

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0926CP

IN THE MATTER OF THE APPLICATION OF BEER NUT CRAFT BREWERY TOURS, LTD., 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
MANA L. JENNINGS-FADER
REQUESTING CLARIFICATION, GRANTING
MOTION TO VACATE HEARING, VACATING
EVIDENTIARY HEARING *NUNC PRO TUNC*, AND
WAIVING RESPONSE TIME TO MOTION**

Mailed Date: January 17, 2014

I. STATEMENT

1. On August 23, 2013, Beer Nut Craft Brewery Tours, Ltd. (Tours or Applicant), filed a verified Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On September 16, 2013, Applicant filed an Amendment to Application, which may have amended the scope of the authority sought in this Proceeding.¹ On October 2, 2013, Applicant supplemented its August 23, 2013 filing. Unless the context indicates otherwise, reference in this Decision to the Application is to the August 23, 2013 filing as supplemented on October 2, 2013.

3. On August 26, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4); established an intervention period, which has expired;

¹ This is discussed below.

and established a procedural schedule. On October 10, 2013, Decision No. R13-1280-I vacated the procedural schedule.

4. The following intervened as of right: Colorado Cab Company LLC, doing business as Boulder SuperShuttle, Denver Yellow Cab, and Boulder Yellow Cab (Colorado Cab); Shamrock Charters, Inc. (Shamrock Charters); Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO (Shamrock Taxi); and SuperShuttle International Denver, Inc. (SuperShuttle). Each opposed the Application.

5. Colorado Cab, Shamrock Charters, Shamrock Taxi, and SuperShuttle, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

6. Pursuant to Decision No. R13-1280-I, Applicant appears *pro se*. Intervenors appear through legal counsel.

7. On October 9, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

8. The procedural history of this Proceeding is set out in previous Interim Decisions issued in this matter. The ALJ repeats the procedural history here as necessary to place this Interim Decision in context.

9. On October 30, 2013, by Decision No. R13-1370-I, the ALJ scheduled a January 9 and 10, 2014 evidentiary hearing in this matter.

10. On January 8, 2014, the Parties filed a Notice of Settlement and Joint Motion to Vacate Hearing. By electronic mail sent on January 8, 2014, the ALJ waived response time to the motion; granted the motion; and vacated the scheduled evidentiary hearing. This Interim Decision memorializes those rulings and vacates, *nunc pro tunc*, the evidentiary hearing scheduled for January 9 and 10, 2014.

11. On January 15, 2014, the Parties filed (in one document) a Stipulation [Stipulation], Motion for Approval of Restrictive Amendments [Motion for Approval], and Conditional Withdrawal of Interventions (collectively, the January 15 Filing).

12. In the Application, Tours seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand shuttle and call-and-demand charter service

between all points within a 5-mile radius of the intersection of 15th Street and Walnut Street, Boulder, Colorado, and between said points, on the one hand, and all points within a 70-mile radius of the intersection of 15th Street and Walnut Street, Boulder, Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) To providing transportation services that either originate or terminate at breweries and/or distilleries as part of a tour of breweries and/or distilleries, these tours must consist of at least two (2) persons, excluding the driver, and visit at least one (1) brewery or distillery, but not more than four (4) breweries or distilleries, on each tour;
- (B) Against providing any transportation service that either originates or terminates at Denver International Airport, Denver, Colorado;
- (C) To the use at any one time of not more than three (3) vehicles, each of which must have a seating capacity of nine (9) or more passengers, excluding the driver;
- (D) To a maximum of two (2) tours per day per vehicle, tours to be conducted between the hours of 11:00 a.m. and 11:00 p.m. only; and
- (E) Against providing transportation to any locations other than breweries, brewpubs, or distilleries in Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson, and Weld Counties.

13. On September 16, 2013, Tours filed an Amendment to Application. That filing contained the following two amendments to the authority sought:

1. No tours shall originate in Larimer County beyond the point north of County Road 392.
2. No theme tours shall take place in Larimer County based upon ghosts, extraterrestrial life, extraterrestrial unidentified objects and cryptids.

Amendments to Application at 1.

