

Decision No. R23-0614

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING MOTION TO WITHDRAW APPLICATION,
VACATING HYBRID HEARING, AND CLOSING
PROCEEDING**

Mailed Date: September 15, 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.

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, 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.”

6. On August 17, 2023, the ALJ issued Decision No. R23-0550-I that granted the Petition, scheduled a hybrid hearing for September 21, 2023, and established a procedural schedule that included, among other things, deadlines of September 1 and 13, 2023 for Tour Estes Park and Intervenors, respectively, to file and serve witness lists and exhibits.

7. On August 18, 2023, the ALJ received a voicemail from Bruce Davies in which Mr. Davies stated that he wished to withdraw the Application. Mr. Davies is listed as the Manager of Tour Estes Park in the Application and signed the Application on behalf of Tour Estes Park.

¹ Petition at 2.

8. On August 21, 2023, Wild Side filed a Notice of Withdrawal of Intervention.

9. On August 23, 2023, Mr. Davies filed a letter requesting to withdraw the Application (Letter).

10. On August 30, 2023, the ALJ issued Decision No. R23-0580-I that shortened response time to the Motion to September 1, 2023.

11. Green Jeep Tours has not filed a response to the Motion.

B. Analysis

12. As stated in Decision No. R23-0580-I, the Letter is construed as a Motion to Withdraw Application (Motion). Under Rule 1309(d) of the Commission’s Rules of Practice and Procedure:

A party may withdraw an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.²

13. Here, the Motion states good cause to withdraw the Application. As support for the Motion, Tour Estes Park states that it has “obtained an Off-Road Charter permit . . . which better fits the parameters of [its] business operations.” In addition, Wild Side’s withdrawal of its intervention, and Green Jeep Tours’ decision not to file any response to the Motion establishes that no prejudice will result from the withdrawal. Accordingly, the Motion shall be granted, the hearing shall be vacated, and the proceeding shall be closed.

² 4 Code of Colorado Regulations 723-1.

II. ORDER

A. The Commission Orders That:

1. The Notice of Withdrawal of Intervention filed by Wild Side 4 X 4 Tours LLC on August 21, 2023, is acknowledged.

2. The letter signed by Bruce Davies on behalf of Tour Estes Park LLC (Tour Estes Park) and filed in this proceeding on August 23, 2023, is construed as a Motion to Withdraw Application and granted.

3. The Application filed by Tour Estes Park on February 15, 2023, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire is withdrawn.

4. The hybrid evidentiary hearing in this proceeding scheduled for September 21, 2023, is vacated.

5. Proceeding No. 23A-0056CP is closed.

6. 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.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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 within 20 days after service, 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.

8. If exceptions to this 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

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