

Decision No. R21-0293-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
GRANTING UNOPPOSED MOTIONS TO AMEND
AND CLARIFYING DECISION NO. R21-0277-I**

Mailed Date: May 13, 2021

I. STATEMENT

A. Summary

1. By this Decision, the Administrative Law Judge (ALJ) grants Applicant's Unopposed Motion to Amend and Second Amended Witness Summaries and Exhibit List (Applicant's Unopposed Motion), filed by Estes Park Guided Tours LLC (Estes Park Guided Tours or Applicant) on May 4, 2021; grants Intervenor's Unopposed Motion to Amend Witness Summary and for Clarification of Interim Decision No. R21-0277-I (Intervenor's Unopposed Motion), filed by Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys) and Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Shuttle) on May 12, 2021; and clarifies and amends Decision No. R21-0277-I (issued on May 7, 2021).

B. Procedural History.

2. On January 5, 2021, 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

3. 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.

4. On January 22, 2021, 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.

5. 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. On March 1, 2021, Estes Valley Transport filed an Amended Intervention, *nunc pro tunc*, and attached a copy of its Certificate PUC No. 54696. Decision No. R21-0113-I (issued on March 1, 2021) acknowledged the intervention by right of Estes Valley Transport.

6. 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.

7. On April 8, 2021, Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Shuttle) filed an Entry of Appearance and Motion for Exchange of Intervening Parties and Corresponding Legal Counsel (Motion for Exchange). Estes Park Shuttle is the

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).

successor in interest of Estes Valley Transport.² Decision No. R21-0228-I (issued on April 14, 2021) granted the Motion for Exchange.

8. The parties to this proceeding are Estes Park Guided Tours, Estes Park Trolleys, and Estes Park Shuttle. All parties are represented by counsel.

9. On May 4, 2021, Estes Park Guided Tours filed Applicant's Unopposed Motion, asking to add witness Alec Rogers and Hearing Exhibit 23, Alex Rogers' report from April 15, 2021. Estes Park Trolleys and Estes Park Shuttle do not oppose Applicant's Unopposed Motion.

10. Decision No. R21-0277-I (issued on May 7, 2021) granted in part, and denied in part, a Motion to Strike and Objection (Motion to Strike) filed on March 1, 2021 by Estes Park Trolleys. The Decision also denied Applicant's Motion for Clarification of Law on the Burden of Proof for Sightseeing, filed on April 15, 2021 by Estes Park Guided Tours.

11. On May 12, 2021, Intervenor Estes Park Shuttle and Estes Park Trolleys filed Intervenor's Unopposed Motion asking to be allowed to amend the First Amended Exhibit and Witness List filed on April 26, 2021 to remove witnesses Neil O'Malley and Kimberly O'Malley, and requesting that Interim Decision No. R21-0277-I be clarified. Estes Park Shuttle and Estes Park Trolleys assert that Intervenor's Unopposed Motion is unopposed.

12. Since Applicant's Unopposed Motion and Intervenor's Unopposed Motion are unopposed, response times to each motion will be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2020). Both motions will be

² See, in which 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.

granted and the proposed amendments to their respective Witness Summaries and Exhibit Lists will be accepted.

13. Intervenor's Unopposed Motion asserts that Decision No. R21-0277-I apparently conflates Intervenor's Estes Park Shuttle and Estes Park Trolleys and combines them into one intervenor, Estes Park Shuttle. After examining the relevant pleadings, Decision No. R21-0277-I, and Decision No. C21-0123 in Proceeding No. 21A-0050CP-Transfer (issued March 4, 2021), the ALJ concludes that Decision No. R21-0277-I should be clarified and amended.

14. The following paragraphs in Decision No. R21-0277-I will be clarified and amended as follows:

- a) Page 2, Section I. A, Paragraph 1 will be amended to state: "By this Decision, the Administrative Law Judge (ALJ) grants in part, and denies in part, the Motion to Strike and Objection (Motion to Strike) filed on March 1, 2021 by Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys)."
- b) Page 2, Section I. A, Footnote 1 will be amended to state: "See Decision No. R20-0228-I (issued on April 14, 2021), granting 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."
- c) Page 4, Section I. B, Paragraph 13 will be amended to state: "The parties to this proceeding now are Estes Park Guided Tours, Estes Park Trolleys, and Estes Park Shuttle. All parties are represented by counsel."
- d) Page 13, Section III, Paragraph 38. The first sentence of Paragraph 38 will be amended to state: "On March 1, 2021, Estes Park Trolleys (now known as Estes Park Shuttle)³ filed the initial Motion to Strike, requesting that Applicant's Witness Summaries and Exhibit List be stricken in its entirety, or in the alternative, that certain of Applicant's exhibits be stricken and witness testimony be limited only to the issues and facts relevant to this proceeding. "

³ From this point forward for the sake of simplicity and accuracy, this Decision will refer to Intervenor Estes Park Trolleys by its current name of Estes Park Shuttle.

- e) Page 13, Section III, Footnote 23. The text of Footnote 23 will be deleted.
- 15. Additional procedural requirements may be issued in future Interim Decisions.

II. **ORDER**

A. **It Is Ordered That:**

- 1. Applicant's Unopposed Motion to Amend and Second Amended Witness Summaries and Exhibit List (Applicant's Unopposed Motion), filed by Estes Park Guided Tours LLC on May 4, 2021 is granted.
- 2. Intervenor's Unopposed Motion to Amend Witness Summary and for Clarification of Interim Decision No. R21-0277-I (Intervenor's Unopposed Motion), filed by Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys and Estes Park Charters Corp., doing business as Estes Park Shuttle, on May 12, 2021 is granted.
- 3. Response times to Applicant's Unopposed Motion and Intervenor's Unopposed Motion are waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2020).
- 4. Decision No. R21-0277-I (issued on May 7, 2021) is clarified and amended, consistent with the findings and discussion in Section I.B, Paragraph 14 of this Decision.

5. 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