14. In the Stipulation, Applicant agrees to amend the Application in order to obtain a CPCN to operate as a motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand shuttle and call-and-demand charter service

between all points within a 5-mile radius of the intersection of 15th Street and Walnut Street, Boulder, Colorado, and between said points, on the one hand, and all points within a 70-mile radius of the intersection of 15th Street and Walnut Street, Boulder, Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) To providing transportation services that either originate or terminate at breweries and/or distilleries as part of a tour of breweries and/or distilleries, these tours must consist of at least two (2) persons, excluding the driver, and must visit at least two (2) breweries or distilleries, but not more than four (4) breweries or distilleries, on each tour;
- (B) Against providing any transportation service that either originates or terminates at Denver International Airport, Denver, Colorado;
- (C) Against providing any transportation service that either originates or terminates at hotels or motels;
- (D) To the use at any one time of not more than three (3) vehicles, each of which must have a seating capacity of nine (9) or more passengers, excluding the driver;
- (E) To a maximum of two (2) tours per day per vehicle, tours to be conducted between the hours of 11:00 a.m. and 11:00 p.m. only; and

- (F) Against providing transportation to any location other than breweries, brewpubs, or distilleries in Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson, and Weld Counties.

15. The Stipulation neither includes nor references the Amendment to Application.

16. In light of the Stipulation, the ALJ cannot determine the status of the Amendment to Application. Based on the January 15 Filing, the ALJ cannot determine: (a) whether Applicant has withdrawn the Amendment of Application; (b) whether the Parties agreed to include the Amendment to Application in the Stipulation but failed to include the language; (c) whether the Parties intended to exclude the Amendment to Application from the Stipulation; or (d) whether there is some other reason for the Parties' failure to include or to reference the Amendment to Application in the Stipulation. The Parties will be ordered to make a filing that clarifies the relationship, if any, between the Stipulation and the Amendment to Application.

17. If the Amendment to Application is excluded from the Stipulation, the ALJ requires clarification as to the status of the Amendment to Application: is the Amendment to Application to be given effect, or is it withdrawn? The Parties will be ordered to make a filing that clarifies the status of the Amendment to Application, assuming it is excluded from the Stipulation.

18. If the Amendment to Application is to be given effect, the ALJ seeks clarification of this language: "No tours shall originate in Larimer County *beyond the point* north of County Road 392." Amendment to Application at 1 (emphasis supplied). The italicized reference requires clarification in order to be enforceable. The Parties will be ordered to make a filing that clarifies the quoted language.

19. If the Amendment to Application is to be given effect, the ALJ seeks clarification of this language: "No theme tours shall take place in Larimer County based upon ghosts,

extraterrestrial life, extraterrestrial unidentified objects and cryptids.” Amendment to Application at 1. The Parties will be ordered to make a filing that clarifies the quoted language. There are two points that require clarification.

20. *First*, the number and types of prohibited theme tours requires clarification. One may read the language as creating four types of prohibited theme tours: (a) tours based on ghosts; (b) tours based on extraterrestrial life; (c) tours based on extraterrestrial unidentified objects; and (d) tours based on cryptids. It is also possible to read the language as creating three types of prohibited theme tours: (a) tours based on ghosts; (b) tours based on extraterrestrial life; and (c) tours based on extraterrestrial unidentified objects and cryptids. To make the restriction clear and enforceable, the number and types of prohibited theme tours must be identified.

21. *Second*, the word “cryptids” requires clarification. The definition of “cryptids” is not found in a standard dictionary, is not an industry term with which the ALJ is familiar, and cannot be discerned from the Amendment to Application. To make the restriction clear and enforceable, the definition of “cryptids,” as intended to be used in the CPCN, must be provided for inclusion in the CPCN.

22. The ALJ will order the Parties to make, not later than **January 31, 2014**, a joint filing that addresses the issues identified above.

23. As filed, the Stipulation had as a single restriction the Restriction (B) against providing transportation that originates or terminates at Denver International Airport and the Restriction (C) against transportation that originates or terminates at a hotel or motel. As evidenced, the ALJ has separated that single restriction into two restrictions in order to clarify the restrictions. If the separation into two restrictions is contrary to the Parties’ intention, the Parties must inform the ALJ of that fact in the **January 31, 2014** joint filing.

II. ORDER**A. It Is Ordered That:**

1. Consistent with the discussion above and not later than January 31, 2014, the Parties shall make joint filing that complies with ¶¶ 16-21 and ¶ 23, above.
2. The Joint Motion to Vacate Hearing is granted.
3. The evidentiary hearing in this Proceeding scheduled for January 9 and 10, 2014 is vacated, *nunc pro tunc*.
4. Response time to the Joint Motion to Vacate Hearing is waived.
5. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.
6. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
DirectorTHE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge