

Decision No. R14-1169

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0759CP

IN THE MATTER OF THE APPLICATION OF MANITOU SPRINGS ADVENTURES, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ACCEPTING AMENDMENT; DISMISSING
INTERVENTION; GRANTING APPLICATION
AMENDED UNDER MODIFIED
PROCEDURE; AND CLOSING PROCEEDING**

Mailed Date: September 22, 2014

I. STATEMENT

1. On July 11, 2014, Manitou Springs Adventures, LLC (Manitou Springs or Applicant), 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 July 14, 2014, the Commission issued its Notice of Application Filed (Notice) in this proceeding by publishing a summary of the same in its Notice as follows:

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 the Counties of El Paso, Park, and Teller, State of Colorado.

RESTRICTION:

(A) This application is restricted against transportation services to or from airports.

3. On July 17, 2014, Marketing Services Inc. of Pueblo/Adventures Out West Inc. (Marketing Services/Intervenor) filed their Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 55737 held by Marketing Services.

4. On August 20, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

5. By Decision No. R14-1047-I, issued August 29, 2014, a prehearing was scheduled for September 18, 2014.

6. On September 9, 2014, the Applicant filed its Amendment to the Application.

7. Through informal communications, the undersigned ALJ informed the parties that the amendment was unacceptable and they were requested to make a new filing.

8. By Decision No. R14-1132-I, issued September 16, 2014, the prehearing conference scheduled for September 18, 2014, was vacated.

9. On September 18, 2014, the parties filed their Revised Amendment to Application. In their Revised Amendment Marketing Services states that it will withdraw its intervention if the amendment is accepted.

10. Under the parties agreement, the restrictively amended authority will read:

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 the Counties of El Paso, Park and Teller, State of Colorado.

RESTRICTIONS:

- (A) against transportation services to or from airports;
- (B) against providing transportation services on unpaved roads, except on roads within 11 Mile Canyon State Park;
- (C) against providing transportation services to, from or between points in North Cheyenne Canyon Park;
- (D) against providing transportation services to, from , or between any points within the Broadmore Hotel and Resort;
- (E) against providing transportation services to, from, or between any points within the U.S. Air Force Academy;
- (F) against the use of more than two vehicles at any one time; and
- (G) to the use of vehicles with a seating capacity of 5 persons.

11. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

12. The ALJ finds and concludes that the proposed amendments are restrictive in nature, are clear and understandable, and are administratively enforceable.

13. The restrictions to the authority sought by Applicant (*i.e.*, the amendments to the Application) will be accepted.

14. Accepting the amendments to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendments. Second, the intervention of the Intervenor shall be withdrawn.

15. Withdrawal of the interventions and dismissal of the Intervenor leaves the Application, as amended, uncontested. Pursuant to § 40-6-109(5), C.R.S., and *Rule 1403, 4 Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, the uncontested application may be processed under the modified procedure, without a formal hearing.

16. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

17. Applicant is a Colorado limited liability company in good standing.

18. Applicant requests authority to operate as a common carrier. By the Application, Manitou Springs, seeks authority to operate as a common carrier by motor vehicle for hire:

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 the Counties of El Paso, Park and Teller, State of Colorado.

RESTRICTIONS:

- (A) against transportation services to or from airports;
- (B) against providing transportation services on unpaved roads, except on roads within 11 Mile Canyon State Park;
- (C) against providing transportation services to, from or between points in North Cheyenne Canyon Park;
- (D) against providing transportation services to, from, or between any points within the Broadmore Hotel and Resort;
- (E) against providing transportation services to, from, or between any points within the U.S. Air Force Academy;

- (F) against the use of more than two vehicles at any one time; and
- (G) to the use of vehicles with a seating capacity of 5 persons.

19. The verified Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. The verified Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Finally, review of the verified Application indicates a need for the proposed service from the support letters contained within the Application. Therefore, because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the permit should be granted.

20. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Revised Amendment to the Application is granted.
2. The verified Application to Operate as a Common Carrier of Passengers by Motor Vehicle is amended consistent with the discussion above.
3. The intervention filed by Marketing Services Inc. of Pueblo/Adventures Out West Inc. is withdrawn and it is dismissed from the proceeding.
4. The Application to Operate as a Common Carrier of Passengers by Motor Vehicle filed by, Manitou Springs Adventures, LLC, as that application has been amended, is granted.

5. Manitou Springs Adventures, LLC, is granted authority to operate as a common carrier by motor vehicle for hire as follows.

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 the Counties of El Paso, Park and Teller, State of Colorado.

RESTRICTIONS:

- (A) against transportation services to or from airports;
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- (D) against providing transportation services to, from, or between any points within the Broadmore Hotel and Resort;
- (E) against providing transportation services to, from, or between any points within the U.S. Air Force Academy;
- (F) against the use of more than two vehicles at any one time; and
- (G) to the use of vehicles with a seating capacity of 5 persons.

6. Manitou Springs Adventures, LLC shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the permit granted shall be strictly common carrier operations.

7. Manitou Springs Adventures, LLC, shall not commence operation until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof,

paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;

- (c) having an effective tariff on file with the Commission. Manitou Springs Adventures, LLC, shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs)]; and
- (d) paying the applicable issuance fee (\$5).

8. If Manitou Springs Adventures, LLC, does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

9. The Commission will notify Manitou Springs Adventures, LLC, in writing when the Commission's records demonstrate compliance with paragraph 7.

10. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails orders this Decision.

11. Proceeding No. 14A-0759CP is closed.

12. 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.

13. 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 Commission can review if exceptions are filed.

14. 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)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge