

Decision No. R23-0544-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
VACATING EVIDENTIARY HEARING,
SETTING SETTLEMENT DEADLINE,
AND GRANTING REQUEST FOR WAIVER
OF RESPONSE TIME**

Mailed Date: August 15, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision vacates the evidentiary hearing scheduled for August 17, 2023, acknowledges the parties' Joint Notice of Settlement, sets a deadline of September 1, 2023, for the parties to file their settlement agreement and amended Application, and grants the parties' Joint Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time.

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, Applicant filed two Amendments to the Application.

3. On March 6, 2023, the Public Utilities Commission (the Commission or PUC) 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), which holds PUC No. 55737, 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.

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. 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 12, 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 to Modify Procedural Schedule 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. Specifically, the parties requested that the deadline for Intervenor to file its Exhibits, Witness Lists, and Exhibit Lists be extended to July 14, 2023. Likewise, the parties requested that the deadline for Applicant

to file her Amended Exhibits, Witness Lists, and Exhibit Lists be extended up to and including July 28, 2023.

12. By Decision No. R23-0454-I, issued July 13, 2023, the undersigned ALJ granted the parties' Joint Motion to Modify Procedural Schedule.

13. In compliance with the revised procedural schedule, Intervenor filed its Witness and Exhibit Lists, as well as its Exhibits, on July 14, 2023. Subsequently, on July 25, 2023, Applicant filed her amended Witness and Exhibit List.

14. On August 14, 2023, the parties filed a Joint Notice of Settlement and Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time.

II. VACATION OF EVIDENTIARY HEARING

15. In their Joint Motion, the parties advise that they have reached a settlement agreement “whereby Applicant will restrictively amend [her] application and Intervenor will withdraw its Intervention and opposition to the Application upon a Commission finding that those restrictive amendments are administratively acceptable.”³ However, the parties indicate that they will need “additional time to carry out the terms of that agreement.”⁴ The parties therefore request that the remainder of the procedural schedule established by Decision Nos. R23-0400-I and R23-0454-I be held “in abeyance” to give the parties an opportunity to finalize and file their settlement documents.

³ Joint Notice of Settlement and Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time, ¶ 9, p. 3.

⁴ *Id.*, at ¶ 10, p. 3.

16. The ALJ notes that most of the deadlines set by the procedural schedule have already expired. The only upcoming dates at issue are the evidentiary hearing scheduled for Thursday, August 17, 2023, and the September 1, 2023, deadline for submitting Statements of Position (SOPs).

17. In light of the parties' Joint Notice of Settlement and indication that they have resolved the disputed issued between them, the ALJ finds and concludes that an evidentiary hearing in this Proceeding is unnecessary. The ALJ will therefore vacate the evidentiary hearing scheduled for August 17, 2023.

III. SETTLEMENT DEADLINE

18. With respect to the deadline for SOPs, the ALJ deduces that, having resolved their dispute, the parties are unlikely to file any kind of statement arguing their respective positions.

19. However, pursuant to § 40-6-109.5(2), C.R.S., the Commission must issue a final decision, including any decision approving or denying a settlement agreement, within two-hundred and fifty (250) days of the date on which the Application is deemed complete. To meet that deadline, the ALJ finds and concludes that it is necessary for the parties to file their settlement documents, motions for approval of the settlement, any amendments to the application, and/or withdrawals of pleadings by September 1, 2023. The ALJ believes that this should provide sufficient time for the parties to draft, finalize, and file the appropriate settlement documents and pleadings.

20. Therefore, the ALJ will modify the SOP deadline to require the parties to file any pleadings pertinent to their settlement by September 1, 2023.

IV. WAIVER OF RESPONSE TIME

21. 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.

22. 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.”

23. An unopposed motion such as this Joint Notice 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 Notice of Settlement is unopposed, the ALJ finds that waiving the response time to the Joint Notice will not prejudice either party. The ALJ will therefore waive response time to the Joint Notice of Settlement and Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time.

V. ORDER

A. It Is Ordered That:

1. The evidentiary hearing scheduled for August 17, 2023, is vacated.
2. The parties must file any pleadings pertinent to their settlement — including but not limited to the Settlement Agreement, Motion for Approval of Settlement, Amendment of Application, and/or Withdrawal of Intervention — on or before **September 1, 2023**.

3. Response time to the Joint Notice of Settlement and Motion to Hold Procedural Schedule in Abeyance and Request for Waiver of Response Time filed by the parties on August 14, 2023, is waived.

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