

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0226CP

IN THE MATTER OF THE APPLICATION OF TRACES OF THE PAST HISTORY TOURS LLC DOING BUSINESS AS TRACES OF THE PAST HISTORY TOURS 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
G. HARRIS ADAMS
AMENDING APPLICATION; DISMISSING
INTERVENTION; AND GRANTING PERMANENT
AUTHORITY SUBJECT TO CONDITIONS**

Mailed Date: September 10, 2019

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I. STATEMENT

1. On May 2, 2019, Traces of the Past History Tours (Applicant) filed its Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

2. Applicant filed an Amendment to the Application on May 3, 2019.

3. The Commission gave notice of the Application on May 6, 2019. As originally noticed, the application sought the following authority:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and and sightseeing service

between all points in Larimer County, State of Colorado.

4. On May 29, 2019, Estes Valley Transport, Inc. (Intervenor) timely intervened of right.

5. The matter was referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held June 12, 2019.

6. By Decision No. R19-0534-I, issued June 19, 2019, a procedural schedule was adopted to govern this proceeding and a hearing was scheduled.

7. By Decision No. R19-0612-I, issued July 19, 2019, the Unopposed Motion for Extension of Time filed by Applicant was granted to extend the deadline for disclosure of witnesses and copies of exhibits that were to be presented at hearing.

8. On July 23, 2019, Applicant filed its "Amendment to Application" stating:

History Tours amends the Application as follows:

- a. Section 10(a) of the Application, Proposed Authority, is amended to state: "Transportation of passenger's from points on or north of Colorado State Highway 392 to the point where it currently ends at the western boundary of U.S. Route 287 and Colorado State Highway 392. Should Colorado State Highway 392 ever be extended westward, History Tours would operate no farther south than within a one-mile radius south of the community of Masonville. History Tours plans to accommodate tours north and west from Masonville on Buckhorn Road to the community of Stove Prairie continuing on to Colorado State Highway 14 and east from there to U.S. Route 287. History Tours will remain north and west of the intersection where Colorado State Highway 392 intersects with U.S. Route 85. The northern boundary shall be the Colorado/Wyoming state line. From the intersection of U.S. Route 287 and Colorado State

Highway 14, the western Boundary shall be U.S. Route 287 to the Colorado/Wyoming state line.”

- b. Section 10(b) of the Application, Restrictions to the proposed authority, is amended to state: “At no time will there be tours provided south of such points outlined above.” Furthermore, “History Tours will be restricted to educational tours.”

- 9. On July 25, 2019, Intervenor filed correspondence in the proceeding stating:

If the "Amendment to Application" filed by the Applicant on July 22, 2019 is accepted, Estes Valley Transport, Inc. withdraws its Intervention.

- 10. By Decision Nos. R19-0693-I¹ and R19-0705-I,² a telephonic prehearing conference was scheduled and parties were informed of the following initial areas of questions regarding pending filings:

- a) The published notice of the within application included no transportation outside of Larimer County, State of Colorado. Do the parties intend that the Application be amended to provide transportation service outside of Larimer County?
- b) Can the parties provide a graphic depiction of the intended service territory on a map?
- c) Applicant seeks to provide sightseeing service, which is defined to include transportation: “originating and terminating at the same point for the sole purpose of viewing or visiting places of natural, historic, or scenic interest.” Rule 6001(ttt) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. With regard thereto, how does the defined term relate to “educational tours” and how do the parties define “educational tours?”

- 11. On September 3, 2019, Applicant filed its second “Amendment to Application” stating:

History Tours amends the Application as follows:

- a. Section 10(a) of the Application, Proposed Authority, is amended to state: “Transportation of passenger’s north and west of the intersection where Colorado State Highway 392 intersects with Interstate 25. Interstate 25 shall be the eastern boundary from Colorado State Highway 392 north to exit 288

¹ Decision No. R19-0693-I was issued in this proceeding on August 16, 2019.

