

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
GRANTING PERMISSIVE INTERVENTION**

Mailed Date: June 16, 2020

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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, 2020.¹

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. The procedural history of the above captioned proceeding is set forth in previous Decisions and is repeated here as necessary to put this Decision into context.

5. On April 13, 2020, Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (EP Trolleys), through counsel, filed its Entry of Appearance and Intervention. EP Trolleys' Certificate PUC No. 55845S was attached to the Intervention.

6. On April 7, 2020, EP Trolleys filed an application to suspend operations under Certificate PUC No. 55845S from April 1, 2020 through May 22, 2020 due to the COVID-19 pandemic. The Commission granted the suspension application in Decision No. C20-0337 (mailed on May 6, 2020) in Proceeding No. 20A-0157CP-SUSPENSION. 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 the authority sought in the application shall not have standing to intervene as of right, but may file a motion to permissively intervene."

¹ 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. *See* § 40-6-109.5(2), C.R.S. (2019)

7. Decision No. R20-0353-I, ¶ 11 at page 4, (mailed on May 7, 2020) found that, “Since EP Trolleys’ Certificate PUC No. 55845S is under suspension, EP Trolleys lacks standing to intervene by right. Here, EP Trolleys did not request alternatively to intervene permissively. Therefore, EP Trolleys Intervention by right will be denied.”

B. EP Trolleys’ Request for Permissive Intervention.

8. On May 11, 2020, EP Trolleys filed a Motion to Intervene by Permission (Motion to Intervene). Counsel advises that, when he filed the initial intervention, he was not aware that EP Trolleys had filed for suspension of its authority. The suspension ended on May 22, 2020. Counsel has asserted that the operating rights sought by Applicant would partially overlap with the rights granted to EP Trolleys under Certificate PUC No. 55845S and competition with EP Trolleys would divert traffic and revenues from its operations. EP Trolleys asserts that active operations under its authority generates about \$20,000 per month from May 1 to October 31 and \$5,000 per month from November 1 to April 30.²

9. Applicant’s response to the Motion to Intervene was due on May 26, 2020, but no response has been filed.³ Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, states: “The Commission may deem a failure to file a response as a confession of the motion.”

10. Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, states the minimum standards for permissive intervention in Commission proceedings and, as relevant here, requires that:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction

² See Motion to Intervene at pages 1 and 2.

³ Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, allows responses to be filed within 14-days after service of a motion. Because the due date from responses here fell on the Memorial Day Holiday (May 25, 2020), Applicant’s response to the Motion to Intervene was due on Tuesday, May 26, 2020. See § 40-6-121, C.R.S.

on which the requested intervention is based, including *the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.* ... The Commission will consider these factors in determining whether permissive intervention should be granted. ... (Emphasis added.)

11. The Commission and its ALJs have the discretion to grant or to deny motions for permissive intervention.⁴ Pursuant to Rule 1401(c), that discretion is based upon the ALJ's determination of whether the person seeking permissive intervention has satisfied the required standards of Rule 1401(c). Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought and their motion's compliance with the requirements of Rule 1401(c).⁵

12. By failing to file a response to EP Trolleys' Motion to Intervene, Applicant has confessed the merits of the Motion to Intervene, and does not contest EP Trolleys' permissive intervention.

13. The ALJ finds that EP Trolleys has demonstrated that this Proceeding may substantially affect its tangible or pecuniary interests through the competition with its operations and the diversion of revenues that it otherwise may earn. EP Trolleys' interests will not be represented by any other party.

14. The Motion to Intervene will be granted and EP Trolleys request for permissive intervention will be granted.

⁴ *Public Service Co. v. Trigen-Nations Energy Co., L.L.P.*, 982 P.2d 316, 327 (Colo. 1999).

⁵ Decision No. R20-0073-I (mailed on January 30, 2020), ¶ 25 at page 10, in Consolidated Proceeding Nos. 19F-0620E and 19F-0621E (Denying motions for permissive intervention for failure to satisfy the standards required by Rule 1401(c)).

15. EP Trolleys is an additional Party to this proceeding.

16. Pursuant to Decision No. R20-0382-I (mailed on May 20, 2020), on or before July 20, 2020, EP Trolleys must file and serve on Estes Park Guided Tours (and its counsel if one has been retained), the following prehearing disclosures: (a) a list that identifies the witnesses EP Trolleys 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 EP Trolleys intends to present at the hearing.

II. ORDER

A. It Is Ordered That:

1. The Motion to Intervene by Permission filed on May 11, 2020, by Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, is granted, consistent with the reasons, findings, and conclusions discussed in this Decision.

2. Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, is a Party to this proceeding.

3. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director