

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0085CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF BARKING SQUIRREL TOURS FOR
PERMANENT AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY NO. 55933.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
VACATING HEARING, DISMISSING APPLICATION
WITHOUT PREJUDICE, AND CLOSING PROCEEDING**

Mailed Date: June 26, 2019

I. STATEMENT

A. Background

1. On February 11, 2019, Barking Squirrel Tours, LLC (Barking Squirrel Tours) filed the application described in the caption above (Application). The Application requests permission to extend the shuttle and charter service authority granted by Certificate of Public Convenience and Necessity (CPCN) No. 55933 from Denver County to the Counties of Boulder, Adams, Arapahoe, Douglas, Jefferson, and Broomfield. The only vehicle listed in the Application to be used to provide the requested extended service is a 2008 Honda Ridgeline.
2. On February 19, 2019, the Commission issued a notice of the Application.
3. On March 18, 2019, Barking Squirrel Tours filed a restrictive amendment to the Application.
4. On March 19, 2019, Ullr Tours, LLC, doing business as The Colorado Sightseer (Colorado Sightseer), filed an Intervention.

5. On March 27, 2019, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

6. On April 11, 2019, the ALJ issued Decision No. R19-0333-I that scheduled the hearing in this proceeding for June 27, 2019. Decision No. R19-0333-I also ordered Barking Squirrel Tours to file and serve on Colorado Sightseer by May 3, 2019: (a) a list that identifies the witnesses Barking Squirrel Tours intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Barking Squirrel Tours will present at the hearing.

7. On April 22, 2019, Colorado Sightseer withdrew its intervention in this proceeding.

8. Barking Squirrel Tours did not comply with the requirement in Decision No. R19-0333-I to file its witness and exhibit lists and copies of its exhibits by May 3, 2019.

9. On May 15, 2019, Barking Squirrel Tours filed an Application to Suspend CPCN No. 55933 through November 15, 2019 because its vehicle was involved in an accident that rendered the vehicle inoperable (Application to Suspend). The inoperable vehicle listed in the Application to Suspend is a 2008 Honda Ridgeline, which is the same year, make, and model of the vehicle listed in the Application that would provide the extended service proposed in the Application.¹ In the Application, Barking Squirrel Tours stated that the 2008 Honda Ridgeline was “totaled,” which is the reason it requested a suspension of its authority through November 15, 2019.

¹ See Application to Suspend filed on May 15, 2019 in Proceeding No. 19A-0259CP-Suspension.

10. Based on the foregoing, the ALJ issued Decision No. R19-0503-I in this proceeding on June 13, 2019 which noted Barking Squirrel Tours' failure to comply with the requirements in Decision No. R19-0333-I to file its witness and exhibit lists and copies of its exhibits. Decision No. R19-0503-I also noted the Application to Suspend and questioned how Barking Squirrel Tours would be able to prove its operational fitness to provide the extended service proposed in the Application without the only vehicle identified in the Application. As a result, the ALJ ordered Barking Squirrel Tours to file a document showing cause why the Application should not be dismissed without prejudice, the hearing vacated, and the proceeding closed. The deadline for Barking Squirrel Tours to show cause established in Decision No. R19-0503-I was June 24, 2019.² The ALJ took administrative notice of the Application to Suspend in Decision No. R19-0503-I.³

11. On June 18, 2019, the Commission issued Decision No. C19-0528 in Proceeding No. 19A-0259CP-Suspension that granted the Application to Suspend. As a result, CPCN No. 55933 is suspended through November 15, 2019.

12. Barking Squirrel Tours did not file a document by June 24, 2019 showing cause why the Application should not be dismissed without prejudice, the hearing vacated, and the proceeding closed, as required by Decision No. R19-0503-I.

B. Analysis

13. As noted, Barking Squirrel Tours did not file any document by June 24, 2019, much less a document showing cause why the Application should not be dismissed. Barking

² See Decision No. R19-0503-I issued on June 13, 2019 and Decision No. R19-0503-I-E issued on June 18, 2019.

³ See Rule 1501(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 ("The Commission may take administrative notice . . . of documents in its files.").

Squirrel Tours has thus violated two decisions of the Commission. In fact, Barking Squirrel Tours has not filed any document in this proceeding since March 18, 2019, which represents a failure to prosecute this case.

14. Under these circumstances, if the hearing were held, the ALJ would not permit Barking Squirrel Tours to call any witnesses or introduce any documents as exhibits. In addition, Barking Squirrel Tours has not stated how it can carry its burden of proving its operational fitness to provide the extended service proposed in the Application without the only vehicle identified in the Application. For these reasons, each of which is an independent basis for this decision, Barking Squirrel Tours cannot carry its burden of proof in this proceeding, and there is thus no reason to waste the time and resources of the Commission by holding the hearing. Based on the foregoing, the hearing shall be vacated and the Application shall be dismissed without prejudice.

II. ORDER

A. The Commission Orders That:

1. The hearing scheduled for June 27, 2019 is vacated.
2. The Application filed on February 11, 2019 by Barking Squirrel Tours, LLC is dismissed without prejudice.
3. Proceeding No. 19A-0085CP- Extension is closed.
4. 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.
5. As provided by § 40-6-109, 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 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 basic findings 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.
6. If exceptions to this 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director