

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
SHORTENING RESPONSE TIME TO
MOTION TO DISMISS APPLICATION**

Mailed Date: July 21, 2020

I. STATEMENT

A. Procedural History

1. On March 9, 2020, Estes Park Guided Tours (Applicant or Estes Park 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 above-captioned proceeding's procedural history is set forth in Decisions previously issued in this matter and is repeated only when necessary to put this Decision into context.

6. The parties to this proceeding are Estes Park Guided Tours, Estes Valley Transport, Inc. (Estes Valley Transport), and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys).³ Estes Park Transport and Estes Park Trolleys, who are represented by the same counsel, will be referred to, collectively, as the Intervenors.

¹ Decision No. R20-0353-I, Paragraph No. 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 See Decision No. R20-0353-I, acknowledging the intervention by right of Estes Valley Transport, filed on March 23, 2020, and Decision No. R20-0445-I (mailed on June 16, 2020), granting the Motion to Intervene by Permission of Estes Park Trolleys, filed on May 11, 2020.

7. Decision No. R20-0353-I (mailed on May 7, 2020) established a process through which Estes Park Guided Tours was required to confer with counsel for Intervenors regarding two sets of consecutive hearing dates when the Parties and their witnesses will be available during certain weeks in July 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-upon hearing dates.⁴

8. 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.⁵

9. Estes Park Guided Tours failed to file the required Joint Status Report by the May 15, 2020 deadline, nor did Estes Valley Transport, the only Intervenor at the time, file an individual Status Report.

10. In Decision No. R20-0382-I (mailed on May 20, 2020), the ALJ scheduled an evidentiary hearing for Tuesday, August 11, 2020, in a Commission Hearing Room in Denver, Colorado, commencing at 9:30 a.m.⁶

11. To facilitate the orderly and efficient litigation of this proceeding, the ALJ also adopted a procedural schedule for the filing of prehearing disclosures, so that each party would

⁴ Decision No. R20-0353-I, Paragraph Nos. 28 – 30 at pages 9 and 10. If Applicant failed to confer with counsel for Intervenors before the deadline, counsel had the option of filing his own Status Report

⁵ *Id.*, Paragraph No. 31 at page 10 (emphasis in original).

⁶ The decision also advised the Parties that, 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 would 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.

have an opportunity prior to the hearing to review a summary of the anticipated testimony of the other party's witnesses and to review copies of the exhibits the other party intended to present at the hearing.

12. The ALJ was aware that Estes Park 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 after that date. In Decision No. R20-0353-I, paragraph 34 at page 11, the ALJ had vacated the schedule in the Notice for filing lists of witnesses and copies of exhibits, thus giving Estes Park 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.

13. Decision No. R20-0382-I ordered Estes Park Guided Tours to file and to serve on counsel for Intervenor, on or before June 22, 2020: (a) a list that identifies the witnesses Estes Park 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 Estes Park Guided Tours intends to present at the hearing.⁷

14. Decision No. R20-0382-I advised Estes Park Guided Tours and its owner, Mr. Legzdins, that Estes Park Guided Tours' failure to file its prehearing disclosures by the June 22, 2020 deadline "shall be just cause for dismissal of this Application for failure to comply with a valid Commission decision."⁸

15. Decision No. R20-0382-I ordered Intervenor to file and serve on Estes Park Guided Tours, on or before July 20, 2020: (a) a list that identifies the witnesses Estes

⁷ Decision No. R20-0382-I, Ordering Paragraph No. 2 at page 7.

⁸ *Id.*, Paragraph No. 17 at page 5. See also *id.*, at Ordering Paragraph No. 4 at page 8, "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."

Valley 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 each Intervenor intends to present at the hearing.⁹

B. Intervenor's Motion to Dismiss.

16. On July 20, 2020, Intervenor filed a Motion to Dismiss Application (Motion to Dismiss). Pursuant to Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015), Estes Park Guided Tours would “have 14 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response.” That deadline (14 days after July 20, 2020) would be Monday, August 3, 2020.

17. However, the hearing is scheduled for August 11, 2020, only 5 business days after Estes Park Guided Tours' response would be filed. That is insufficient time before the hearing for the ALJ to analyze the Motion to Dismiss, and any response thereto, and to prepare and issue a decision ruling on the Motion to Dismiss. That would also be inadequate time for the ALJ to issue a decision converting the in-person hearing to a remote video hearing to be conducted with the use of electronic exhibits.

18. Therefore, pursuant to Rule 1401(b) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ will shorten response time to the Motion to Dismiss to 9 calendar days, or to and including July 29, 2020.

II. ORDER

A. It Is Ordered That:

1. Pursuant to Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015), responses to the Motion to Dismiss Application,

⁹ Decision No. R20-0382-I, Ordering Paragraph No. 3 at pages 7 and 8.

filed by Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (collectively, Intervenor) on July 20, 2020, is shortened to 9 calendar days, or to an including July 29, 2020.

2. Applicant, Estes Park Guided Tours, shall file and serve on counsel for Intervenor its response, if any, to the Motion to Dismiss Application no later than 5:00 p.m. Mountain Time on Wednesday, July 29, 2020.

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

4. This Decision shall be 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

Doug Dean

Doug Dean,
Director