

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0107CP

IN THE MATTER OF THE APPLICATION OF ORIGINAL GRAVITY BEER TOURS LLC
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
MELODY MIRBABA
SCHEDULING REMOTE EVIDENTIARY HEARING,
AND ESTABLISHING PROCEDURES AND DEADLINES**

Mailed Date: June 15, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Procedural History.

1. Only the procedural history necessary to understand this Decision is included.

This matter concerns Original Gravity Beer Tours LLC's (Original Gravity) Application for a Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Application lists Nicholas Ores as counsel for Original Gravity.

2. On April 7, 2020, Estes Valley Transport, Inc. (Estes Valley) filed an Entry of Appearance and Intervention objecting to the Application and seeking to intervene of right in this proceeding. And, on April 24, 2020, Fun Tyme Trolleys LLC, doing business as Estes Park Trolleys, (Fun Tyme) filed an Entry of Appearance and Intervention (Fun Tyme's Intervention) objecting to the Application and seeking to intervene of right.

3. On May 11, 2020, Original Gravity filed an "Entry of Response to Intervention by Fun Tyme Trolleys d/b/a Estes Park Trolleys" (Response). The Response objects to Fun Tyme's Intervention.

4. On May 13, 2020, Fun Tyme filed an “Amendment to the Entry of Appearance and Intervention” (Amendment). The Amendment supplements Fun Tyme’s original Intervention by adding a request to permissively intervene. The certificate of service automatically generated by the Commission’s E-Filing System when the Amendment was filed does not show that counsel for Original Gravity was served with the Amendment.

5. On May 19, 2020, counsel for Original Gravity, Nicholas Ores, filed a Notice of Withdrawal (Notice).

6. On May 29, 2020, in anticipation of the evidentiary hearing on the Application, the Administrative Law Judge (ALJ) scheduled this matter for a remote prehearing conference for June 11, 2020 at 1:30 p.m. Decision No. R20-0407-I. The same Decision directs: (1) Fun Tyme to file a certificate of service reflecting that counsel for Original Gravity was served with its Amendment; and (2) Fun Tyme and Estes Valley to making filings supplementing their Interventions to identify specific parts of their PUC authorities in conflict with the Application, as required by Rule 1401(e)(I) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. *Id.* In addition, the ALJ extended the time for Original Gravity to object to counsel’s Notice, and ordered that if no objection is filed, counsel’s Notice will become effective. *Id.* The ALJ also ordered that if Original Gravity’s counsel’s withdrawal becomes effective, Original Gravity must either have new counsel enter an appearance, or make a filing establishing that it is entitled to be represented by a non-attorney, per Commission Rule 1201(b)(II), 4 CCR 723-1. *Id.*

7. On June 2, 2020 Fun Tyme made a filing supplementing its Intervention with the information required by Decision No. R20-0407-I, and filed a “Response to Requirement to Show Certificate of Service (With Motion Addressing Adequacy of Service)” (Response) and

attachment. The Response fails to include a certificate of service as required by Decision No. R20-0407-I, instead explaining the reasons Fun Tyme did not serve Original Gravity's then counsel of record, and arguing that Original Gravity received actual notice of Fun Tyme's Amendment.

8. On June 3, 2020, Estes Valley made a filing supplementing its Intervention with the information required by Decision No. R20-0407-I.

9. On June 4, 2020, attorney Brian Hanning filed an Entry of Appearance on behalf of Original Gravity.

B. Matters Addressed During Remote Prehearing Conference.

10. The ALJ called the matter for the remote prehearing conference as noticed on June 11, 2020. All parties appeared. The ALJ first addressed whether the parties complied with the filing requirements in Decision No. R20-0407-I. The ALJ found that Interveners' supplemental filings comply with Decision No. R20-0407-I, and Commission Rule 1201, and concluded that they have properly intervened of right. The ALJ acknowledged that new counsel has entered his appearance on behalf of Original Gravity, and thus, that Original Gravity has also complied with Decision No. R20-0407-I.

11. Finally, the ALJ noted that Fun Tyme failed to file a certificate of service for its Amendment as required, but given that the Amendment seeks permissive intervention as alternative relief and Fun Tyme has now appropriately intervened of right, Fun Tyme's failure to file a certificate of service for the Amendment is moot and will be denied for that reason. However, the ALJ advised Fun Tyme that regardless of whether a represented party has received actual notice of a pleading, all parties are obligated to also serve counsel as required by Commission rules.

12. The ALJ next addressed the manner in which the evidentiary hearing will be held. The ALJ explained that due to the COVID-19 global pandemic, the Commission's offices currently are not open to the public, and therefore, no in-person hearings are being held. The ALJ explained that it is unknown when the Commission will be able to hold hearings in-person, and that due to the current conditions, the Commission has been holding evidentiary hearings by video-conference. All parties stated that they are able and willing to hold the evidentiary hearing by video-conference. The ALJ scheduled an evidentiary hearing to be held by video conference, and established procedural deadlines, to which the parties agreed (set forth below). This Decision reiterates and expands on the requirements for the remote hearing that were discussed during the remote prehearing conference.

C. Remote Evidentiary Hearing.

13. The ALJ finds that at this time, it is in the parties' interests to plan and prepare for a remote evidentiary hearing. Doing so is consistent with public health advisories to prevent the spread of COVID-19, and allows this proceeding to move forward. As explained in more detail below, the hearing will be held by video-conference, and the parties and witnesses will be required to participate by video-conference.¹

14. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by video-conference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being testified to and offered into evidence.

¹ If circumstances change to allow for a safe in-person hearing, the ALJ may convert the video-conference hearing to an in-person hearing.

15. This Decision and Attachment A hereto includes important requirements and technical information to ensure that the remote evidentiary hearing proceeds efficiently without technical problems. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and Attachment A.

16. The Commission will use the web-hosted video conferencing service GoToMeeting to hold the remote evidentiary hearing. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID code to attend the hearing will be provided to the parties by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.²

17. *All parties are on notice that* failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek. This may include dismissing the Application for having failed to prosecute it, granting the authority the Application seeks, or dismissing an intervener as a party for abandoning its intervention.

II. ORDER

A. **It Is Ordered That:**

1. Consistent with the above discussion, Estes Valley Transport, Inc. (Estes Valley) and Fun Tyme Trolleys LLC, doing business as Estes Park Trolleys, (Fun Tyme) have properly intervened of right in this proceeding. Because Fun Tyme has properly intervened of right, its request to permissively intervene in its Amendment to the Entry of Appearance and Intervention

² The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

is denied as moot.

2. A remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATE: August 20, 2020
TIME: 9:00 a.m.
METHOD: Join by video-conference online at meeting link to be provided to parties by email.

3. The parties may not distribute the GoToMeeting link and ID code to anyone not participating in the hearing. Parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations.

4. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties must ensure that they and their witnesses are ready and able to participate in the evidentiary hearing by video-conference using GoToMeeting. This Decision and Attachment A establishes requirements and procedures to ensure the smooth function of the video-conference hearing. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated as a part of this Decision.

5. **Presentation of Exhibits Electronically During Evidentiary Hearing.** Because the hearing will be held remotely by video-conference, all evidence must be presented electronically. As explained below, to facilitate electronic exhibit presentation, all parties will be required to upload all exhibits they intend to use at the hearing, regardless of whether they have been pre-filed, to their designated box.com folder.

6. **Deadlines to File and Exchange Exhibits, Witness Lists, and Exhibit Lists.**

Original Gravity Beer Tours LLC must file with the Commission and serve on all parties its pre-marked exhibits, witness lists, and exhibit lists *by the close of business on July 30, 2020*. Interveners must file with the Commission and serve on all parties their pre-marked exhibits, witness lists, and exhibit lists *by the close of business on August 6, 2020*. The parties must make these filings using the Commission's free E-filing System, which may be found on the Commission's website at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list, or to pre-mark and file such an exhibit. Duplicative exhibits are discouraged. Nothing in this Decision requires the parties to pre-file exhibits that may be used solely to impeach, refresh recollection, or for rebuttal.

7. Unless good cause is shown, exhibits which are not pre-filed as required by this Decision may not be admitted into evidence during the hearing.

8. **Deadline to File Stipulations and Settlement Agreements.** The parties must file any stipulations and settlement agreement they reach *on or by the close of business on August 6, 2020*.

9. **Deadline to File Prehearing Motions.** The parties must file and serve any prehearing motions by August 10, 2020.

10. **Deadline to File Statements of Position.** In lieu of verbal closing arguments, the parties may file statements of position, limited to 30 pages. Any party wishing to file a statement of position must do so *on or by the close of business on September 3, 2020*. The parties are not permitted to file responses to statements of position.

11. **Witness List Requirements.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

12. **Exhibit List Requirements.** Exhibit lists must include the hearing exhibit number or letter assigned to each exhibit, and a brief description of the exhibit.

13. **Exhibit Requirements.** These requirements apply to all exhibits that may be used during the hearing, including those used solely to impeach, refresh recollection, or for rebuttal. Each party must: (a) mark all exhibits for identification with a hearing exhibit number in accordance with the below requirements; and (b) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.³ When exhibits are presented during the hearing, the Commission will receive them electronically from each party's folder.

a. **Pre-Mark and Page Number Exhibits.** To efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Original Gravity is assigned hearing exhibit numbers 100-199; Estes Valley is assigned hearing exhibit numbers 200-299; and Fun Tyme is assigned hearing exhibit numbers 300-399. Each party must sequentially pre-mark for identification all hearing exhibits as a "Hearing Exhibit" with exhibit numbers within their assigned hearing exhibit number block *before* filing and serving the exhibits, and *before* uploading exhibits to their designated box.com folder. For example, Original Gravity should pre-mark its first exhibit as "Hearing Exhibit 100." Estes Valley should pre-mark its first exhibit as "Hearing Exhibit 200." And Fun Tyme should pre-mark its first exhibit as "Hearing Exhibit 300." The parties must

³ The Public Utilities Commission Administrative Hearings Section uses a web-based document sharing service, box.com. All parties must ensure they can access and use box.com. An email with more details will follow.

sequentially page-number each page of any hearing exhibit that is longer than two pages. The parties must number the first page of hearing exhibits as page 1, regardless of content.⁴

b. Exhibits Must Be Available to Parties and Witnesses During Hearing.

All parties are responsible for ensuring they and their respective witnesses have access to all exhibits via a box.com link the Commission will provide and that they are able to download and view documents from box.com *during the hearing*.

14. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

⁴ The page numbering requirements make electronic display of exhibits during the hearing easier.