

Decision No. R20-0396

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0030CP

IN THE MATTER OF THE APPLICATION OF COLORADO DETOURS 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
CONOR F. FARLEY
ACCEPTING AMENDMENT OF
APPLICATION, ACCEPTING WITHDRAWAL OF
INTERVENTION, GRANTING APPLICATION WITH
AMENDMENTS, AND CLOSING PROCEEDING**

Mailed Date: May 26, 2020

I. STATEMENT

A. Background

1. On January 16, 2020, Colorado Detours LLC (Colorado Detours) filed the application described in the caption above (Application). David C. Noe, who is not an attorney, signed the Application on behalf of Colorado Detours. In the Application, Colorado Detours stated that: (a) it does not believe the amount in controversy in this proceeding exceeds \$15,000; (b) Colorado Detours does not have more than three owners; and (c) Mr. Noe is an owner of Colorado Detours.

2. On January 21, 2020, the Commission issued the following notice of the Application:

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

passengers in call-and-demand:

- (I) sightseeing service between all points in the Counties of Delta, Eagle, Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, State of Colorado; and
- (II) shuttle service between all points in Delta County; and between all points in Delta County, on the one hand, and all points in the Counties of Eagle, Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, State of Colorado, on the other hand.

3. On January 31, 2020, AEX, Inc. (AEX) and San Miguel Mountain Ventures, LLC (SMMV) (collectively, Intervenors), filed a Joint Intervention.

4. On February 26, 2020, 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.

5. On March 6, 2020, the ALJ issued Decision No. R20-0147-I that, among other things, scheduled an in-person hearing for May 7, 2020 starting at 9:00 a.m.

6. On April 28, 2020, the ALJ issued Decision No. R20-0308-I that converted the in-person hearing to a remote hearing, provided instructions for participating in or viewing the remote hearing, and established a new schedule for the filing and serving of witness and exhibit lists and marked exhibits.

7. On May 5, 2020, AEX and SMMV filed a Joint Motion to Reschedule Hearing from May 7, 2020 to May 15, 2020 (Joint Motion).

8. On May 6, 2020, the ALJ issued Decision No. R20-0344-I granting the Joint Motion and rescheduling the hearing to May 15, 2020.

9. On May 12, 2020, Intervenors filed a Stipulation and Conditional Withdrawal of Intervention in which they proposed to modify the existing proposed authority and add restrictions thereto as follows:

I. Sightseeing service between points in Delta County, on the one hand, and points in the Counties of Delta, Eagle, Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, on the other hand;

Item I is restricted as follows: (a) to service that originates in the cities of Austin, Paonia, Hotchkiss, Crawford, Cedaredge, and Delta; (b) service originating in Austin will be for sightseeing service to federal and state owned lands only; and (c) against service to and from airports or event venues.

II. Sightseeing service between points in Montrose County, on the one hand, and points in the Counties of Delta, Eagle, Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, on the other hand;

Item II is restricted: (a) to service that originates at the Ute Indian Museum, 17253 Chipeta Road, and at the Montrose Visitor Center, 107 South Cascade Avenue, in the City of Montrose, and (b) against service to and from airports and event venues.¹

10. In the Stipulation and Conditional Withdrawal of Intervention, Intervenors state: (a) if the restrictive amendment is approved, Intervenors agree to withdraw their opposition to the application; and (b) they “are authorized to state that Colorado Detours, LLC agrees to the authority described above, and supports Commission approval of the agreement between the two parties.”²

11. After reviewing the Stipulation and Conditional Withdrawal of Intervention, the ALJ vacated the hearing scheduled for May 15, 2020, which the ALJ communicated to the

¹ Stipulation and Conditional Withdrawal of Intervention at 2 (¶ 4).

² *Id.* at 2 (¶¶ 5, 6).

parties by email. The ALJ also informed the parties that a Recommended Decision would issue as soon as reasonably possible.

B. Analysis

12. The amendments proposed by the parties are restrictive in nature, clear and understandable, and administratively enforceable. They are contained wholly within the scope or the authority sought in the Application. Accordingly, the restrictive amendments proposed by the parties will be accepted.

13. Accepting the amendments has two relevant results. First, the authority sought in the Application will be amended to conform to the restrictive amendments set forth in paragraph 9 above. Second, because Intervenor's intervention has been withdrawn, the Application, as revised by the amendment, is unopposed and, pursuant to § 40-6-109(5), C.R.S., and Commission Rule 1403,³ will be considered under the modified procedure, without a formal hearing.

14. The Application establishes that Colorado Detours is familiar with the Commission's Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.⁴ The Application and its supporting documentation establish that Colorado Detours has or will have sufficient equipment with which to render the proposed service, and is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application and the lack of opposition thereto indicate a need for the proposed service as amended. The ALJ finds that the Application, as amended, is

³ 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure.

⁴ 4 CCR 723-6.

reasonable and in the public interest. For the foregoing reasons, the requested authority will be granted.

15. 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 proposed amendments filed on May 12, 2020 to the Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) filed by Colorado Detours LLC (Colorado Detours) on January 16, 2020 are granted.

2. The Application is amended as set forth in paragraph 9 above.

3. The joint intervention filed by AEX, Inc. (AEX) and San Miguel Mountain Ventures, LLC (SMMV) on January 31, 2020 is withdrawn.

4. AEX and SMMV are dismissed from this proceeding.

5. The Application, as amended as set forth in paragraph 9 above, is granted.

6. Colorado Detours is granted authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of
passengers:

- (I) In call-and-demand sightseeing service between points in Delta County, on the one hand, and points in the Counties of Delta, Eagle, Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, on the other hand;
- (II) In call-and-demand sightseeing service between points in Montrose County, on the one hand, and points in the Counties of Delta, Eagle,

Garfield, Gunnison, Mesa, Montrose, Ouray, Pitkin, and San Miguel, on the other hand.

RESTRICTIONS:

Item I is restricted: (a) to service that originates in the cities of Austin, Paonia, Hotchkiss, Crawford, Cedaredge, and Delta; (b) service originating in Austin will be for sightseeing service to federal and state owned lands only; and (c) against service to and from airports or event venues.

Item II is restricted: (a) to service that originates at the Ute Indian Museum, 17253 Chipeta Road, and at the Montrose Visitor Center, 107 South Cascade Avenue, in the City of Montrose; and (b) against service to and from airports and event venues.

7. Colorado Detours shall operate in accordance with all applicable Colorado law and Commission rules.

8. Colorado Detours shall not commence operation under the extended authority 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 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. Colorado Detours 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 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 Colorado.gov/dora/puc and by following the transportation common and contract carrier links to tariffs); and
- d. paying the applicable issuance fee.

9. If Colorado Detours 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 extended 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.

10. The Commission will notify Colorado Detours in writing when the Commission's records demonstrate compliance with paragraph 8.

11. The hearing scheduled for May 15, 2020 is vacated.

12. Proceeding No. 20A-0030CP is closed.

13. 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.

- 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.

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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director