

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0188CP

IN THE MATTER OF THE APPLICATION OF KEP EXPEDITIONS 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
STEVEN H. DENMAN
APPROVING RESTRICTIVE AMENDMENT,
DISMISSING INTERVENTION, AND
GRANTING APPLICATION, AS AMENDED**

Mailed Date: July 24, 2019

I. STATEMENT

A. Procedural History

1. On April 9, 2019, KEP Expeditions LLC (Applicant) filed the above-captioned Application for a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire and commenced this Proceeding. Applicant did not file direct testimony, a list of witnesses, detailed summaries of testimony, or copies of exhibits with its Application.¹

2. On April 11, 2019, Applicant filed an Amendment to the Application, adding a clearer statement of the proposed authority and adding a restriction that the proposed authority would be restricted to the use of vehicles with wheelchair accessibility.

¹ Pursuant to § 40-6-109.5(2), C.R.S., therefore, the Commission's decision in this proceeding shall be issued no later than 210 days after the Application was deemed complete, or no later than December 18, 2019.

3. On April 15, 2019, the Commission issued a Notice of Applications Filed, including the Application in this proceeding, stating that the Application is:

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 Larimer County and Rocky Mountain National Park, State of Colorado.

RESTRICTION:

This [authority] is restricted to the use of vehicles with wheelchair accessibility.

The 30-day intervention deadline set by the Notice ended on May 15, 2019.

4. On May 15, 2019, Estes Valley Transport, Inc. (Estes Valley or Intervenor), through its counsel, filed its Entry of Appearance and Intervention (Intervention). The Intervention asserted that the operating rights sought by Applicant would partially overlap the rights granted to Estes Valley in Certificate PUC No. 54696, which was attached to the Intervention. Therefore, Intervenor concluded, it has a legally protected right in the subject matter of the Application. Estes Valley requested that the Application be denied.

5. While Intervenor makes the general allegation that the authority sought overlaps its authority, Item V of Certificate PUC No. 54696 grants authority to Estes Valley for:

Transportation of

passengers, in sightseeing service,

between all points within a 12-mile radius of Estes Park, Colorado, on the one hand, and that portion of Boulder County which lies north of a line beginning at the intersection of Colorado State Highway 52 and the Boulder County, Weld County line, then west over Colorado State Highway 52 as extended to the Boulder County, Grand County line, on the other hand.

Item V is apparently the portion of its authority claimed to be overlapped by the Application.

6. During the Commission's weekly meeting held on May 22, 2019, this matter was referred to an Administrative Law Judge (ALJ) for disposition. Subsequently the undersigned ALJ was assigned to preside over this proceeding.

7. In Decision No. R19-0471-I (mailed on June 5, 2019), the ALJ found that Estes Valley is an intervenor by right and a Party to this proceeding. Applicant and Estes Valley are the only Parties to this proceeding.

8. Decision No. R19-0471-I also scheduled an evidentiary hearing for July 22 and 23, 2019 at 10:00 a.m. in a Commission hearing room. Decision No. R19-0471-I ordered Applicant, no later than June 19, 2019, to file its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it would present at the hearing. Estes Valley was ordered, no later than July 10, 2019, to file its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it will present at hearing.

9. On June 19, 2019, Robert H. Foster, Esq., entered his appearance as counsel for Applicant. Mr. Foster also moved for an extension of time to June 24, 2019 for Applicant to file its prehearing disclosures.²

10. On June 24, 2019, Applicant filed its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it would present at the hearing. On June 28, 2019, Estes Valley filed its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it would present at the hearing.

² Decision No. R19-0542-I (mailed on June 20, 2019) granted Applicant an extension of time until June 24, 2019 to file its list of witnesses, detailed summaries of the testimony of its witnesses, and copies of the exhibits that it would present at the hearing.

11. On July 17, 2019, Applicant and Estes Valley filed a Notice of Agreed Resolution; Unopposed Motion to Vacate Hearing Date (Unopposed Motion). The Parties state that they had reached a settlement of the Amended Application, pursuant to which Applicant would submit a second amendment to its Application to add the following restrictions to its requested authority:

- (1) Restricted to transportation in a vehicle containing special equipment required for the transportation of persons with disabilities.
- (2) Restricted to transportation to, within, and from points of recreational and sightseeing interest.

After the Application was amended pursuant to the settlement, the Unopposed Motion stated that Estes Valley would withdraw its objection. The Parties then jointly moved to vacate the hearing.³

12. Since implementation of the settlement was contingent on filings to be made by both Applicant and Estes Valley, the ALJ declined to vacate the hearing until after Applicant had filed the second amendment to the Application and Estes Valley had withdrawn its Intervention and its objection to the Application, as amended.

13. Decision No. R19-0606-I (mailed on July 17, 2019) ordered Applicant to file the second amendment to the Application required by the settlement no later than 5:00 p.m. on Thursday, July 18, 2019. In this filing, Applicant was required to include a complete statement of the authority it sought, including the restrictions to which it had agreed in the settlement. That Decision ordered Estes Valley to file a withdrawal of its Intervention and objection to the Application, as amended, no later than 11:00 a.m. on Friday, July 19, 2019.

14. On July 18, 2019, Applicant filed the second amendment to the Application required by the settlement. This filing only included a recitation of the restricted amendments to

³ Unopposed Motion, ¶¶ 4 at pages 1 and 2.

which Applicant had agreed, but did not include a complete statement of the authority it sought. On July 19, 2019, Estes Valley filed a Withdrawal of Intervention, stating that its withdrawal was conditional on the Commission's acceptance of the amendments to the scope of the Application.

15. By Decision No. R19-0615-I (mailed on July 19, 2019), the ALJ vacated the evidentiary hearing scheduled for July 22 and 23, 2019 at 10:00 a.m. Decision No. R19-0615-I also confirmed Estes Valley's withdrawal of its intervention and its objection to the Application.

B. Discussion, Findings, and Conclusions

16. The Commission encourages the settlement of contested proceedings. Rule 1408 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

17. Pursuant to the settlement agreed to by Applicant and Estes Valley, the complete statement of the authority sought, including the restrictions agreed to in the settlement as reflected in the Application as amended, is the following:

Transportation of
passengers in call-and-demand sightseeing service
between all points in Larimer County and Rocky Mountain National Park, State
of Colorado.

RESTRICTIONS:

- (1) Restricted to transportation in a vehicle containing special equipment required for the transportation of persons with disabilities.
- (2) Restricted to transportation to, within, and from points of recreational and sightseeing interest.

18. The proposed restrictive amendments, to which Applicant agreed to in the settlement, clarify the restriction included in the first amendment to the Application.⁴

⁴ The first amendment to the application added the following restriction: "This [authority] is restricted to the use of vehicles with wheelchair accessibility."

They impose the additional restriction that the authority for transportation of passengers in call-and-demand sightseeing service will be restricted “to transportation to, within, and from points of recreational and sightseeing interest,” between all points in Larimer County and Rocky Mountain National Park in the State of Colorado.

19. Based upon the forgoing findings and conclusions, the undersigned ALJ finds that the restrictive amendments proposed in the settlement are restrictive in nature, clear and understandable, and administratively enforceable. The settled restrictions on the authority sought by Applicant are unambiguous and will be contained wholly within the authority granted. Accordingly, the restrictive amendments proposed in the settlement will be approved.

20. Estes Valley’s withdrawal of its intervention and its objection to the Application is approved. Estes Valley will be dismissed as a Party to this Proceeding.

21. As a result of the withdrawal of Estes Valley’s intervention, the Application, as amended and restricted by the settlement, is not contested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the Application, as amended, and the supporting attachments will be determined under the Commission’s modified procedure, without an evidentiary hearing.

22. The Application, as amended and as restricted by the settlement, as well as the Application’s supporting attachments, establish that Applicant has sufficient equipment with which to render the proposed transportation service under the authority requested.

23. The Application, as amended and as restricted by the settlement, as well as the Application’s supporting attachments, establish that Applicant is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application, as

amended by the settlement, as well as the Application's supporting attachments, and the lack of opposition to the Application, as amended, indicate a need for the proposed call-and-demand sightseeing service as restricted.

24. The Application, as amended by the settlement, as well as the Application's supporting attachments, demonstrate that Applicant is familiar with the Commission's Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.⁵

25. The proposed transportation of passengers as requested in the Application, as amended and as restricted, is reasonable and not contrary to the public interest.

26. Based upon the foregoing findings and conclusions, the Application, as amended and restricted, will be granted.

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

II. ORDER

A. **The Commission Orders That:**

1. The Application for a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire, filed by KEP Expeditions LLC (Applicant) on April 9, 2019, is granted consistent with the discussion, findings, and conclusions stated in this Decision.

2. The Withdrawal of Intervention filed by Estes Valley Transport, Inc. (Estes Valley) on July 19, 2019, is approved. Estes Valley is dismissed as a Party to this proceeding.

⁵ 4 CCR 723-6.

3. Applicant is granted authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of
 passengers in call-and-demand sightseeing service
 between all points in Larimer County and Rocky Mountain National Park, State of Colorado.

RESTRICTIONS:

- (1) Restricted to transportation in a vehicle containing special equipment required for the transportation of persons with disabilities.
 - (2) Restricted to transportation to, within, and from points of recreational and sightseeing interest.
4. Applicant shall operate in accordance with all applicable Colorado laws and Commission rules.

5. Applicant shall not commence operations under the authority granted by this Decision until it has complied with the requirements of Colorado law 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 (\$45) 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. Applicant 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 Commission 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 <https://www.colorado.gov/dora/puc> and by following the transportation common and contract carrier links to tariffs); and
- d. paying the applicable issuance fee.

6. If Applicant 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 authority 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.

7. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph II.A.5.

8. Proceeding No. 19A-0188CP is closed.

9. 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.

10. 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.

11. 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

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director