

Decision No. R19-0712-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0170CP

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN AMPHICAR
ADVENTURES LLC DOING BUSINESS AS ROCKY MOUNTAIN AMPHICAR
ADVENTURES FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

PROCEEDING NO. 19V-0176CP

IN THE MATTER OF THE PETITION OF ROCKY MOUNTAIN AMPHICAR
ADVENTURES FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF
THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

PROCEEDING NO. 19V-0177CP

IN THE MATTER OF THE PETITION OF ROCKY MOUNTAIN AMPHICAR
ADVENTURES FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF
THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING UNOPPOSED MOTION TO WITHDRAW
APPLICATION AND VACATING HEARING**

Mailed Date: August 27, 2019

I. STATEMENT

1. This Interim Decision grants the Unopposed Motion to Withdraw Application and to Vacate the Hearing Dates (Unopposed Motion) filed by Rocky Mountain Amphicar Adventures, LLC (RMAA) on August 26, 2019.

A. Procedural History.

2. On April 2, 2019, RMAA filed with the Public Utilities Commission of the State of Colorado (Commission) an Application for a Certificate of Public Convenience and Necessity (CPCN) to Operate as a Common Carrier by Motor Vehicle for Hire (CPCN Application). This filing commenced Proceeding No. 19A-0170CP.

3. On April 3, 2019, RMAA filed an Amendment to the CPCN Application, adding a clearer statement of the proposed authority and adding a restriction that the proposed authority would be restricted to the use of Amphicar Model 770 vehicles.

4. On April 8, 2019, the Commission issued a Notice of Applications Filed (Notice), stating that the CPCN Application was:

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 within a 2-mile radius of the intersection of Grand Avenue and Vine Street in Grand Lake, State of Colorado.

RESTRICTION:

This [authority] is restricted to the use of Amphicar Model 770 vehicles.

The 30-day intervention deadline set by the Notice ended on May 8, 2019, and no motions for permissive intervention were filed. The deadline for filing an intervention by Staff of the Public Utilities Commission of the State of Colorado (Staff) was May 15, 2019.

5. On May 10, 2019, Staff filed a Notice of Intervention as of Right by Staff, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401 (Intervention). Staff's

Intervention requested that the CPCN Application be set for hearing and lists a number of Staff's concerns with the filing.¹

6. Staff's intervention as of right was acknowledged in Decision No. R19-0474-I (mailed on June 7, 2019).

7. The Commission deemed the CPCN Application complete within the meaning of § 40-6-109.5, C.R.S., on May 22, 2019, and referred it to an Administrative Law Judge (ALJ) for disposition. Proceeding No. 19A-0170CP was subsequently assigned to the undersigned ALJ.

8. On April 3, 2019, RMAA filed a Petition with the Commission, seeking a waiver of Rule 6213(a) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (2017), regarding age of motor vehicles, for a 1966 Amphicar Model 770, Vehicle Identification No. (VIN) 106521896, with 17,677 miles. The waiver was requested from May 1, 2019 through October 31, 2019. This Petition was docketed as Proceeding No. 19V-0176CP.

9. Also on April 3, 2019, RMAA filed a second Petition with the Commission, seeking a waiver of Rule 6213(a), 4 CCR 723-6 (2017), regarding age of motor vehicles, for a 1967 Amphicar Model 770, VIN No. 106523641, with 13,993 miles. The waiver was requested from May 1, 2019 through October 31, 2019. That Petition was docketed as Proceeding No. 19V-0177CP.

10. On April 8, 2019, the Commission issued a Notice, including the foregoing Petitions, stating that each Petition sought an order of the Commission authorizing a waiver of

¹ On May 17, 2019, Staff amended its Intervention to add two more Advisory Staff members.

Rule 6213(a) (Age of Motor Vehicles) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

11. In both Proceeding Nos. 19V-0176CP and 19V-0177CP, on May 10, 2019 Staff filed Notices of Intervention as of Right by Staff, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401 (Interventions). Staff's Interventions requested that each Petition be set for hearing and listed a number of Staff's concerns with the Petitions.² Staff's Interventions as of right were acknowledged in Decision Nos. R19-0477-I (mailed on June 7, 2019) and R19-0479-I (mailed on June 7, 2019), respectively.

12. Detailed procedural histories of Proceeding Nos. 19A-0170CP, 19V-0176CP, and 19V-0177CP are set out in Decisions previously issued in those proceedings. Their procedural histories are repeated here as necessary to put this Interim Decision into context.

13. On June 12, 2019, counsel for RMAA, Mark T. Valentine, Esquire, entered his appearance in Proceeding No. 19A-0170CP.

14. By Decision No. R19-0474-I, the ALJ scheduled a combined prehearing conference in all three proceedings for June 13, 2019 at 1:30 p.m.

B. Ruling made at the Prehearing Conference.

15. The prehearing conference was called to order as scheduled. Staff appeared through counsel, Assistant Attorney General Aaron Neptune. Mr. Valentine appeared on behalf of RMAA in Proceeding No. 19A-0170CP, as well as in Proceeding Nos. 19V-0176CP, and 19V-0177CP.

16. Rulings made by the ALJ during the prehearing conference were memorialized by Decision No. R19-0511-I (mailed on June 14, 2019).

17. At the prehearing conference, the ALJ discussed with counsel whether Proceeding Nos. 19V-0176CP and 19V-0177CP should be consolidated with Proceeding No. 19A-0170CP. Neither RMAA nor Staff objected to the consolidation.

18. Decision No. R19-0511-I consolidated all three proceedings, pursuant to Rule 1402 of the Rules of Practice and Procedure, 4 CCR 723-1.

19. At the prehearing conference, the ALJ next discussed with counsel whether the former Rule 6213(a) on age of vehicles, or the new Rule 6117(c) on age of vehicles, applies to the waiver petitions. New Rule 6117(c) is part of the amended Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (New Transportation Rules), which became effective on May 15, 2019.

20. The two Petitions for Waiver/Variance of Rule 6213(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, were filed on April 3, 2019, before the effective date of the New Transportation Rules. Each Petition in Proceeding Nos. 19V-0176CP and 19V-0177CP seeks a waiver of Rule 6213(a) for an Amphicar Model 770 vehicle, each of which is more than 50 model years of age.

21. Counsel for both RMAA and Staff agreed that, based upon the facts in this Consolidated Proceeding, the new Rule 6117 should only be applied prospectively, and not retroactively to the two Petitions in this Consolidated Proceeding.

22. Decision No. R19-0511-I confirmed that the Petitions in Proceeding Nos. 19V-0176CP and 19V-0177CP seek waivers of the version of Rule 6213(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, in effect on April 3, 2019.

² On May 17, 2019, Staff amended both Interventions to add two more Advisory Staff members.

23. After the prehearing conference, Decision No. R19-0511-I established a procedural schedule by which RMAA and Staff would file their prehearing disclosures (*i.e.*, their lists of witnesses, detailed summaries of the testimony of each witness, and copies of the exhibits that they intend to offer into evidence at the hearing). RMAA had agreed to file its prehearing disclosures no later than 5:00 p.m. on July 5, 2019. Staff had agreed to file its prehearing disclosures no later than 5:00 p.m. on July 26, 2019. RMAA and Staff made those filings.

24. Decision No. R19-0511-I also scheduled an evidentiary hearing on the Consolidated Application and Petitions for August 28, 2019 at 10:00 a.m. in a Commission Hearing Room, with August 29, 2019 at 10:00 a.m. reserved if needed.

C. Unopposed Motion to Withdraw Application and to Vacate the Hearing Dates.

25. In the Unopposed Motion, RMAA requests to withdraw the CPCN Application in Proceeding No. 19A-0170CP on the grounds that the service RMAA proposes to offer does not require a CPCN. RMAA states that Staff and RMAA agree that the Commission would not have jurisdiction over the Amphicars when they are on the water (*i.e.*, in Grand Lake). Rather, the Division of Parks and Wildlife licenses water craft that operate commercially in Colorado. RMAA is required to license the Amphicar vehicles just as it would a boat.

