

Decision No. R20-0653-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
DENYING RECONSIDERATION OF DECISION
NO. R20-0650-I AND ESTABLISHING
SUPPLEMENTAL PROCEDURES**

Mailed Date: September 9, 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* 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

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. On September 4, 2020 at 1:56 p.m., Complainants filed an Objection to Respondent’s Motion, objecting to the continuance of the hearing and extension of the prehearing disclosure filing deadline.

18. Decision No. R20-0650-I (issued on September 4, 2020) granted the Motion for Continuance.

B. Reconsideration of Decision No. R20-0650-I.

19. Complainants’ Objection to Respondent’s Motion was received and reviewed by the ALJ *after* Decision No. R20-0650-I had been finalized and was in the process of being issued by the Commission. The ALJ will construe Complainants’ Objection to Respondent’s Motion as a Motion for Reconsideration of Decision No. R20-0650-I.

20. In Decision No. R20-0650-I, the ALJ found that based upon representations made by Respondent’s newly retained counsel in the Motion for Continuance, the Motion states good

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

cause to grant the requested two-week continuance of the hearing and extension of time for filing Respondent's prehearing disclosures. The ALJ did not find that no one would be harmed by granting the short extension of time requested, as argued in the Motion for Continuance. Instead, the ALJ believed that the two-week continuance and extension of time were reasonable under the circumstances explained by Respondent's counsel.

21. Complainants objected to the continuance of the hearing and extension of the prehearing disclosure filing deadline. Complainants argue that Respondent is aware that he has been operating a common carrier for hire without authority since at least March 2020, that he should have followed Commission Rules by which he was bound as a non-attorney,⁷ and that Complainants will suffer harm if this proceeding is delayed.

22. After reconsideration, ALJ affirms his finding that, based upon representations made by Respondent's newly retained counsel in the Motion for Continuance, the Motion stated good cause to grant the requested two-week continuance of the hearing and extension of time for filing Respondent's prehearing disclosures. The ALJ denies the Motion for Reconsideration and affirms granting the Motion for Continuance.

23. Decision No. R20-0650-I also rescheduled the remote videoconference hearing and prehearing disclosure filing dates, as follows: (a) the September 8, 2020 deadline for Respondent to file its prehearing disclosures was vacated and rescheduled to on or before September 22, 2020; and (b) the remote hearing scheduled for September 14, 2020, at 9:00 a.m.,

⁷ See Decision No. R20-0563, Paragraph 16 at page 5, (issued on August 3, 2020) in Proceeding No. 20A-0097CP. That proceeding was an application by Estes Park Guided Tours 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 Estes Park, Colorado, on the one hand, and all points in Rocky Mountain National Park and Grand Lake, Colorado, on the other hand. The application was dismissed for failure of Estes Park Guided Tours to prosecute. No exceptions were filed and Decision No. R20-0563 became a Commission decision by operation of law, pursuant to § 40-6-109(2), C.R.S.

was vacated and rescheduled for September 29, 2020, at 9:00 a.m. The ALJ stated further that no further extensions of Respondent's prehearing disclosure filing deadline or continuances of the hearing would be granted, unless there is a showing of exceptional and extraordinary circumstances. The ALJ affirms these findings.

24. Finally, Decision No. R20-0650-I stated that 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 at the videoconference hearing scheduled for September 29, 2020. The ALJ affirms this finding.

C. Supplemental Requirements and Procedures for Remote Hearing Exhibits

25. Attachment A to this Decision provides supplemental procedures relating to Hearing Exhibits for the remote evidentiary hearing. These procedures are intended to replicate, as practicable, the presentation of evidence as it occurs when parties and witnesses are present in the hearing room. The requirements and procedures set forth in Attachment A to this Decision shall be in effect and followed by the parties for the videoconference hearing scheduled for September 29, 2020.

D. Advisements.

26. 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. Complainants Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys' Objection to Respondent's Motion, filed on September 4, 2020,

shall be construed as a Motion for Reconsideration of Decision No. R20-0650-I (issued on September 4, 2020).

2. Complainants Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys' Objection to Respondent's Motion, construed as a Motion for Reconsideration of Decision No. R20-0650-I, shall be denied. After reconsideration, Decision No. R20-0650-I is affirmed.

3. The parties shall comply with the procedures and requirements established in this Decision and Attachment A hereto, which are incorporated herein.

4. 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.

5. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge