

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
GRANTING MOTION FOR EXCHANGE
OF INTERVENING PARTIES**

Mailed Date: April 14, 2021

I. STATEMENT

A. Summary

1. By this Decision, the Administrative Law Judge (ALJ) grants the Motion for Exchange of Intervening Parties and Corresponding Legal Counsel (Motion for Exchange) filed on April 8, 2021 by Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Shuttle), the successor in interest of Estes Valley Transport, Inc.

B. Procedural History.

2. On January 5, 2021, Estes Park Guided Tours LLC's (Estes Park 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).¹

¹ Estes Park Guided Tours 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. *See* § 40-6-109.5(2), C.R.S. (2019).

3. 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.

4. The procedural history of the above captioned proceeding is set forth in Decisions previously issued in this matter and is repeated here as needed to put this Decision into context.

5. 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

6. On January 22, 2021, Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys), through counsel, filed its Entry of Appearance and Intervention, including its Certificate PUC No. 55845S, claiming to be an intervenor by right. Decision No. R21-0094-I (issued on February 22, 2021) acknowledged the intervention by right of Estes Park Trolleys.

7. On February 8, 2021, Estes Valley Transport, Inc. (Estes Valley Transport), through counsel, filed its Entry of Appearance and Intervention, claiming to be an intervenor by right. As directed by Decision No. R21-0094-I, on March 1, 2021, Estes Valley Transport filed

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.

an Amended Intervention, *nunc pro tunc*, and attached a copy of its Certificate PUC No. 54696. Under that Certificate, Estes Valley Transport may transport 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 the 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.

8. Decision No. R21-0113-I (issued on March 1, 2021) acknowledged the intervention by right of Estes Valley Transport.

9. The parties to this proceeding are Estes Park Guided Tours, Estes Park Trolleys, and Estes Valley Transport. All parties are represented by counsel.

10. Decision No. R21-0142-I (issued on March 11, 2021) scheduled a remote evidentiary hearing for May 17 and 18, 2021 at 9:30 a.m. for each day.

11. On April 5, 2021 at 3:05 p.m., Estes Park Guided Tours filed Applicant's First Amended Witness Summaries and Exhibit List (First Amended Witness and Exhibit List), as well as copies of 19 proposed hearing exhibits. In this amended pleading, Applicant has removed six endorsed witnesses but has added three new possible witnesses and added three new proposed hearing exhibits (20 through 22). The First Amended Witness and Exhibit List showed the correct proceeding number (21A-0020CP) for the instant proceeding, but it erroneously stated the caption as *Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, Complainants v. Estes Park Guided Tours, Respondent*.³

³ That caption was for Proceeding No. 20F-0290CP, which involved the same parties. See Decision No. R20-0906 (issued on December 22, 2020).

12. Decision No. R21-0203-I (issued on April 6, 2021) *inter alia* directed Estes Park Guided Tours, no later than April 8, 2021, to correct the caption on the First Amended Witness and Exhibit List and to request leave of the Administrative Law Judge to amend the original Applicant's Witness Summaries and Exhibit List filed on February 19, 2021.

13. On April 7, 2021, Estes Park Guided Tours filed the Motion for Leave, the corrected Applicant's First Amended Witness Summaries and Exhibit List, as well as copies of 22 proposed hearing exhibits. Estes Park Guided Tours removed six endorsed witnesses, added three new possible witnesses, and added three new proposed hearing exhibits (20 through 22). After conferral, counsel for Estes Park Trolleys advised that he would not oppose the filing of the corrected First Amended Witness and Exhibit List, although he would reserve the same objections as he made before in a pending Motion to Strike and Objection filed March 1, 2020.

14. Decision No. R21-0216-I (issued on April 9, 2021) waived response time to the Motion for Leave, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020) and granted the Motion for Leave.

15. On April 8, 2021, Estes Park Shuttle filed the EPS Entry of Appearance and Motion for Exchange. Estes Park Shuttle states that by Decision No. C21-0123 (issued on March 4, 2021) in Proceeding No. 21A-0050CP-Transfer, the Commission approved the transfer of Estes Valley Transport's Certificate PUC No. 54696 to Estes Park Shuttle. After the requirements for the final transfer were fulfilled, the Commission's Issue Letter, dated March 23, 2021, authorized Estes Park Shuttle to begin providing the services authorized by Certificate PUC No. 54696.

16. Estes Park Shuttle filed the Motion for Exchange to be granted standing to represent the interests of an intervenor as of right, originally held by Estes Valley Transport.

Estes Park Shuttle wishes to be allowed to intervene as of right and procedurally to step into the shoes of Estes Valley Transport as an intervenor as of right. Estes Park Shuttle also states that both it and Estes Park Trolleys would then be represented by the same legal counsel.

17. Because Estes Park Shuttle failed to confer with counsel for Estes Park Guided Tours about the Motion for Exchange, as required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1 (2020), Decision No. R21-0216-I shortened response time to the Motion for Exchange to and including April 13, 2021 at Noon.⁴ Estes Park Guided Tours failed to file any response to the Motion for Exchange.

18. Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, states that: “The Commission may deem a failure to file a response as a confession of the motion.” By failing to file a response to the Motion for Exchange, Estes Park Guided Tours has confessed the merits of the motion. Hence, the Motion for Exchange is unopposed.

19. According to the application and attachments in Proceeding No. 21A-0050CP-Transfer, Estes Valley Transport transferred its authorities, assets, equipment, trade name, intellectual property, and goodwill to Estes Park Shuttle. Hence, Estes Park Shuttle is the successor in interest to Estes Valley Transport. The assets and intellectual property that Estes Valley Transport sold and transferred to Estes Park Shuttle included Estes Valley Transport’s interests in the instant proceeding as an intervenor as of right.

20. The ALJ finds that the operating rights in Certificate PUC No. 54696, which are now owned by Estes Park Shuttle, will be directly affected by the outcome of this proceeding. A review of the geographic area and type of service authorized by Certificate PUC No. 54696

⁴ Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

indicates that an overlap would exist between the transportation services authorized there and the transportation service requested by Estes Park Guided Tours.

21. Estes Valley Transport's intervention as of right was acknowledged by Decision No. R21-0113-I. Had Estes Park Shuttle owned Certificate PUC No. 54696 at the time for filing of interventions in this proceeding, it would have been recognized as an intervenor as of right pursuant to Rule 1401 of the Rules of Practice and Procedure, 4 CCR 723-1.

22. The ALJ finds good cause to grant the Motion for Exchange.

23. Because the Commission has approved the transfer to Estes Park Shuttle of Certificate PUC No. 54696, Estes Park Shuttle is the successor in interest of Estes Valley Transport. Therefore, Estes Park Shuttle will be acknowledged as succeeding Estes Valley Transport as an intervenor as of right in this proceeding. From a procedural perspective, Estes Park Shuttle will be bound by the pleadings filed by Estes Valley Transport though the mailed date of this Decision.

24. Additional procedural requirements may be issued in future Interim Decisions.

II. ORDER

A. It Is Ordered That:

1. The Motion for Exchange of Intervening Parties and Corresponding Legal Counsel filed on April 8, 2021 by Estes Park Charters Corp., doing business as Estes Park Shuttle, the successor in interest of Estes Valley Transport, Inc. is granted consistent with the findings and conclusions in this Decision.

2. This 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