

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
GRANTING MOTION FOR LEAVE TO AMEND
AND SHORTENING RESPONSE TIME TO MOTION
FOR EXCHANGE OF INTERVENING PARTIES**

Mailed Date: April 9, 2021

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I. STATEMENT

A. Summary

1. By this Decision, the Administrative Law Judge (ALJ) grants Applicant's Unopposed Motion for Leave to File First Amended Witness Summaries and Exhibit List (Motion for Leave) filed by Estes Park Guided Tours LLC's (Estes Park Guided Tours or

Applicant) on April 7, 2021. This Decision also shortens response time to April 13, 2021 at Noon for filing responses to the Motion for Exchange of Intervening Parties and Corresponding Legal Counsel (Motion for Exchange) filed on April 8, 2021 by Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Shuttle), the successor in interest of Estes Valley Transport, Inc. (Estes Valley Transport).

B. Procedural History.

2. On January 5, 2021, 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).¹

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. 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.

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

¹ Estes Park Guided Tours 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. See § 40-6-109.5(2), C.R.S. (2019).

of process), and 10(a) (Proposed Authority), and on February 19, 2021, to again amend Sections 2 and 8.²

6. On January 22, 2021, Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys (Estes Park Trolleys), through counsel, filed its Entry of Appearance and Intervention, including its Certificate PUC No. 55845S as Attachment 01, claiming to be an intervenor by right. Decision No. R21-0094-I (issued on February 22, 2021) acknowledged the intervention by right of Estes Park Trolleys.

7. On February 8, 2021, Estes Valley Transport through counsel, filed its Entry of Appearance and Intervention, claiming to be an intervenor by right. On March 1, 2021, Estes Valley Transport filed an Amended Intervention, *nunc pro tunc*, and attached a copy of its Certificate PUC No. 54696. Under that Certificate, Estes Valley Transport may transport passengers in call-and-demand sightseeing service, between all points within a ten-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, and between said points, on the one hand, and all points within a 75-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, on the other hand.

8. Decision No. R21-0113-I (issued on March 1, 2021) acknowledged the intervention by right of Estes Valley Transport.

9. The parties to this proceeding are Estes Park Guided Tours, Estes Park Trolleys, and Estes Valley Transport. All parties are represented by counsel.

10. Decision No. R21-0142-I (issued on March 11, 2021) scheduled a remote evidentiary hearing for May 17 and 18, 2021 at 9:30 a.m. for each day.

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.

11. On April 5, 2021 at 3:05 p.m., Estes Park Guided Tours filed Applicant's First Amended Witness Summaries and Exhibit List (First Amended Witness and Exhibit List), as well as copies of 19 proposed hearing exhibits. In this amended pleading, Applicant has removed six endorsed witnesses but has added three new possible witnesses and added three new proposed hearing exhibits (20 through 22). While the First Amended Witness and Exhibit List showed the correct proceeding number (21A-0020CP) for the instant proceeding, it erroneously stated the caption as *Estes Valley Transport, Inc. and Fun Tyme Trolleys, LLC, doing business as Estes Park Trolleys, Complainants v. Estes Park Guided Tours, Respondent*.³

12. Decision No. R21-0203-I (issued on April 6, 2021) *inter alia* directed Estes Park Guided Tours, no later than April 8, 2021, to correct the caption on the First Amended Witness and Exhibit List and to request leave of the ALJ to amend the original Applicant's Witness Summaries and Exhibit List filed on February 19, 2021.

C. Motion for Leave.

13. On April 7, 2021, Estes Park Guided Tours filed the Motion for Leave, the corrected Applicant's First Amended Witness Summaries and Exhibit List, as well as copies of 22 proposed hearing exhibits. Estes Park Guided Tours argues that leave should be granted because the witnesses and exhibits are mostly the same as those filed on February 19, 2021, except that six endorsed witnesses were removed, three new possible witnesses were added, and three new proposed hearing exhibits (20 through 22) were added. Estes Park Guided Tours also asserts that no parties will be prejudiced, since the hearing is not scheduled until May 17 and 18, 2021. After conferral, counsel for Estes Park Trolleys advised that he would not oppose the

³ That caption was for Proceeding No. 20F-0290CP, which involved the same parties. See Decision No. R20-0906 (issued on December 22, 2020).

filing of the corrected First Amended Witness and Exhibit List, although he would reserve the same objections as he made before in a pending Motion to Strike and Objection filed on March 1, 2021. Counsel also indicated that he plans to submit his own amended witness summaries and exhibit list.

14. Since time is of the essence to act on the Motion for Leave, response time will be waived pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020).

15. Under the circumstances, the ALJ finds that Estes Park Guided Tours has shown good cause. The Motion for Leave will be granted.

D. Motion for Exchange.

16. On April 8, 2021, Estes Park Shuttle filed the EPS Entry of Appearance and Motion for Exchange. Estes Park Shuttle states that by Decision No. C21-0123 (issued on March 4, 2021) in Proceeding 21A-0050CP-Transfer, the Commission approved the transfer of Estes Valley Transport's Certificate PUC No. 54696 to Estes Park Shuttle. After the requirements for the final transfer were fulfilled, the Commission's Issue Letter, dated March 23, 2021, authorized Estes Park Shuttle to begin providing the services authorized by Certificate PUC No. 54696.

17. According to the application and attachments in Proceeding No. 21A-0050CP-Transfer, Estes Valley Transport transferred its authorities, assets, equipment, trade name, intellectual property, and goodwill to Estes Park Shuttle. Hence, Estes Park Shuttle is the successor in interest to Estes Valley Transport.

18. Estes Park Shuttle filed the Motion for Exchange to be granted standing to represent the interests of an intervenor as of right, originally held by Estes Valley Transport.

Estes Park Shuttle asserts that the operating rights in Certificate PUC No. 54696, which it now owns, will be directly affected by the outcome of this proceeding, it should be allowed to intervene as of right and procedurally step into the shoes of Estes Valley Transport as an intervenor as of right. Estes Park Shuttle also states that both it and Estes Park Trolleys would not be represented by the same legal counsel.

19. The ALJ notes that Estes Park Shuttle failed to confer with counsel for Estes Park Guided Tours, as required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1 (2020).

20. In order to provide Estes Park Guided Tours an opportunity to state its position on the Motion for Exchange, the ALJ will shorten response time to the Motion for Exchange to and including April 13, 2021 at Noon, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

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

II. ORDER

A. It Is Ordered That:

1. Applicant's Unopposed Motion for Leave to File First Amended Witness Summaries and Exhibit List (Motion for Leave) filed by Estes Park Guided Tours LLC on April 7, 2021 is granted.

2. Response time to the Motion for Leave is waived.

3. The Motion for Exchange of Intervening Parties and Corresponding Legal Counsel (Motion for Exchange) filed on April 8, 2014 by Estes Park Charters Corp., doing business as Estes Park Shuttle, the successor in interest of Estes Valley Transport, Inc. is taken under advisement.

4. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2020), response time to the Motion for Exchange is shortened to April 13, 2021 at Noon.

5. 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