26. Instead, RMAA asserts that the proposed service fits within the limited regulation statutes in § 40-10.1-301 *et seq.*, C.R.S. RMAA intends to file an application with the Commission to operate as an off-road scenic charter, pursuant to Rule 6302 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and § 40-10.1-301(12), C.R.S.³

³ Section 40-10.1-301(12), C.R.S. provides: “‘Off-Road Scenic Charter’ means a motor vehicle that transports passengers, on a charter basis, to scenic points within Colorado, originating and terminating at the same location and using a route that is wholly or partly off of paved roads.”

pursuant to Rule 6302, 4 CCR 723-6, RMAA admits that it must have the Amphicar vehicles inspected within 20 days before filing the off-road scenic charter application, submit the required application fees and vehicle stamp fees, and then must have the Amphicar vehicles inspected annually by Commission staff.

27. The Unopposed Motion states that Staff does not oppose the withdrawal of the CPCN Application and vacating the hearing dates. Since Staff does not oppose the relief sought in the Unopposed Motion, response time will be waived.

28. Rule 1309 of the Rules of Practice and Procedure, 4 CCR 723-1, provides that, if an application is within 45 days of the hearing date, the applicant must file a motion to obtain leave of the Commission to withdraw the application and state good cause for the withdrawal. The Commission must also consider whether other parties would be prejudiced by the withdrawal.

29. The ALJ finds that RMAA has stated good cause to withdraw its CPCN Application. Since Staff does not oppose the withdrawal, the ALJ finds that Staff will not be prejudiced by withdrawal of the CPCN Application. The Unopposed Motion will be granted.

30. The evidentiary hearing scheduled for August 28, 2019 at 10:00 a.m. and for August 29, 2019 at 10:00 a.m. (the latter reserved if needed) will be vacated.

D. The Age of Vehicle Waiver Petitions.

31. After RMAA's withdrawal of the CPCN Application, the two Petitions for Waiver of Rule 6213(a) in Proceeding Nos. 19V-0176CP and 19V-0177CP, seeking waivers of Rule 6213(a) for the two Amphicar Model 770 vehicles, remain consolidated.

32. Staff remains an Intervenor regarding those two waiver Petitions, yet the Unopposed Motion does not indicate Staff's position on the merits of those Petitions. The ALJ

will order Staff, within 5 business days of this Interim Decision (*i.e.*, by September 4, 2019), to make a filing answering the following two questions:

a. Staff enforces the Commission's safety rules regardless of whether the motor carrier has a CPCN or a limited regulation permit. If RMAA applies for an off-road scenic charter permit, does Staff still have the concerns identified in (a) – (i) at pages 1 – 3 of its Intervention in Proceeding No. 19A-0170CP?

b. What are Staff's intentions regarding the merits of the two Petitions in Proceeding Nos. 19V-0176CP and 19V-0177CP?

33. The merits of the Petitions in Proceeding Nos. 19V-0176CP and 19V-0177CP will be addressed in a subsequent Recommended Decision.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Withdraw Application and to Vacate the Hearing Dates (Unopposed Motion) filed by Rocky Mountain Amphicar Adventures, LLC (RMAA) on August 26, 2019, is granted.

2. Response time to the Unopposed Motion shall be waived.

3. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, filed by RMAA on April 2, 2019 in Proceeding No. 19A-0170CP, shall be deemed to be withdrawn by RMAA.

4. Proceeding Nos. 19V-0176CP and 19V-0177CP shall remain consolidated, consistent with the foregoing discussion and findings.

5. Proceeding No. 19V-0176CP shall now be the primary proceeding in this matter. Henceforth, the caption of this Consolidated Proceeding shall include only Proceeding Nos. 19V-0176CP and 19V-0177CP

6. Within 5 business days of the mailed date this Interim Decision (*i.e.*, by September 4, 2019), Staff of the Public Utilities Commission of the State of Colorado shall make a filing answering the AL's questions posed in Paragraph No 32 on Pages 7 and 8.

7. The evidentiary hearing scheduled for August 28, 2019 (and for August 29, 2019, if needed) is hereby vacated.

8. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge