificate to provide transportation sightseeing services in several counties which overlap with the area of service proposed by Rapp Tours. In addition, Marketing Services is authorized to provide the same type of services — sightseeing tours — that Rapp Tours seeks to provide. Marketing Services has also asserted that the granting of a certificate to Rapp Tours would negatively impact the former's business and would not be in the public interest.

11. Marketing Services has thus demonstrated that it may intervene as of right in this Proceeding. Its Intervention as of right is acknowledged.

³ 4 CCR 723-1401(b) and (c); See § 40-6-109(a), C.R.S.; and *RAM Broad. of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

⁴ Rule 1401(b) and (f)(I), 4 CCR 723-1.

B. Remote Prehearing Conference.

12. To move this matter forward, and in anticipation of a hearing on the Application, the ALJ is scheduling a fully remote prehearing conference per Rule 1409(a), 4 CCR 723-1.

13. Participants will appear at the prehearing conference from remote locations by video conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

14. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code 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.⁵

15. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates that a hybrid hearing will be held in person and via Zoom at the Commission's offices in Denver, Colorado, and that it must be held by the end of August 2023. The participants should keep this in mind when preparing for the prehearing conference. Other issues relevant to this proceeding may be raised or addressed at the

⁵ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this proceeding. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

prehearing conference, including whether Interveners have met the requirements of this Decision and relevant Commission rules, and whether they should be permitted to intervene.

16. *All parties are on notice* that failure to appear at the prehearing conference 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 prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

IV. **ORDER**

A. **It Is Ordered That:**

1. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: **Tuesday, June 6, 2023**

TIME: **10:30 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. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

4. 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