² Decision No. R19-0705-I was issued in this proceeding on August 22, 2019.

off Interstate 25 which is the intersection of Interstate 25 and Larimer County Road 82. The northern boundary will include proceeding west on Larimer County Road 82 to where it intersects with Larimer County Road 15. History Tours will proceed from the intersection of Larimer County Road's 15 and 82, proceeding north by north-west on Larimer County Road 15 to the Colorado/Wyoming state line and west bound from there to U.S. Route 287 utilizing such roads as exist there and are open to public travel. The northern boundary shall be the Colorado/Wyoming state line. The western boundary shall be U.S. Route 287 south from the Colorado/Wyoming state line to U.S. Route 287B also known as Larimer County Road 54G to the intersection of Larimer County Road 54G and North Overland Trail. Continuing south on North Overland Trail to the intersection of South Overland Trail and West Drake Road. Continuing east on West Drake Road to the intersection of South Taft Hill Road. Continuing south on South Taft Hill Road to the intersection with West Trilby Road. Continuing east on West Trilby Road to U.S. Route 287. Continuing south on U.S. Route 287 to the intersection of Colorado State Highway 392. The Southern boundary shall be Colorado State Highway 392 from U.S. Route 287 to the intersection of Colorado State Highway 392 and Interstate 25.”

- b. Section 10(b) of the Application, Restrictions to the proposed authority, is amended to state: “At no time will there be tours provided south of such points outlined above.”³

A graphic depiction of the intended service territory was also attached to the second amendment.

12. On September 3, 2019, Intervenor filed correspondence in the proceeding stating:

I reviewed the Applicant's new language and red lined map. If they are acceptable to you, please consider the Estes Valley Transport Intervention withdrawn.

13. 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

14. The July 23, 2019, and September 3, 2019, Amendments to Application will be construed as motions for leave to amend the application. Due to the overlapping of scope, a

³ The final sentence from the amendment of July 23, 2019 (Furthermore, “History Tours will be restricted to educational tours.”), is stricken in redline format.

pending motion will be construed together with the most recent filing prevailing in the event of conflict.

15. 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 certificate. Both must be worded so that a person will know, from reading the certificate 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 certificate, which is the touchstone by which one determines whether the operation of a common carrier is within the scope of its Commission-granted authority.

16. The proposed restriction against service contrary to the Certificate of Public Convenience and Necessity (CPCN) granted by this Recommended Decision is wholly unnecessary, serves no useful purpose, is possibly misleading, and must be rejected. Applicant must operate within the scope of certificated authority without any express restriction. Illustratively, not only are operations prohibited south of the authorized service territory as proposed, they are likewise prohibited east and west of the authorized service territory, which is not explicitly stated. The CPCN stating the exact extent of the authority, all operations outside of the authorized territory would be contrary to the authority. The proposed restriction in Section 10(b) will not be adopted.

17. The ALJ finds and concludes that the remainder of the requested amendment is restrictive in nature, is clear and understandable, and is administratively enforceable.

18. As now amended, the Application is construed to seek the following authority:

A Certificate of Public Convenience and Necessity 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 located in the following defined area:

Beginning at the intersection where Colorado State Highway 392 intersects with Interstate 25; then north along Interstate 25 to the Colorado/Wyoming state line; then west along the Colorado/Wyoming state line to U.S. Route 287; then south along U.S. Route 287 to its intersection with Larimer County Road 54G; then continuing south along Larimer County Road 54G to its intersection with North Overland Trail; then continuing south along North/South Overland Trail to its intersection with West Drake Road; then east along West Drake Road to its intersection with South Taft Hill Road; then south along South Taft Hill Road to its intersection with West Trilby Road; then east along West Trilby Road to its intersection with U.S. Route 287; then south on U.S. Route 287 to its intersection with Colorado State Highway 392; then east along Colorado State Highway 392 to the point of beginning.

