

Decision No. R20-0650-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 (NOW KNOWN AS ESTES PARK PHOTO TOURS),

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING MOTION FOR CONTINUANCE,
EXTENDING DATE FOR RESPONDENT TO FILE
PREHEARING DISCLOSURES,
AND SETTING NEW HEARING DATE**

Mailed Date: September 4, 2020

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I. STATEMENT**A. Procedural History**

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

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

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. The Commission set the Complaint for hearing for September 14, 2020 at 9:00 a.m. in a Commission hearing room in Denver, Colorado, and served the Notice of Hearing on Respondent. These documents were served on Respondent through the Commission's E-Filing System, which Estes Park Guided Tours had previously registered to use.

4. 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." Finally, the Amended Complaint requests that the Commission order Estes Park Guided Tours to discontinue providing unauthorized services.² In other words, as relief Complainants seek an

¹ On June 30, 2020, Complainants filed a Motion to amend the second page of the Complaint to correct a statutory reference. Respondent failed to file a response.

² Amended Complaint, at pages 2 and 3.

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.

5. 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.

6. 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.

7. The Commission's E-filing System for this proceeding reveals that Respondent failed to file an Answer to the Complaint by July 27, 2020. By that deadline, Respondent filed neither written evidence that the Complaint has been satisfied nor a timely motion for an extension of time to file its Answer.

8. 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 by email and through the Commission's E-Filing System.³

9. 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 the 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

³ See Motion to Grant Relief at page 2; and E-filings Certificate of Service for the Motion to Grant Relief, dated July 31, 2020.

unauthorized transportation for hire services.⁴ 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.

10. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, 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. 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 a response. The ALJ has taken the Motion to Grant Relief under advisement pending the hearing.

12. Pursuant to § 40-10.1-112, C.R.S., by Decision No. R20-0613-I (issued on August 20, 2020), the ALJ found that a hearing in this proceeding was necessary and converted the in-person hearing scheduled for September 14, 2020 at 9:00 a.m. into a remote videoconference hearing. The Commission served Decision No. R20-0613-I on Respondent through the Commission's E-Filing System.

13. Decision No. R20-0613-I also ordered Complainants to file and to serve on Respondent 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.⁵

14. On August 26, 2020, Complainants filed and served on Respondent their prehearing disclosures, consisting of lists of the witnesses Complainants intend to call at the

⁴ Motion to Grant Relief, at page 1.

⁵ Decision No. R20-0613-I, Ordering Paragraph No. 1 at page 11.

hearing, summaries of the anticipated testimony of each witness, and copies of the exhibits they intend to offer into evidence at the hearing.

15. Finally, Decision No. R20-0613-I ordered Respondent 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.⁶

B. Motion for Continuance.

16. On September 3, 2020, at 2:26 p.m., counsel for Respondent filed an “Entry of Appearance and Motion for Extension of Hearing Date” (Motion for Continuance), which was also served electronically on counsel for Complainants.

17. The Motion for Continuance requests, “an extension of the hearing scheduled for September 14, 2020 and witness and exhibit list filing deadline of September 8, 2020, for two weeks or such other period of time as the tribunal considers appropriate.”⁷

18. Counsel for Respondent asserts that he “learned of this matter for the first time late in the day [on] September 2, 2020, and needs additional time to learn the facts relating to the hearing, prepare exhibits, determine who may testify, and prepare an appropriate defense.” Counsel argues that, “No one will be harmed by granting the short extension of time requested.” The Motion for Continuance reports that counsel for Complainants do not agree to the extension.⁸

⁶ *Id.*, Ordering Paragraph No. 2 at pages 11 and 12.

⁷ Motion for Continuance at page 1. Counsel also states that Estes Park Guided Tours has changed its name to “Estes Park Photo Tours.” The ALJ has *sua sponte* amended the caption to reflect that information.

⁸ *Id.*, Paragraphs 1, 2, and 4 at page 1.

19. Whether to grant a motion to continue a previously scheduled trial or evidentiary hearing rests in the sound discretion of the trial court or administrative law judge.⁹ The ALJ is aware that counsel for Complainants do not agree to the requested continuance of the hearing date.

20. The ALJ is concerned that Respondent has apparently ignored the procedural requirements of this proceeding and related Commission orders until a scant few days before the scheduled prehearing disclosure filing date. The Commission's file in this proceeding reveals that Respondent was served with, and has had notice of this Complaint and the September 14, 2020 hearing date since July 7, 2020, when the Commission served Respondent with the Order to Satisfy or Answer and the Complaint, as well as the Notice of Hearing.¹⁰ Respondent had notice of the September 8, 2020 deadline for filing his prehearing disclosures since August 20, 2020, when the Commission served Respondent with Decision No. R20-0613-I setting that September 8, 2020 deadline.¹¹

21. Based upon representations made by Respondent's newly retained counsel, however, the ALJ finds that the Motion for Continuance states good cause to grant the requested two-week continuance of the hearing and extension of time for filing Respondent's prehearing disclosures. The ALJ concludes that counsel's request for the two-week continuance and extension constitutes counsel's representation that he and Respondent will be prepared to file his

⁹ See *People v. Ahuero*, 403 P.3d 171, 175 (Colo. 2017).

¹⁰ See Commission's E-filings Certificate of Service for the Order to Satisfy or Answer, dated July 7, 2020.

¹¹ See Commission's E-filings Certificate of Service for Decision No. R20-0613-I, dated August 20, 2020.

prehearing disclosures by the deadline set in this Decision and to appear ready to proceed at the rescheduled remote hearing.¹²

22. The ALJ will grant the Motion for Continuance. No further extensions of Respondent's prehearing disclosure filing deadline or continuances of the hearing will be granted, unless there is a showing of exceptional and extraordinary circumstances.

23. The deadline for Respondent to file its prehearing disclosures is Tuesday, September 8, 2020 – literally the next business day the Commission will be open after issuance of this Decision. Therefore, the ALJ finds that time is of the essence and the response time to the Motion for Continuance will be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

C. Rescheduling the Videoconference Hearing and Prehearing Disclosure Filing Dates.

24. The September 8, 2020 deadline for Respondent to file its prehearing disclosures will be vacated.

25. Respondent will be ordered to file and to serve on counsel for Complainants **on or before September 22, 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.

26. The remote hearing scheduled for September 14, 2020 at 9:00 a.m. will be vacated, and the remote hearing will be rescheduled for September 29, 2020 at 9:00 a.m.

¹² See Rule 1202(e) of the Rules of Practice and Procedure, 4 CCR 723-1; ("The signature of an attorney ... certifies that the signatory has read the filing; that to the best of the signatory's knowledge, information, and belief there are good grounds to support it; and that it is not interposed for any improper purpose, such as to harass, delay, or increase the cost of the litigation.")

27. The requirements and procedures for conducting the remote videoconference hearing and relating to Hearing Exhibits, set forth in Decision No. R20-0613-I and Attachment A thereto, shall be in effect and followed by the parties for the rescheduled hearing.

D. Advisements.

28. The procedures and advisements provided in Decision No. R20-0613-I will continue to be in effect.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extension of Hearing Date, filed by Estes Park Guided Tours, now known as Estes Park Photo Tours (Respondent) on September 3, 2020, is granted consistent with the foregoing findings and conclusions in this Decision.

2. Response time to the Motion for Extension of Hearing Date will be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

3. The remote hearing scheduled for September 14, 2020 at 9:00 a.m. shall be vacated.

4. The remote evidentiary hearing in this proceeding is rescheduled as follows:

DATE: September 29, 2020

TIME: 9:00 a.m.

FOR WEBCASTS: Hearing Room B

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge, **OR**

Join by telephone: Dial the telephone number provided in the email, and when prompted, enter the PIN (or Meeting ID) in the email.

5. The parties, witnesses, and members of the public should not attend the remote hearing in-person at the Commission's hearing room.

6. The September 8, 2020 deadline for Respondent to file its prehearing disclosures shall be vacated.

7. Respondent shall file and serve on counsel for Complainants on or before September 22, 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.

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.

9. The parties and all participants in the hearing shall comply with the remote hearing requirements and procedures in Decision No. R20-0613-I (issued on August 20, 2020) and Attachment A thereto, which are incorporated herein.

10. 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