

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0097CP

IN THE MATTER OF THE APPLICATION OF ESTES PARK GUIDED TOURS FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
SCHEDULING HEARING, AND
ADOPTING PROCEDURAL SCHEDULE
FOR FILING PREHEARING DISCLOSURES**

Mailed Date: May 20, 2020

I. STATEMENT

A. Procedural History

1. On March 9, 2020, Estes Park Guided Tours (Applicant or EP Guided Tours) 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 March 16, 2020, the Commission issued its Notice of Application Filed (Notice). As originally noticed, the 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 the Estes Park Visitors Center, 500 Big Thompson Avenue, Estes Park, Colorado, on the one hand, and all points in Rocky Mountain National Park and Grand Lake, Colorado, on the other hand.

The 30-day intervention deadline set by the Notice expired on April 15, 2020. The Notice also required Applicant to file and serve its list of witnesses and copies of its exhibits within ten days after the conclusions of the notice period, or no later than April 24, 2020.¹

3. During the Commission's weekly meeting held on April 22, 2020, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this proceeding.

4. Applicant did not file testimony and exhibits with its Application and, therefore, seeks a Commission decision within 210 days after the Application was deemed complete, or no later than November 18, 2020.² Applicant also failed to file and serve its list of witnesses and copies of its exhibits no later than April 24, 2020, as required by the Notice.

5. The procedural history of the above-captioned proceeding is set forth in Decision No. R20-0353-I (mailed on May 7, 2020) and is repeated here as necessary to put this Decision into context.

6. Decision No. R20-0353-I acknowledged the intervention by right of Estes Valley Transport, Inc. (EV Transport), filed on March 23, 2020.³

7. Rule 1401(e)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, provides that, in regulated intrastate transportation carrier proceedings: "A common carrier holding either temporary or suspended authority in conflict with

¹ Decision No. R20-0353-I, ¶ 33 at page 10 (mailed on May 7, 2020), stated incorrectly that the tenth day after the conclusion of the notice period was Monday, April 27, 2020. The correct due date for Applicant to file and serve its list of witnesses and copies of its exhibits was Friday, April 24, 2020.

² See § 40-6-109.5(2), C.R.S. (2019)

³ Certificate PUC No. 54696 *inter alia* grants to EV Transport the authority to provide transportation of passengers in call-and-demand sightseeing service between all points within certain areas around Estes Park, Colorado, described in detail in Decision No. R20-0353-I at pages 2 and 3.

the authority sought in the application shall not have standing to intervene as of right, but may file a motion to permissively intervene.” Decision No. R20-0353-I denied the attempted intervention by right, filed on April 13, 2020 by Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (EP Trolleys), on the grounds that its Certificate PUC No. 55845S was then under suspension.⁴ Since EP Trolleys did not request permissive intervention, its intervention by right was denied.

8. On May 11, 2020, EP Trolleys filed a Motion to Intervene by Permission. Responses to the Motion to Intervene by Permission are not due until May 26, 2020, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1 (2015).⁵ A separate decision ruling on the Motion to Intervene by Permission will be issued after responses, if any, are filed.

9. Decision No. R20-0353-I also denied the attempted intervention by right by Aspire Tours LLC (Aspire), filed on April 15, 2020, because the operating rights sought by Applicant would not overlap the rights granted to Aspire under Certificate PUC No. 55865.⁶ Additionally, Decision No. R20-0353-I denied Aspire’s alternative request to grant it permissive intervention, because Aspire had failed in its burden to satisfy the required standards of Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, on permissive interventions.⁷

10. Finally, Decision No. R20-0353-I established a process through which EP Guided Tours was required to confer with counsel for EV Transport regarding two sets of consecutive hearing dates when the Parties and their witnesses will be available during certain weeks in July

⁴ See Decision No. C20-0337 (mailed on May 6, 2020) in Proceeding No. 20A-0157CP-SUSPENSION, granting a request to suspend Certificate PUC No. 55845S from April 1 through May 22, 2020.

⁵ The 14-day due date for responses under Rule 1400(b) falls on Monday, May 25, 2020, which is the Memorial Day Holiday. Pursuant to § 40-6-121, C.R.S., responses are due on the next business day, or Tuesday May 26, 2020.

⁶ See Decision No. R20-0353-I, ¶¶ 12 – 14 at pages 4 and 5.

⁷ *Id.*, ¶¶ 15 – 19 at pages 5 – 7.

and August of 2020. The Parties were ordered to file a Joint Status Report, no later than May 15, 2020, informing the ALJ of the results of their conferral, including the agreed hearing dates.⁸

11. Decision No. R20-0353-I warned the Parties that:

The Parties are advised and are on notice that failure to file the Joint Status Report, or individual Status Report, or failure to agree on proposed hearing dates by the deadline ordered in this Decision will result in the ALJ selecting a hearing date without further input from the Parties. In that event, after scheduling the hearing, the ALJ will not consider future requests to reschedule the hearing, unless upon filing a motion with a showing of good cause.⁹

B. Scheduling the Hearing and Adopting a Procedural Schedule.

12. An examination of the Commission's file for this Proceeding reveals that EP Guided Tours and EV Transport failed to file the required Joint Status Report and that EV Transport failed to file an individual Status Report by the May 15, 2020 deadline. Therefore, the ALJ will set a hearing date and dates for the filing of prehearing disclosures by both Applicant and Intervenor.

13. **The hearing will be scheduled for Tuesday, August 11, 2020 in a Commission Hearing Room in Denver, Colorado, commencing at 9:30 a.m.**¹⁰

14. To facilitate the orderly and efficient litigation of this proceeding, the ALJ finds that a procedural schedule should be adopted, so that each Party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at

⁸ *Id.*, ¶¶ 28 – 30 at pages 9 and 10. Intervenor EV Transport was also given the option of filing its own Status Report in the event that Applicant failed to confer with it before the deadline.

⁹ *Id.*, ¶ 31 at page 10. (Emphasis in Original)

¹⁰ Holding the hearing remotely may be necessary depending on the substance of public health orders and advisories to prevent the spread of coronavirus (COVID-19) in Colorado that may be in effect during July 2020. If necessary to hold the hearing remotely, a separate decision will be issued sufficiently in advance of the hearing providing links and instructions for the Parties and their counsel about how to participate in the hearing remotely.

the hearing. Therefore, this Decision will order the Parties to file, and to serve on each other (or counsel), as prehearing disclosures, a list of their witnesses, a written summary of the testimony of each witness, and copies of the exhibits the filing Party intends to present at the hearing.¹¹

15. EP Guided Tours will be ordered to file and to serve on counsel for EV Transport (and any other parties granted intervention) **on or before June 22, 2020**: (a) a list that identifies the witnesses EP Guided Tours intends to call at the hearing, including the last known address and telephone number of each witness; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits EP Guided Tours intends to present at the hearing.

16. The ALJ is aware that EP Guided Tours failed to file its list of witnesses and copies of its exhibits by the April 24, 2020 deadline set by the Commission's Notice, or any time since that date. In Decision No. R20-0353-I, ¶ 34 at page 11, the ALJ vacated the schedule in the Notice for filing lists of witnesses and copies of exhibits. This gave EP Guided Tours another chance to correct its failure with a new date for filing and serving its list of witnesses and copies of its exhibits.

17. **EP Guided Tours and Mr. Legzdins are advised and on notice that EP Guided Tours' failure to file its prehearing disclosures by the June 22, 2020 deadline set by this Decision shall be just cause for dismissal of this Application for failure to comply with a valid Commission decision.**

¹¹ The ALJ is aware that Intervenor EV Transport filed on March 23, 2020, with its Intervention pleading, an "Exhibit and Witness List." The ALJ finds that this pleading is deficient to provide adequate prehearing notice to Applicant of the contents of witness Greg Rounds' testimony and exhibits. For example the only exhibit attached was a copy of Certificate PUC No. 54696. While the "Exhibit and Witness List names topics about which Mr. Rounds will testify, it provides no summary of the details in that testimony. After seeing Applicant's prehearing disclosures, EV Transport may want to add topics or exhibits. Therefore, this Decision will set a date by which EV Transport must file a proper prehearing disclosure supplementing the March 23, 2020 filing.

18. EV Transport will be ordered to file and serve on EP Guided Tours (and its counsel if one has been retained) on or before **July 20, 2020**: (a) a list that identifies the witnesses EV Transport intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits EV Transport intends to present at the hearing. This prehearing disclosure filing requirement and deadline will apply to any other parties granted intervention in this Proceeding.

C. Procedural Advisements.

19. The procedural advisements provided to the Parties in Decision No. R20-0353-I continue to be in force. The following advisements relate to the hearing.

20. At the hearing, exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3); starting with EP Guided Tours' direct case exhibits, followed by EV Transport's exhibits. Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. Before the hearing commences, the Parties shall work with the Court Reporter to mark their exhibits for identification.

21. Each Party shall bring to the hearing an original and three hard copies of each exhibit it intends to introduce at the hearing. The filing of an exhibit with the Commission does not result in the exhibit being admitted into the evidentiary record of the hearing.

22. If any exhibit is longer than two pages, the Party offering the exhibit shall sequentially number each page of the exhibit.

23. The Parties are on notice of the following: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed

and served as required by this Decision; (b) any failure to provide an accurate summary of the anticipated testimony of a witness may also result in a bench order prohibiting such witness from testifying beyond the scope of the summary; and (c) any exhibit may not be received in evidence, except in rebuttal, unless the exhibit was filed and served as required by this Decision.

24. Any Party wishing to make an oral closing argument may do so immediately following the close of the evidence (*i.e.*, after presentation of evidence near the end of the hearing).

II. ORDER

A. It Is Ordered That:

1. A hearing in this matter shall be conducted at the following date, time, and place:

DATE: August 11, 2020

TIME: 9:30 a.m.

PLACE: Hearing Room B
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. On or before June 22, 2020, Estes Park Guided Tours (EP Guided Tours) shall file and serve on counsel for Estes Valley Transport, Inc. (EV Transport), and on any other parties granted intervention: (a) a list that identifies the witnesses EP Guided Tours intends to call at the hearing, including the last known address and telephone number of each witness; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits EP Guided Tours intends to present at the hearing.

3. On or before July 20, 2020, EV Transport shall file and serve on EP Guided Tours (and its counsel if one has been retained): (a) a list that identifies the witnesses EV Transport

intends to call at the hearing, including the last known address and telephone number of each witness; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits EV Transport intends to present at the hearing. This prehearing disclosure filing requirement and deadline shall apply to any other parties that may be granted intervention in this Proceeding.

4. The Parties shall comply with the requirements established in this Decision, and they shall make the filings as required by the procedural schedule established by this Decision.

5. Additional procedural requirements and matters may be issued in future Interim Decisions.

6. This Decision shall be 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