

Decision No. R24-0321

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0058CP

IN THE MATTER OF THE APPLICATION OF KRISTEN EATMON DOING BUSINESS AS RABBIT RUN, 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
ALENKA HAN
GRANTING CONTINGENT WITHDRAWAL OF
INTERVENTIONS, AND
GRANTING APPLICATION AS AMENDED**

Mailed Date: May 9, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision grants the contingent withdrawal of the Interventions and grants the application as amended.

B. Procedural History

2. On February 6, 2024, Applicant Kristen Eatmon, doing business as Rabbit Run (Applicant or Rabbit Run), initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application). In its Application, Rabbit Run seeks a Certificate of Public Convenience and Necessity (CPCN) to provide shuttle, charter, and sightseeing services in Larimer and Weld Counties.¹

¹Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed Feb. 6, 2024.

3. On February 12, 2024, the Public Utilities Commission (the Commission) provided public notice under § 40-6-108(2), C.R.S., of this Application. As noticed, the Application seeks permanent authority:

to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in the Counties of Larimer and Weld, State of Colorado.²

4. On February 26, 2024, Estes Park Charters, Corp. (Estes Park Charters) and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys) (collectively, Intervenors) filed a joint Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for Hearing. No other interventions have been filed.

5. On March 20, 2024, 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.

6. Shortly thereafter, Applicant informally advised Commission Staff that it was in negotiations with Intervenors to reach an agreement in this matter.

7. On April 12, 2024, Applicant submitted a letter to the Commission requesting that the authority sought in the February 6, 2024 Application be amended. Specifically, Rabbit Run asked that the Application be restricted as follows:

Transportation service between points in Larimer County is restricted to service that originates or terminates within the city limits of Fort Collins, Colorado. Rabbit Run will not provide any transportation service that originates or terminates within 5 miles of the intersection of US Highway 34 and US Highway 36 in Estes Park, Colorado.

²Notice of Application and Petitions Filed, p. 2, filed Feb. 12, 2024.

8. On April 16, 2024, Applicant submitted a revised amendment to the Application further restricting the requested authority as follows:

Transportation service between points in Larimer County is restricted to service that originates and terminates within the city limits of Fort Collins, Colorado. Rabbit Run will not provide any transportation service that originates and terminates within 5 miles of the intersection of US Highway 34 and US Highway 36 in Estes Park, Colorado.

9. Subsequently, on April 18, 2024, Intervenors filed a Notice of Settlement and Conditional Withdrawal of Intervention. Intervenors represented that if the Commission approved the Application as restricted and amended, they would withdraw their joint Intervention.

10. As discussed more fully below, the ALJ will grant the restricted amendments.

11. The Application as amended by Rabbit Run's submitted restrictions and revisions is now uncontested.

12. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT AND CONCLUSIONS

13. Since the Application as amended is now unopposed, the matter will be considered and processed pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

14. A proposed restricted amendment to an application for authority to operate as a contract carrier or common carrier by motor vehicle for hire must be restrictive in nature, clear and understandable, and administratively enforceable. The proposed restriction and authority must be unambiguous and must be contained entirely within the authority granted.

15. As amended and restricted, Rabbit Run seeks authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of passengers in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in the Counties of Larimer and Weld, State of Colorado.

RESTRICTION: This authority is restricted as follows:

- a) restricted to providing transportation service between points in Larimer County that originates and terminates within the city limits of Fort Collins, Colorado; and
- b) restricted against providing any transportation service that originates and terminates within 5 miles of the intersection of US Highway 34 and US Highway 36 in Estes Park, Colorado.

16. Intervenors' Notice of Settlement and Conditional Withdrawal of Intervention requests that the Commission approve the restricted authority as set out in Applicant's restriction. Intervenors' Notice suggests that they have agreed that the above proposed authority, with the incorporated restrictions, is acceptable to them.