19. It is found and concluded that eliminating the unnecessary proposed restriction does not affect the proposed scope of authority. Thus, the undersigned will proceed to consider the remainder of the unopposed requested relief. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment, as modified. Second, the intervention of Intervenor will be withdrawn.

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

21. The verified Application, as amended and now clarified in the Amendment, 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.

22. The verified Application, including supporting documentation, establishes that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. In addition, the verified Application including supporting documents (*e.g.*, support letters) indicates a public need for the proposed service. Therefore, because Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the requested CPCN should be granted.

23. 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 July 23, 2019, and September 3, 2019, Amendments to Application filed by Traces of the Past History Tours (Applicant or Traces of the Past) are construed as unopposed motions for leave to further amend the Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) filed on May 2, 2019, and amended on May 3, 2019. The unopposed motions of July 23, 2019 and September 3, 2019, for leave to amend the Application are granted in part, consistent with the discussion above.

2. The intervention filed by Estes Valley Transport, Inc. filed on May 29, 2019, is dismissed.

3. The verified Application filed by Applicant, as it has been amended, is granted in part as consistent with the discussion above.

4. Subject to Applicant's full compliance with the requirements contained in Ordering Paragraph No. 8, Traces of the Past is granted a Certificate of Public Convenience and Necessity (CPCN) 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 located in the following defined area:

Beginning at the intersection where Colorado State Highway 392 intersects with Interstate 25; then north along Interstate 25 to the Colorado/Wyoming state line; then west along the Colorado/Wyoming state line to U.S. Route 287; then south along U.S. Route 287 to its intersection with Larimer County Road 54G; then continuing south along Larimer County Road 54G to its intersection with North Overland Trail; then continuing south along North/South Overland Trail to its intersection with West Drake Road; then east along West Drake Road to its intersection with South Taft Hill Road; then south along South Taft Hill Road to its intersection with West Trilby Road; then east along West Trilby Road to its intersection with U.S. Route 287; then south on U.S. Route 287 to its intersection with Colorado State Highway 392; then east along Colorado State Highway 392 to the point of beginning.

5. The authority granted in Ordering Paragraph No. 4 is conditioned on Traces of the Past meeting the requirements contained in this Decision and is not effective until these requirements have been met.

6. All operations under the CPCN granted by this Decision shall be in accordance with the authority granted, all applicable Colorado law, and Commission rules. The Commission retains jurisdiction to make such amendments to this authority as deemed advisable. The Commission may issue an order to cease and desist or to suspend, revoke, alter, or amend any certificate or permit for violation of, or refusal to observe any statute, order, or rule of the Commission, consistent with § 40-10.1-112(1), C.R.S.

7. The right of Traces of the Past to operate under the CPCN granted by this Decision shall depend upon compliance with all present and future laws, regulations, and orders of the Commission.

8. Traces of the Past shall not commence operation until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) pay to the Commission, the motor vehicle fee (\$50.00) 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) file with the Commission and have an effective, publicly available tariff. The tariff should comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The tariff shall be filed in a *new* Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. 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 proposed effective date. Information can be found at:
<https://www.colorado.gov/pacific/dora/Trans-Tariffs>;
- (d) submit a Vehicle Inspection Report for each vehicle to be operated under the authority at the commencement of operations. The inspection must be done in accordance with Rules 6103 and 6104 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6; and, the inspection must show that the vehicle passed the inspection. The inspection report may be found at:
<https://www.colorado.gov/pacific/dora/common-carriers>;
- (e) register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system (E-Filings) and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at:
www.dora.state.co.us/pls/efi/EFI.homepage; and
- (f) pay the applicable fee (\$5.00) for the issuance of the authority.

9. If Traces of the Past does not comply with each requirement in paragraph no. 8, within 60 days of the effective date of this Decision, the CPCN is denied without further action of the Commission. 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.

10. The Commission will notify Traces of the Past in writing when the Commission's records demonstrate compliance with paragraph no. 8.

11. Proceeding No. 19A-0226CP 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director