

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
GRANTING IN PART AND DENYING IN PART
MOTION FOR AMENDMENT TO APPLICATION,
AND SETTING DEADLINES**

Mailed Date: July 15, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

1. Only the procedural history necessary to understand this Decision is included. On March 17, 2020, Original Gravity Beer Tours LLC (Original Gravity) initiated this proceeding by filing a verified Application for New Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission or PUC) seeking to provide scheduled service and call-and-demand sightseeing service. Application, ¶ 9. On April 2, 2020, Original Gravity amended its Application to seek call-and-demand charter and shuttle service, instead of scheduled and sightseeing service. Amendment to Proceeding 20A-0107CP filed April 2, 2020 (First Amendment).

2. As amended, the Application¹ seeks authority to operate as a common carrier for the transportation of passengers in call-and-demand charter and shuttle service between all points

¹ All references herein to the Application are to the amended Application.

within Larimer and Weld Counties, with service originating in Larimer County, State of Colorado. See Commission Notice of Applications and Petitions Filed, dated April 6, 2020 (Public Notice).

3. The Commission gave public notice of the Application on April 6, 2020, consistent with Rule 1206 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. *Id.*

4. Through their Interventions, Estes Valley Transport, Inc. (Estes Valley) and Fun Tyme Trolleys LLC, doing business as Estes Park Trolleys, (Fun Tyme) object to the Application. Estes Valley, Fun Tyme, and Original Gravity are the only parties to this proceeding.

5. On June 15, 2020, after holding a prehearing conference, the Administrative Law Judge (ALJ) scheduled a video-conference evidentiary hearing on the Application for August 20, 2020, and established procedures and deadlines relating to that hearing. Decision No. R20-0440-I.

6. On June 30, 2020, Original Gravity filed a Motion for Amendment of Application (Motion). The Motion seeks to amend the proposed authority by adding the following underlined language: "provide privately chartered tours in addition to regularly scheduled tours, all such tours shall be to breweries, distilleries, tasting rooms, bars, and such other locations within the geographic scope indicated." Motion, ¶ 1. It also seeks to amend the proposed authority by replacing language describing the geographic service territory with the following new language:

Originating from the Physical Address of Principal Office in Colorado, or such other pickup locations designated from time to time within the city limits of Fort Collins, Loveland, and Greeley, with service to specified tour routes as designated from time to time with such routes contained within the area starting at the intersection of N. Overland Trail and W Vine Dr. on a line northeast to the intersection of N. County Rd. 9. and E. Co. Rd. 66, Southeast to the intersection of Weld County Rd 43 and Colorado Highway 14, South to the intersection of W Co Rd 43 and E 37th Street, Southwest to the intersection of U.S. Highway 287 and W Co Rd 4, and finally north-northwest to the initial intersection and within an area extending of 2 miles beyond these indicated boundaries.

Motion, ¶ 2. The Motion attaches a map showing the above-described geographical territory. Attachment A to Motion.

7. The Motion states that Original Gravity worked with both Interveners to appropriately address their objections, but it does not state that granting the proposed amendments resolves the parties' disputes in this proceeding. Nor does it state that Original Gravity conferred with Interveners on whether they object to the Motion.

8. On July 9, 2020, Fun Tyme filed a "Statement of Position of Intervenor Fun Tyme Trolleys, LLC D/B/A Estes Park Trolleys" (Response to Motion). The Response to Motion states that if Original Gravity's proposed amendments are accepted, that Fun Tyme's interests will be satisfied, and requests that its Intervention be deemed withdrawn.

9. Estes Valley did not file a response to the Motion.

10. The time to respond to the Motion has elapsed. Rule 1400(b), 4 CCR 723-1. The ALJ deems Estes Valley's failure to respond to the Motion as confessing the Motion. Rule 1400(d), 4 CCR 723-1.

11. To be acceptable, changes to an application's requested authority 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 permit. Both must be worded so that a person will know, from reading the permit 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 permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

12. Original Gravity's proposed changes relating to service type include references to "tours" but no such service type exists. Motion, ¶ 1. The current proposed authority also does not include any reference to tours. *See* Public Notice, 2; First Amendment. Given that no such service type exists, the ALJ finds that language referencing "tours" is vague and administratively unenforceable. The ALJ rejects any references to "tours" in the proposed amendments.

13. In addition, Original Gravity includes language referencing scheduled service, but does not explain that it seeks to modify the proposed service types, either by adding scheduled service or by adding scheduled service and removing call-and-demand charter or shuttle service (the current requested service types). Motion, ¶ 1; *see* Public Notice, 2; First Amendment. Given this, it is unclear what Original Gravity seeks to accomplish by referencing scheduled service. As such, the ALJ will reject language referencing scheduled service.