17. The restrictive amendment filed by Rabbit Run on April 16, 2024, is clear, unambiguous, and administratively enforceable. The restrictive amendment achieves the purposes sought by Rabbit Run and the Intervenors by protecting Intervenors' existing authority while allowing Rabbit Run to provide the substance of the service it seeks to offer. As a result, the restrictive amendment which restricts Rabbit Run's proposed authority to operate as a common carrier by motor vehicle for hire will be accepted.

18. The ALJ will grant the contingent withdrawal of Intervenors' Interventions. The Interventions filed by Estes Park Charters and Estes Park Trolleys will be deemed withdrawn.

19. In completing and submitting the Application, Rabbit Run represented that it is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agreed to comply with those Rules to the extent applicable to it.

20. Additionally, the information provided by Rabbit Run establishes that it possesses sufficient equipment to provide the proposed service and is financially viable to conduct operations under the authority requested. The Application and the supporting information attached demonstrate that a need exists for the proposed service.

21. It is found that Applicant Rabbit Run is fit to provide the proposed transportation service as restrictively amended and the Application with the proposed restrictive amendments is reasonable, in the public interest, and should be granted.

22. Rabbit Run will be granted, subject to conditions, authority to operate as a common carrier of passengers by motor vehicle for hire as set forth in the Appendix attached to this Decision, conditioned upon Applicant's full compliance with the requirements contained in this Decision.

23. If Rabbit Run fails to comply with the prerequisites required by Ordering Paragraph No. 5 within 60 days of the effective date of the Decision, the requested authority will be deemed denied and Applicant will not be granted the requested permanent authority; the CPCN shall not be issued; and Applicant shall not be permitted to operate under the requested authority. No further action of the Commission is required.

24. For good cause shown, the Commission may grant additional time for compliance with Ordering Paragraph No. 5 if the request for additional time is filed within 60 days of the effective date of this Decision.

25. The Commission will notify Applicant in writing when the Commission's records demonstrate Applicant has fully complied with the requirements of Ordering Paragraph No. 5. Applicant shall not begin operations without the receipt of written notification of compliance from the Commission.

26. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. It is Ordered That:

1. The Notice of Settlement and Conditional Withdrawal of Interventions filed by Intervenors Estes Park Charters, Corp. (Estes Park Charters) and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys) (collectively, Intervenors), on April 18, 2024, is acknowledged and granted.

2. The Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire, filed by Applicant Kristen Eatmon, doing business as Rabbit Run (Applicant or Rabbit Run), on February 6, 2024, and the amended restriction to the Application set out in Rabbit Run's April 16, 2024 revised amendment, are granted consistent with the discussion above.

3. The contingent withdrawal of Intervenors' Interventions filed as part of the Intervenors' Notice of Settlement and Conditional Withdrawal of Interventions is likewise granted. The Interventions filed by Estes Park Charters and Estes Park Trolleys are deemed withdrawn.

4. The Application and the amended restrictions to the Application of Rabbit Run, filed on February 6, 2024, and April 16, 2024, respectively, are granted consistent with the

discussion above, subject to Applicant's full compliance with the requirements contained in Ordering Paragraph No. 5.

5. Applicant shall not be granted the authority under a Certificate of Public Convenience and Necessity (CPCN) and shall not commence the extended operations until it has 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 (and time schedule if applicable), which includes the extended authority. 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) 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
- (e) pay the applicable fee (\$5.00) for the issuance of the extended authority.

6. The CPCN authority shall not be issued and Applicant shall not operate under the extended authority unless Applicant complies with all of the conditions in Ordering Paragraph No. 5.

7. If Applicant does not comply with each requirement in Ordering Paragraph No. 5, within 60 days of the effective date of this Decision, the CPCN authority 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.

8. Applicant shall continue to 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

9. Proceeding No. 24A-0058CP is closed.

10. 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.

11. 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, 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.

12. 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.

(SEAL)



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