

Decision No. R20-0613-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20F-0290CP

ESTES VALLEY TRANSPORT, INC. AND FUN TYME TROLLEYS, LLC, DOING BUSINESS
AS ESTES PARK TROLLEYS

COMPLAINANTS,

V.

ESTES PARK GUIDED TOURS,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ORDERING FILING OF PREHEARING DISCLOSURES,
CONVERTING IN-PERSON HEARING
TO REMOTE VIDEOCONFERENCE HEARING,
AND ESTABLISHING PROCEDURES**

Mailed Date: August 20, 2020

I. STATEMENT

A. Procedural History

1. On June 30, 2020, 2020, Estes Valley Transport, Inc. (Estes Valley Transport) and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys) (collectively, Complainants), filed a formal complaint (Complaint) against Estes Park Guided Tours (Respondent or Estes Park Guided Tours). That filing commenced this proceeding.

2. On July 2, 2020, Complainants filed a Motion to amend the second page of the Complaint (Motion to Amend), correcting the statutory reference of “CRS Title 10” to “CRS Title 40 Chapter 10.” No response was filed to the Motion to amend.

3. On July 7, 2020, the Commission issued an Order to Satisfy or Answer and served it on Respondent through the Commission’s E-Filing System. The Order to Satisfy or Answer also served a copy of the Complaint on Respondent.

4. The Commission set the Complaint for hearing on September 14, 2020 at 9:00 a.m. in a Commission hearing room in Denver, Colorado.

5. The Amended Complaint alleges that Estes Park Guided Tours has no Commission or federal agency authority to provide the subject passenger transportation services in Estes Park and that Respondent is operating in violation of “CRS Title 40 Chapter 10.”¹ Finally, the Amended Complaint requests that the Commission order Estes Park Guided Tours to discontinue providing unauthorized services.² Using terminology from the Colorado Public Utilities Law, Complainants seek an order requiring Respondent to cease and desist from operating as a common carrier of passengers for hire within the State of Colorado without a valid Certificate issued by the Commission.

6. During the Commission’s weekly meeting held on July 15, 2020, the Commission referred the Complaint to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this proceeding.

¹ The part of the Colorado Public Utilities Law regulating motor carriers can be found in Title 40 Article 10.1, of Colorado Revised Statutes. Complainant’s cite to Chapter 10 may be a typographical error. House Bill 11-1098, Ch. 127, p. 416, § 2, effective August 10, 2011, repealed the former Articles 10, 11, 13, 14, and 16 of Title 40. House Bill 11-1098, Ch. 127, § 1, consolidated those former regulatory statutes into Article 10.1 of Title 40.

² Amended Complaint, at pages 2 and 3.

7. As required by the Order to Satisfy or Answer, Respondent was required to file its Answer within 20 days after service of the Complaint, or no later than Monday, July 27, 2020.

8. A review of the Commission's E-filing System for this proceeding reveals that Respondent failed to file an Answer to the Complaint by July 27, 2020. Respondent did not either file by that deadline written evidence that the Complaint has been satisfied or a timely motion for an extension of time to file its Answer.

9. On July 31, 2020, Complainants filed a Motion to Grant Relief Sought in Formal Complaint (Motion to Grant Relief). Complainants served the Motion to Grant Relief on Respondent by email at epguidedtours@gmail.com (which is the email address in the Commission's records for Estes Park Guided Tours). The Motion to Grant Relief was also served on Respondent through the Commission's E-Filing System.

10. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (20150, Respondent had 14 days after service of the Motion to Grant Relief in which to file a response. That deadline was Friday, August 14, 2020.

11. A review of the Commission's E-filing System for this proceeding reveals that Respondent failed to file a response to the Motion to Grant Relief by August 14, 2020, or a motion for an extension of time to file its response.

12. The Motion to Grant Relief argues that the Complaint should be granted, because Estes Park Guided Tours has not filed an answer or some other reply, as required by Order to Satisfy or Answer. As relief, Complainants request that the allegations in the Complaint be deemed to be admitted and that the Commission order Respondent to discontinue the unauthorized

transportation for hire services.³ As noted earlier, Complainants seek an order requiring Respondent to cease and desist from operating as a common carrier of passengers for hire within the State of Colorado without a valid Certificate issued by the Commission. The ALJ has taken the Motion to Grant Relief under advisement pending the hearing.