14. The proposed amendment to the service territory includes a reference to the "Physical Address of Principal Office in Colorado." This language is vague, and opens the door to future changes in the geographic scope of the proposed territory that may go beyond the scope of that publicly noticed. As such, this language is rejected.

15. The ALJ recognizes that Original Gravity's proposed amendments are intended to resolve the disputes in this proceeding. *See* Motion. Consistent with the Commission's policy to encourage settlement, the ALJ will consider the requested changes without the rejected language mentioned above, and will make minor modifications to the proposed amendments that align with Original Gravity's requested changes, while eliminating the above concerns.² *See* Rule 1408, 4 CCR 723-1. Specifically, the ALJ will replace the language as referencing the "Physical Address

² Doing this may help preserve the parties' resources by potentially avoiding filing and responding to another motion to amend.

of Principal Office in Colorado” with the physical address of Original Gravity’s principal office in Colorado, as stated in its Application, that is: “2720 W. Council Tree Avenue #242, Fort Collins, Colorado 80525.” Application, ¶ 1. This address is within the proposed geographical service territory in the Motion.

16. With the rejected and modified language described above, the proposed authority would read as follows:

authority to operate as a common carrier by motor vehicle for hire

for the transportation of passengers in call-and-demand charter and shuttle service

to breweries, distilleries, tasting rooms, bars, and such other locations within the following geographic area:

originating from 2720 W. Council Tree Avenue #242, Fort Collins, Colorado 80525, or such other pickup locations designated from time to time within the city limits of Fort Collins, Loveland, and Greeley,

with service to

specified routes as designated from time to time, with such routes contained within the area starting at

the intersection of N. Overland Trail and W. Vine Dr. on a line northeast to the intersection of N. County Rd. 9. and E. Co. Rd. 66, Southeast to the intersection of Weld County Rd 43 and Colorado Highway 14, South to the intersection of W Co Rd 43 and E 37th Street, Southwest to the intersection of U.S. Highway 287 and W Co Rd 4, and finally north-northwest to the initial intersection and within an area extending of 2 miles beyond these indicated boundaries

in Larimer and Weld Counties, State of Colorado.³

³ The ALJ has formatted the proposed amended authority in a way that helps facilitate looking at the proposed changes in context of the entire proposed authority.

17. The ALJ finds that the modified changes to the proposed authority as described in ¶ 16 above are restrictive, clear, understandable, and administratively enforceable. For the reasons discussed, the ALJ accepts the proposed amendments, with the changes discussed. The proposed authority is amended as set forth in ¶ 16 above.

18. The ALJ views the changes to proposed amendments as minor, but recognizes that that the parties may disagree. As such, the amendments to the proposed authority discussed above will not become immediately effective, and instead will become effective as set forth below. This allows Original Gravity time to make a filing should it disagree with the minor changes made to its proposed amendments.⁴ It also gives Fun Tyme the opportunity to make a filing indicating that the amendments do not satisfy its concerns, or that it no longer wishes to withdraw its Intervention. If neither Original Gravity nor Fun Tyme make such filings by the dates specified, the amendments discussed herein will be effective and Fun Tyme's Intervention will be deemed withdrawn (per its Response to Motion).

19. Assuming the amendments become effective and that Fun Tyme's Intervention is deemed withdrawn, that does not resolve the disputes in this proceeding. Estes Valley remains an Intervenor and has made no filing indicating that it withdraws its Intervention. As such, the Application remains disputed and must proceed to an evidentiary hearing. For this reason, this Decision does not impact the hearing date, procedures, and deadlines or any other aspect of Decision No. R20-0440-I.

⁴ If Original Gravity makes such a filing, none of the proposed amendments will be effective. As such, a new filing requesting to amend the proposed authority may be appropriate. In making such a filing, Original Gravity should keep the above concerns in mind, and use as the starting point, the language that the Public Notice outlines as the authority that the Application currently seeks.

II. ORDER**A. It Is Ordered That:**

1. Consistent with the above discussion, the Application is amended as set forth in ¶ 16 above, effective on July 26, 2020.
2. If Original Gravity makes a filing on or by the close of business on July 25, 2020 objecting to the amendments to the Application in ¶ 16, Ordering ¶ 1 above is void and the Application is not amended.
3. If Fun Tyme does not wish to withdraw its Intervention based on the amendments to the Application in ¶ 16 above, it must make a filing on or by the close of business on July 25, 2020 stating this. If Fun Tyme does not make that filing by the stated deadline, and Ordering ¶ 2 above is not triggered, Fun Tyme's Intervention will be deemed withdrawn.
4. This Decision does not impact any aspect of Decision No. R20-0440-I.
5. Except as provided above, this Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
DirectorTHE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge