

Decision No. R21-0113-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0020CP

IN THE MATTER OF THE APPLICATION OF ESTES PARK GUIDED TOURS 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
STEVEN H. DENMAN
ADDRESSING AMENDED INTERVENTION**

Mailed Date: March 1, 2021

I. STATEMENT

A. Procedural History

1. On January 5, 2021, Estes Park Guided Tours LLC (Applicant or EP Guided Tours) filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On January 11, 2021, the Commission issued its Notice of Application Filed (Notice). As originally noticed, the Application was:

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 in Estes Park Colorado, on the one hand, and all points in Rocky Mountain National Park located in the Counties of Boulder, Grand, and Larimer, State of Colorado, and Grand Lake, Colorado, on the other hand.

The 30-day intervention deadline set by the Notice expired on February 10, 2021.

3. Applicant did not file testimony and exhibits with its Application and, therefore, seeks a Commission decision within 210 days after the Application was deemed complete, or no later than August 15, 2021.¹

4. Applicant filed amendments to the Application on January 14, 2021, to amend Sections 2 (Contact Person for questions about the Application), 8 (Designated Agent for service of process), and 10(a) (Proposed Authority), and on February 19, 2021, to again amend Sections 2 and 8.²

5. The procedural history of the above captioned proceeding is set forth in Decision No. R20-0094-I (issued on February 22, 2021) and is repeated here only as necessary to put this Decision into context.

6. On January 22, 2021, Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (EP Trolleys), through counsel, filed its Entry of Appearance and Intervention. At the same time, EP Trolleys filed its Certificate PUC No. 55845S as Attachment 01. EP Trolleys asserted that the operating rights sought by Applicant would overlap the rights granted to it under Certificate PUC No. 55845S and claimed to be an intervenor by right.

7. Decision No. R20-0094-I acknowledged the intervention by right of EP Trolleys.

8. On February 8, 2021, Estes Valley Transport, Inc. (EV Transport), through counsel, filed its Entry of Appearance and Intervention. EV Transport asserts that the operating rights sought by Applicant would partially overlap the rights granted to it under Certificate PUC No. 54696 and that it was entitled to intervene by right, because it has legally protected rights in the subject matter of the Application which would be affected if the Application were to be

¹ See § 40-6-109.5(2), C.R.S. (2019).

² The January 14, 2021 amendment to Section 10(a) of the Application amended the statement of the Proposed Authority to conform to the Commission's Notice.

granted. While EV Transport stated that a copy of Certificate PUC No. 54696 was attached to its Intervention, the Certificate was not attached or filed separately simultaneously with the Intervention.³

9. In regulated intrastate transportation carrier application proceedings, such as this one, Rule 1401(f)(I) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), provides that:

- (I) A notice of intervention as of right must include a copy of the common carrier's letter of authority, must show that the common carrier's authority is in good standing, must identify the specific parts of that authority that are in conflict with the application, and must explain the consequences to the common carrier and the public interest if the application is granted.

10. While EV Transport may have intended to attach a copy of its Certificate PUC No. 54696, the Administrative Law Judge (ALJ) in Decision No. R20-0094-I, ruled that he must be able to review Certificate PUC No. 54696, in the record of this proceeding, to determine whether this Application, if granted, would affect operating rights granted to EV Transport and whether EV Transport was an intervenor by right.⁴

11. Because EV Transport's failure to attach a copy of its Certificate to its Intervention may have been an oversight by counsel, the ALJ gave EV Transport an opportunity to cure the oversight by filing an amended Intervention pleading, *nunc pro tunc*, that includes a copy of Certificate PUC No. 54696. The amended Intervention was due no later than March 1, 2021.⁵

12. Decision No. R20-0094-I also directed counsel for the parties to confer about dates for a remote hearing when the parties and their witnesses will be available during certain

³ EV Transport's Intervention, at pages 1 – 3; *see Id.*, at page 4.

⁴ Decision No. R20-0094-I, ¶ 14 at page 5.

⁵ *Id.*, ¶ 15 at page 6.

specified dates, as well as to file a Joint Status Report, no later than March 8, 2021, informing the ALJ of the results of their conferral.

B. EV Transport's Amended Intervention

13. On March 1, 2021, EV Transport filed an Amended Intervention, *nunc pro tunc*, and attached a copy of its Certificate PUC No. 54696 to cure counsel's previous oversight. EV Transport asserts that the operating rights sought by Applicant would partially overlap the rights granted to it under this Certificate and that it is entitled to intervene by right, because it has legally protected rights in the subject matter of the Application which would be affected if the Application were to be granted.⁶

14. After a review of Certificate PUC No. 54696 and the authority granted therein, the ALJ agrees that the authority sought in the Application does overlap a portion of the authority granted to EV Transport. Under Section III, EV Transport has the authority to provide transportation of passengers in call-and-demand sightseeing service between all points within a 10-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, and between said points, on one hand, and all points within a 75-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, on the other hand. Under Section IV, EV Transport has the authority to provide transportation of passengers in call-and-demand sightseeing service between all points within 12 miles of Estes Park, Colorado, and a specified portion of Boulder County. The ALJ finds that EV Transport is an intervenor by right.

15. The parties to this proceeding are EP Guided Tours, EP Trolleys, and EV Transport. All parties are represented by counsel.

⁶ EV Transport's Amended Intervention, at pages 1 and 2.

16. The requirement in Decision No. R20-0094-I directing counsel for the parties to confer about dates for the remote hearing and to file a Joint Status Report no later than March 8, 2021, shall remain in effect.

II. ORDER

A. It Is Ordered That:

1. The intervention as of right filed on February 8, 2021, by Estes Valley Transport, Inc., and amended *nunc pro tunc* on March 1, 2021, is acknowledged.
2. The parties shall continue to comply with the requirements established in Decision No. R20-0094-I (issued on February 22, 2021).
3. Additional procedural requirements may be issued in future Interim Decisions.
4. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director