13. Section 40-10.1-112(2), C.R.S., provides that:

Any person may file a complaint against a motor carrier for a violation of this article [10.1].... *The complaint may request any relief that the commission, in its authority, may grant, including an order to cease and desist.... Upon proof of violation, the commission may issue an order to cease and desist ... or take any other action within the commission's authority.* (Emphasis added.)

14. However, § 40-10.1-112(1), C.R.S., relating to cease and desist orders, provides that:

Except as specified in subsection (3) of this section [relating to summary suspensions of certificates or permits], *the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist ...* for the following reasons:

(a) A violation of this article [10.1] (Emphasis added.)

15. Therefore, § 40-10.1-112(1), C.R.S., requires that the ALJ must hold a hearing, after notice to Estes Park Guided Tours, before the ALJ could enter a cease and desist order, assuming Complainants prove the violation and demonstrate that entry of a cease and desist order is justified.

16. The hearing has already been scheduled for September 14, 2020 at 9:00 a.m. in a Commission hearing room in Denver, Colorado. On July 7, 2020, the Commission served on Estes Park Guided Tours the Complaint, an Order to Satisfy or Answer, and a notice setting the hearing for September 14, 2020. These documents were served it on Respondent through the Commission's E-Filing System. Therefore, the Commission has already given adequate notice to Estes Park Guided Tours of the hearing, as required by § 40-10.1-112(1), C.R.S.

³ Motion to Grant Relief, at page 1.

17. This Decision will provide additional adequate notice to Complainants and to Estes Park Guided Tours of the hearing date and time, as well as the manner of conducting the hearing. The primary issues to be litigated at the hearing are: (1) whether Estes Park Guided Tours is operating, providing, advertising, or offering to provide passenger transportation services for hire in Estes Park, in violation of Colorado Law; and (2) if so whether the Commission should issue an order requiring Estes Park Guided Tours to cease and desist from operating as a common carrier of passengers for hire within the State of Colorado without a valid Certificate issued by the Commission.

18. The purpose of this Interim Decision is to convert the in-person hearing on September 14, 2020 into a remote hearing by video conference, as well as to establish certain procedures.

B. Adopting a Procedural Schedule for filing Prehearing Disclosures.

19. To facilitate the orderly and efficient litigation of this Complaint, this Decision will order the parties to file, and to serve on each other (or counsel), as prehearing disclosures, a list of their witnesses, a written summary of the testimony of each witness, and copies of the exhibits the filing Party intends to present at the hearing.⁴

20. Complainants will be ordered to file and to serve on Respondent **on or before August 27, 2020** as prehearing disclosures: (a) a list that identifies the witnesses Complainants

⁴ The ALJ is aware that Intervenor EV Transport filed on March 23, 2020, with its Intervention pleading, an “Exhibit and Witness List.” The ALJ finds that this pleading is deficient to provide adequate prehearing notice to Applicant of the contents of witness Greg Rounds’ testimony and exhibits. For example, the only exhibit attached was a copy of Certificate PUC No. 54696. While the “Exhibit and Witness List names topics about which Mr. Rounds will testify, it provides no summary of the details in that testimony. After seeing Applicant’s prehearing disclosures, EV Transport may want to add topics or exhibits. Therefore, this Decision will set a date by which EV Transport must file a proper prehearing disclosure supplementing the March 23, 2020 filing.

intend to call at the hearing; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits Complainants intend to present at the hearing.

21. Respondent, Estes Park Guided Tours, will be ordered to file and to serve on counsel for Complainants on or before **September 8, 2020**: (a) a list that identifies the witnesses Respondent intends to call at the hearing; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits Respondent intends to present at the hearing.

C. Impact of COVID-19 on the Hearing Date.

22. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. Executive Order D-2020 003. Since then, Colorado State government and the Commission have been working diligently to address how to manage the challenges presented by COVID-19 safely and effectively. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings or hearings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted.

23. When the September 14, 2020 hearing date was set on July 7, 2020, the Commission may have believed that enough time would pass for the COVID-19 public health orders and related executive orders to expire, so that in-person hearings could occur without presenting public health risks.

24. Since July 7, 2020, conditions relating to COVID-19 have not progressed to allow for in-person hearings. For example, no in-person hearings are authorized at the Commission's

offices, and Commission personnel are restricted to essential travel only.⁵ Moreover, based on data showing a recent increase in COVID-19 infections, state and local officials have issued orders placing restrictions on public gatherings (among other orders), which include social distancing and mandatory wearing of face masks in public.⁶ All of these efforts are intended to protect the public health from the spread of COVID-19.

25. Based on the foregoing, the ALJ finds that conditions in Colorado have not improved enough to allow for an in-person hearing in this proceeding. The ALJ concludes that holding an in-person hearing is neither feasible, nor in the public interest at this time. When an in-person hearing in this proceeding may be held safely is presently unknown.

26. Since the in-person hearing was scheduled on July 7, 2020, the Commission has obtained additional resources and developed processes that facilitate holding hearings in a streamlined fashion by videoconference, while minimizing the challenges associated with remote hearings.

27. For all the reasons discussed, the ALJ finds that at this time, it is in the best interests of the parties and the public to convert the September 14, 2020 in-person hearing to a remote hearing by videoconference. Doing so is consistent with public health advisories to prevent the spread of COVID-19, while allowing this proceeding to move forward.

28. Given that this Decision will be issued more than three weeks before the September 14, 2020 hearing, the parties have sufficient time to familiarize themselves with technology that will be used to hold the hearing.

⁵ The ALJ and the court reporter may need to travel to Estes Park for an in-person hearing. If this restriction remains in place, the ALJ and court reporter will not be able to travel to Estes Park.

⁶ See Executive Order D 2020 152 (August 2, 2020); Larimer County Public Health Order 20-32, Amended on August 7, 2020.

D. Procedures for the Videoconference Hearing.

29. The videoconference hearing will be held using the web-hosted video conferencing service, GoToMeeting. The ALJ strongly encourages the parties to test their ability to use GoToMeeting prior to the hearing. This Decision and Attachment A explain the procedures, requirements, and instructions to participate in the videoconference hearing using GoToMeeting, and are intended to ensure that the videoconference hearing proceeds efficiently without technical problems. Therefore, the parties must carefully review and follow all requirements in this Decision and Attachment A.

30. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the GoToMeeting link and access code to participate in the hearing will be provided to the parties by email a few days before the hearing. For the same reason, the parties and their witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

31. For parties and their counsel to participate in the remote hearing, the Commission will use the web-hosted video conferencing service, GoToMeeting, to hold video conferences, and in this case, a remote hearing. Videoconference participation allows for comments and arguments to be presented in a manner most similar to that, which occurs during in-person hearings. Individuals who wish to participate in the hearing can participate by either telephone or computer. The paragraphs below set forth general instructions and requirements for how to participate by telephone or by computer. These requirements are intended to ensure that the remote hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the hearing through GoToMeeting using a computer

and internet connection. It is vitally important that parties and counsel carefully review and follow all requirements in this Decision and Attachment A.

32. **To Participate by Telephone.** A party or their counsel who wishes to participate in the hearing by telephone during the remote hearing must call the telephone number provided by the Commission's email sent a few days before the hearing. Please call in a few minutes before the hearing starts. When prompted, input the pin provided in the Commission's email. You will then be placed into the hearing. Please note that the ALJ and Administrative Staff will control your session and participation. When you are not speaking, please mute your telephone.

33. **To Participate by Computer.** A party or their counsel who wishes to participate in the hearing by computer must use a computer that is connected to the internet and has a microphone and a speaker. At the time of the hearing, please go to the link to GoToMeeting provided by the Commission's email sent a few days before the hearing. When you are not speaking, please mute your microphone. Attachment A contains detailed instructions for participating in the hearing using GoToMeeting.

E. Advisements. (Please read and understand these Advisements.)

34. **The parties are advised and on notice** that the Rules of Practice and Procedure, found at 4 CCR 723-1, Part 1, govern this proceeding. Counsel represents complainants. It is unknown whether counsel represents Respondent. These rules apply equally to a non-attorney, who has been given permission by the Commission to represent a party in this proceeding. The ALJ expects all parties to comply with these rules. The Rules of Practice and Procedure are available on the Commission's website (<http://www.dora.colorado.gov/puc>), as well as in hard copy from the Commission upon request.

35. **The parties are advised and are on notice** that they are each responsible for filing pleadings and other documents with the Commission. Pursuant to Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1, a filing is made when the Commission receives the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is not filed with the Commission in a timely manner. Pleadings and other documents are filed with the Commission either by using the E-Filing System or by filing a paper document, including the original and three copies. Emailing pleadings and other documents to the ALJ, Commissioners, the Director of the Commission, or other employees of the Commission **does not** constitute proper filing under Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

36. **Each party is specifically advised** that all filings with the Commission must also be served upon the other party and counsel, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

37. **The parties are advised and are on notice** that the Commission has an E-Filing System available. One may learn about -- and if one wishes to do so, may register to use -- that system at <http://www.dora.colorado.gov/puc>.

38. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their positions. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this proceeding.

39. **The parties are advised and are on notice that** failing to appear at the hearing may result in a decision adverse to their interests, including dismissing the Complaint if

Complainants fail to appear or granting the relief requested by Complainants if Respondent fails to appear.

40. **The parties are advised and are on notice of the following:** (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required by this Decision; (b) any failure to provide an accurate summary of the anticipated testimony of a witness may also result in a bench order prohibiting such witness from testifying beyond the scope of the summary; and (c) any exhibit may not be received in evidence, except in rebuttal, unless the exhibit was filed and served as required by this Decision.

41. Any party wishing to make an oral closing argument may do so immediately following the close of the evidence (*i.e.*, after presentation of evidence near the end of the hearing).

II. ORDER

A. **It Is Ordered That:**

1. Estes Valley Transport, Inc. (Estes Valley Transport) and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (together, Complainants), shall file and serve on Estes Park Guided Tours **on or before August 27, 2020**, as prehearing disclosures: (a) a list that identifies the witnesses Complainants intend to call at the hearing; (b) a summary of the anticipated testimony of each witness; and (c) copies of the exhibits Complainants intend to present at the hearing.

2. Estes Park Guided Tours (Respondent) shall file and serve on counsel for Complainants **on or before September 8, 2020**, as prehearing disclosures: (a) a list that identifies the witnesses Respondent intends to call at the hearing; (b) a written summary of the anticipated

testimony of each witness; and (c) copies of the exhibits Respondent intends to present at the hearing.

3. Consistent with the above discussion, the in-person hearing on the merits of the Application in this proceeding scheduled for September 14, 2020 at 9:00 a.m., is converted to a remote video-conference hearing, which the parties and witnesses may join using the GoToMeeting link to be provided to the parties by email.

4. 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.

5. The parties and witnesses may not distribute the GoToMeeting link and access code to anyone not participating in the hearing. The parties and witnesses shall not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses shall participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated herein.

7. **Videoconference Participation.** The parties and witnesses are required to participate in the hearing by videoconference using GoToMeeting. The parties are responsible for providing their witnesses, if any, with the link to join the GoToMeeting hearing. The parties must ensure that they and their respective witnesses are ready and able to participate in the hearing by videoconference using GoToMeeting.

8. **Evidence Presentation at the Hearing.** Because the hearing will be held remotely by videoconference, all evidence must be presented electronically. Administrative notice will be taken of Hearing Exhibits filed as prehearing disclosures with the Commission, as long as a Hearing Exhibit is otherwise admissible. All parties are responsible for ensuring they and their

respective witnesses have access to all exhibits prior to the hearing, and will be asked to verify the same during the hearing.

9. **Exhibit Number Assignments.** Complainants, Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, are assigned hearing exhibit numbers 1 through 99, and Respondent, Estes Park Guided Tours is assigned hearing exhibit numbers 100-199. For example, Complainants should mark their first hearing exhibit as “Hearing Exhibit 1” and Respondent should mark its first hearing exhibit as “Hearing Exhibit 100.”

10. **Exhibit Requirements.** Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block *before* pre-filing the exhibits with the Commission as prehearing disclosures; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page one, regardless of content *before* pre-filing the exhibits with the Commission; and (c) upload all pre-marked exhibits into each party’s respective designated box.com folder prior to presenting them during the hearing.

11. This 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