

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-196CP

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IN THE MATTER OF THE APPLICATION OF MARKETING SERVICES INC. OF PUEBLO,  
DOING BUSINESS AS ADVENTURES OUT WEST, INC., FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY  
MOTOR VEHICLE FOR HIRE.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
DENYING STIPULATED MOTION  
TO RESTRICT AUTHORITY AND  
CONDITIONAL WITHDRAWAL  
OF INTERVENTION AND  
WAIVING RESPONSE TIME**

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Mailed Date: June 4, 2004

**I. STATEMENT**

1. On April 19, 2004, Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc. (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Applicant seeks authority to operate as a common carrier of passengers and their baggage in sightseeing service in five counties in Colorado. The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Notice of Applications Filed dated May 3, 2004 (Notice) at 2. That Notice established a procedural schedule and a hearing date for this proceeding. The hearing is scheduled for July 7, 2004.

3. RDSM Transportation, LTD, doing business as Yellow Cab Company of Colorado Springs (Intervenor), intervened of right. Based on a review of the Commission's record, this is the only intervention filed in this proceeding. Intervenor opposes the granting of the Application.

4. On June 2, 2004, Applicant and Intervenor filed a Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention (Motion). Among the proposed restrictions on the authority sought by Applicant are the following:

(a) "Baggage shall not include luggage."

(b) "Transportation shall be limited to the transportation services described on Applicant's web site, as set forth on printed copies of the web site, which are attached [to the Motion] as Exhibit A, and incorporated [into the Motion] by reference."

(c) "Vehicles shall be restricted to the size and type described on Applicant's web site, as set forth on printed copies of the web site, which are attached [to the Motion] as Exhibit A, and incorporated [into the Motion] by reference."

5. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be wholly contained within the Certificate of Public Convenience and Necessity (CPCN). Both must be worded in such a way that a person will know, from reading the CPCN and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority granted by the Commission is found within the four corners of the CPCN, which is the touchstone against which the operation of a carrier is judged to determine whether the operation

is within the scope of the Commission-granted authority. The quoted proposed restrictions do not meet these standards.

6. First, “luggage” is an ambiguous term which appears to sweep too broadly and to encompass items (such as purses, backpacks, and camera cases) not intended to be included within the restriction. While the parties should consider using another word or adding clarifying language, this is not the primary difficulty with the Motion.

7. Second, and this is a primary difficulty, the restrictions quoted in ¶¶ 4(b) and (c) are unacceptable. They incorporate by reference Applicant’s web site pages and, thus, require reference to documents or sources other than the CPCN itself.<sup>1</sup> They are advertising descriptions. Based on these descriptions (were they to be used as restrictions), one could not determine whether Applicant was acting within the scope of its authority. In addition, the vehicle descriptions are not clear; and, from the Motion, the Administrative Law Judge (ALJ) cannot determine whether Applicant and Intervenor intend to include the 47-passenger bus within the restriction (*i.e.*, to permit Applicant to use such a vehicle).

8. Third, Applicant and Intervenor have not crafted restrictions but, instead, rely on Applicant’s web site descriptions. This puts the Commission in the position of having to guess the parties’ intention and the exact meaning and scope of the proposed restrictions, and this the Commission will not do. It is the responsibility of the parties to craft the agreed-upon restrictions, and it is the responsibility of the Commission to review the proposed restrictions to determine whether they comply with the standards articulated above.

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<sup>1</sup> While not determinative in light of the other difficulties with the Motion, the ALJ notes that the Motion does not state that the restrictions are fixed and will not change as Applicant’s web site changes (*e.g.*, adding more tours or changing locations to be visited) in the future.

9. The Motion will be denied because, in this case, the parties have not met their burden. The proposed restrictions are not clear and understandable and are not administratively enforceable.

10. As a result of the Motion's being denied, the procedural schedule established by the Notice remains in effect. *See* Notice; *see also* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-71(b). Applicant's list of witnesses and copies of its exhibits are to be filed on or before **June 14, 2004**. Intervenor's list of witnesses and copies of its exhibits are to be filed on or before **June 22, 2004**.

11. **The parties are advised** that, in accordance with Rule 4 CCR 723-1-71(b), no witness will be permitted to testify, except in rebuttal, unless that witness is identified as provided in the rule and the Notice. Similarly, no document will be received in evidence, except in rebuttal, unless filed and served as provided in the rule and the Notice.

12. **The parties are advised:** If a party does not meet the filing requirements of the Notice, of Rule 4 CCR 723-1-71(b), and of this Order, the ALJ may dismiss the application or an intervention upon motion filed by any other party, or upon the ALJ's own motion, unless good cause for the failure to meet the requirements is shown.

13. Applicant has elected to proceed *pro se* in this matter and, in accordance with Commission policy and practice, will be given some latitude in this proceeding. That latitude will not be permitted to prejudice the rights of, and fairness to, Intervenor in this proceeding. If

it intends to continue *pro se*, Applicant is **strongly advised** to obtain a copy of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, in order to understand what is expected of it.<sup>2</sup>

## II. **ORDER**

### A. **It Is Ordered That:**

1. The Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention is denied.
2. Response time to the Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention is waived.
3. The parties shall follow the procedures and shall make the filings as set forth above.
4. This Order is effective immediately.

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<sup>2</sup> The rules are available on the Commission's website ([www.dora.state.co.us/puc](http://www.dora.state.co.us/puc)) or from the Commission's document room.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge