

Decision No. R21-0142-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0020CP

IN THE MATTER OF THE APPLICATION OF ESTES PARK GUIDED 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
STEVEN H. DENMAN
SCHEDULING REMOTE EVIDENTIARY HEARING
AND ESTABLISHING PROCEDURES**

Mailed Date: March 11, 2021

I. STATEMENT

A. Summary

1. By this Decision, the Administrative Law Judge (ALJ) schedules a remote evidentiary hearing and establishes procedural requirements.

B. Procedural History

2. On January 5, 2021, Estes Park Guided Tours LLC (Applicant or EP 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.

3. On January 11, 2021, 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 all points in Estes Park Colorado, on the one hand, and all points in Rocky Mountain National Park located in the Counties of Boulder, Grand, and Larimer, State of Colorado, and Grand Lake, Colorado, on the other hand.

The 30-day intervention deadline set by the Notice expired on February 10, 2021.

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 August 15, 2021.¹

5. Applicant filed amendments to the Application on January 14, 2021, to amend Sections 2 (Contact Person for questions about the Application), 8 (Designated Agent for service of process), and 10(a) (Proposed Authority), and on February 19, 2021, to again amend Sections 2 and 8.²

6. The procedural history of the above captioned proceeding is set forth in Decisions previously issued in this matter and is repeated here as needed to put this Decision into context.

7. On January 22, 2021, Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (EP Trolleys), through counsel, filed its Entry of Appearance and Intervention. At the same time, EP Trolleys filed its Certificate PUC No. 55845S as Attachment 01, claiming to be an intervenor by right. Decision No. R20-0094-I (issued on February 22, 2021) acknowledged the intervention by right of EP Trolleys.

8. On February 8, 2021, Estes Valley Transport, Inc. (EV Transport), through counsel, filed its Entry of Appearance and Intervention, claiming to be an intervenor by right. On March 1, 2021, EV Transport filed an Amended Intervention, *nunc pro tunc*, and attached a copy of its Certificate PUC No. 54696. Decision No. R20-0113-I (issued on March 1, 2021) acknowledged the intervention by right of EV Transport.

9. The parties to this proceeding are EP Guided Tours, EP Trolleys, and EV Transport. All parties are represented by counsel.

¹ See § 40-6-109.5(2), C.R.S. (2019).

² The January 14, 2021 amendment to Section 10(a) of the Application amended the statement of the Proposed Authority to conform to the Commission's Notice.

C. Scheduling the Remote Hearing.

10. As noted in Decision No. R20-0094-I, it will be necessary to schedule a remote evidentiary hearing in this proceeding.

11. Due to the COVID-19 pandemic, in-person hearings at the Commission's offices have not been permitted for almost a year. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. Public access to the building containing the Commission's offices and hearing rooms has been restricted for many months. The pandemic has also resulted in restrictions on state employees' ability to travel, including travel to hold a hearing in Estes Park, Colorado. Since the COVID-19 pandemic began, the Commission has held numerous evidentiary hearings by videoconference and continues to do so successfully. Holding the hearing remotely in this proceeding is in the public interest and is consistent with public health advisories to prevent the spread of COVID-19.

12. Decision No. R20-0094-I directed counsel for the parties to confer about dates for a remote hearing when the parties and their witnesses will be available, as well as to file a Joint Status Report no later than March 8, 2021. The parties filed the Joint Status Report on March 4, 2021. After conferring with counsel for the parties by email, the ALJ has determined that counsel, the parties, and their witnesses will be available for the hearing on May 17 and 18, 2021. This Decision schedules the remote evidentiary hearing for those dates.

D. Procedures for the Remote Evidentiary Hearing.

13. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses

to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

14. The evidentiary hearing will be conducted via videoconference using GoToMeeting. Attachment A to this Decision provides information about the GoToMeeting platform and how to use GoToMeeting to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

15. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is vitally important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

16. Additional procedural requirements may be issued in future Interim Decisions.

II. **ORDER**

A. **It Is Ordered That:**

1. A remote evidentiary hearing on the above-captioned Petition is scheduled as follows:

DATES: May 17 and 18, 2021

TIME: 9:30 a.m. each day

METHOD: Join by videoconference online at the GoToMeeting link emailed to counsel before the hearing.

2. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the

Commission for the above-scheduled hearing. Instead, counsel and the parties will participate in the hearing from remote locations, consistent with the requirements of this Decision.

3. All participants must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

4. **Video-Conference Participation.** Counsel for the parties and witnesses are required to participate in the evidentiary hearing by videoconference using the GoToMeeting platform. Counsel for the parties must ensure that they and their respective witnesses are ready and able to participate in the evidentiary hearing by videoconference using GoToMeeting.

5. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses (a) have access to all pre-filed exhibits; and (b) can download and to view documents available from box.com *during the hearing*.

6. **Dispositive Motions, Responses, and Replies.** Counsel for the parties shall file and serve any dispositive motions by April 16, 2021. Responses to dispositive motions shall be due 14 days after the dispositive motion is served. The parties are permitted, but not required, to file replies to dispositive motions. Such replies shall be due 7 days after the response to a dispositive motion is served on counsel.

7. **Discovery.** Discovery and responses shall be governed by Rule 1405 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020).

8. **Stipulations and Prehearing Motions.** Counsel for the parties must file and serve stipulations and prehearing motions by May 7, 2021.

11. **Statements of Position.** The parties shall file and serve statements of position by October 5, 2021, limited to 30 pages exclusive of title page, tables of contents, appendices, and certificates of service. No responses shall be permitted.

12. In addition to the requirements set forth here and in Attachments A and B, the parties must comply with the Commission’s Rules of Practice and Procedure, 4 CCR 723-1 (2020).

13. 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