

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0216CP

IN THE MATTER OF THE APPLICATION OF COLORADO CANYON CONNECTION LLC
FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING MOTION TO DISMISS APPLICATION;
DISMISSING APPLICATION
WITHOUT PREJUDICE; VACATING EVIDENTIARY
HEARING; AND CLOSING PROCEEDING**

Mailed Date: October 25, 2022

I. STATEMENT

1. On May 24, 2022, Colorado Canyon Connection LLC (Applicant) filed its Permanent Authority Application (Application), through which Applicant sought a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier of passengers by motor vehicle for hire. This filing commenced Proceeding No. 22A-0216CP.

2. On June 13, 2022, the Commission issued a Notice of Applications and Petitions Filed (Notice). The Notice gave notice of the Application, notice of procedural deadlines, and established a 30-day intervention period. As noticed, Applicant seeks the following authority:

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

3. On June 21, 2022, Estes Park Charters Corp. (Estes Park Charters), Fun Tyme Trolleys, LLC d/b/a Estes Park Trolleys (Estes Park Trolleys), and Home James Transportation Services, LTD (collectively Intervenors) timely noticed their intervention of right.

4. On July 27, 2022, the Commission, via a minute entry, deemed the Application complete and referred Proceeding No. 22A-0216CP to an Administrative Law Judge (ALJ) for disposition.

5. Despite the fact that Applicant's deadline for filing lists of witnesses and copies of exhibits had passed and no such information was filed, the undersigned adopted a new procedural schedule to govern this proceeding. By Decision No. R22-0535-I, issued September 9, 2022, a procedural schedule was adopted and a hearing in this matter was scheduled to be held on November 10, 2022. In Decision No. R22-0535-I, Applicant was ordered to file its list of witnesses and copies of its exhibits that it will present at hearing no later than September 30, 2022. Rule 1205(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires all parties to serve all documents filed in a case on all other parties or their attorneys (if represented by counsel). Paragraph 15 of Decision No. R22-0535-I contained the following advisement:

Parties are advised that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. **Parties are advised further** that no exhibit will be received in evidence, except in rebuttal, unless filed and served in accordance with the procedural schedule.

(Bolding in original).

6. Applicant failed to file and serve the required disclosures regarding the list of witnesses and copies of exhibits by the September 30, 2022 deadline.

7. On October 12, 2022, Estes Park Charters, and Estes Park Trolleys (Movants) filed their Motion in Limine and Motion to Dismiss Without Prejudice and Request to Shorten Response Time (Motion to Dismiss). Through the Motion to Dismiss, Movants request dismissal of the Application for Applicant's failure to file and serve disclosures as ordered. Based

thereupon, and the advisement in Decision No. R22-0535-I quoted above, Applicant will be unable to meet its burden of proof.

8. On October 13, 2022, by Interim Decision R22-0619, the ALJ shortened Applicant's response time to the Motion to Dismiss to October 21, 2022.

9. No response was filed to the Motion to Dismiss.

10. A review of the Commission's file reveals that Applicant has not filed the ordered disclosures. Movants' counsel represents that he was not served with Applicant's disclosures, as required by Commission rule. Further, Applicant did not respond to the Motion to Dismiss.

11. The Motion to Dismiss is unopposed; and, pursuant to Rule 1400 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and Decision No. R22-0535-I, the ALJ deems the Applicant to have confessed the Motion to Dismiss.

12. Applicants failed to comply with the procedural order governing this proceeding. Such failure also prejudices Intervenors by significantly hindering Intervenors' ability to adequately prepare for the upcoming evidentiary hearing and to ensure compliance of its own disclosures.

13. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the order below.

II. ORDER

A. It Is Ordered That:

1. The Motion in Limine and Motion to Dismiss Without Prejudice filed by Estes Park Charters Corp. and Fun Tyme Trolleys, LLC d/b/a Estes Park Trolleys on October 12, 2022, is granted.

2. Applicant, Colorado Canyon Connection LLC, is precluded from offering witnesses or exhibits at the scheduled evidentiary hearing in this matter.

3. The application of Colorado Canyon Connection LLC for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed on May 24, 2022, and amended on June 7, 2022, is dismissed without prejudice.¹

4. The evidentiary hearing scheduled in this matter for November 10, 2022, is vacated.

5. This Proceeding is now closed.

6. 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.

7. As provided by § 40-6-106, 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 recommended 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 a basic finding 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

¹ Dismissal without prejudice means that the Applicant may file another application at any time.

Commission can review if exceptions are filed.

8. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director