

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0521EC

IN THE MATTER OF THE PETITION FOR A DECLARATORY ORDER FILED BY WILD SIDE 4 X 4 TOURS LLC, PURSUANT TO THE COMMISSION'S RULE OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(F).

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
RESCHEDULING REMOTE EVIDENTIARY HEARING,
MODIFYING DEADLINES, AND ADDRESSING MOTIONS**

Mailed Date: May 19, 2021

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I. STATEMENT, BACKGROUND, FINDINGS AND CONCLUSIONS

A. Summary

1. By this Decision, the Administrative Law Judge (ALJ) reschedules the evidentiary hearing for September 23 and 24, 2021, adjusts procedural deadlines to accommodate the later hearing dates, and grants outstanding motions, as discussed below.

B. Background

2. Only the procedural history necessary to understand this Decision are included. Wild Side 4 x 4, LLC (Wild Side) commenced this proceeding on November 23, 2020 by filing the above-captioned Petition for Declaratory Order (Petition) per Rule 1304(i) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

3. Since then, the Commission accepted the Petition, issued public notice of the Petition, stayed enforcement action against Wild Side, and referred this matter to an ALJ for disposition. Decision No. C20-0925-I adopted December 23, 2020.

4. Public Utilities Commission Staff, Estes Valley Transport, Inc. (Estes Valley), and Fun Tyme Trolleys LLC, doing business as Estes Park Trolleys (Fun Tyme), are parties to this proceeding as interveners. *See* Decision No. R21-0084-I issued February 16, 2021. Fun Tyme and Estes Valley both intervene to protect their interests in their respective permits. *Id.*

5. After holding a remote prehearing conference on March 2, 2021 at which all parties appeared, the ALJ scheduled this matter for a remote evidentiary hearing to be held on September 13 and 14, 2021, and established filing deadlines. Decision No. R21-0130-I issued March 8, 2021.

6. On April 8, 2021, Estes Park Charters Corp., doing business as Estes Park Shuttle (Estes Park Shuttle) filed an "Entry of Appearance and Motion for Exchange of Intervening Parties and Corresponding Legal Counsel" (Motion). And, on April 13, 2021, Estes Valley filed a Motion to Withdraw seeking both to withdraw as a party, and for counsel to withdraw as Estes Valley's attorney in this proceeding. No responses have been filed to either Motion.

C. Evidentiary Hearing Dates and Filing Deadlines.

7. Due to a conflict in the Commission's schedule, the original hearing dates are no longer available. As such, the ALJ is rescheduling the evidentiary hearing for September 23 and 24, 2021.¹

8. As noted in Decision No. R21-0130-I, Wild Side prefers an in-person hearing. It is still unknown when restrictions on state employee travel and in-person hearings will be lifted. Both restrictions may still be in place at the time of the hearing. It is also possible that restrictions on in-person hearings may be lifted, but restrictions on state employee travel may not (or vice versa). Given this, and for the reasons discussed in Decision No. R21-0130-I, the evidentiary hearing is scheduled to be held by video-conference,² with the caveat that if circumstances permit, it will be converted to an in-person hearing.³

9. At least 30 days before the scheduled hearing, the ALJ will inform the parties whether the hearing will be converted from a video-conference hearing to an in-person hearing. If it is converted, a written decision will issue; if it is not, this will be communicated informally to the parties.

10. Because the hearing will be held ten days later than originally scheduled, the ALJ is also modifying most filing deadlines established by Decision No. R21-0130-I so the parties may have the benefit of the additional time.

¹ The parties confirmed their availability for the new hearing dates by email.

² The ALJ anticipates holding an informal practice video-conference with the parties approximately one week before the hearing to confirm the parties are prepared to participate in the remote evidentiary hearing. Exhibits will be displayed electronically during the hearing. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Christie Nicks at Christie.Nicks@state.co.us.

³ If in-person hearings are permitted at the Commission's offices in Denver, but state employee travel is not permitted, the ALJ may reach out to the parties about whether the hearing may be held in-person in Denver. The ALJ has reserved the Commission's larger hearing room to preserve the possibility that an in-person hearing may be accommodated should restrictions on in-person hearings at the Commission's offices are lifted by the time of the hearing.

11. The procedures outlined in Decision No. R21-0130-I for holding the hearing by video-conference and the parties' agreements as approved by Decision No. R21-0130-I remain in effect. However, for the parties' convenience, they are repeated in the ordering paragraphs below.

12. The Commission will use the web-hosted service, Zoom⁴, to hold the hearing remotely. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the hearing. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

13. To minimize the potential that the video-conference 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.⁵

D. Pending Motions.

14. As noted, no responses have been filed to either of the two pending motions referenced above. The ALJ deems the failure to respond as confessing the motions. *See* Rule 1400(d), of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. As such, the Motions are unopposed.

15. Estes Park Shuttle seeks to intervene in this proceeding by taking the place of Estes Valley. Motion at 1. Estes Park Shuttle explains that since this proceeding was initiated, it

⁴ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All parties are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

⁵ The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

purchased Estes Valley's Permit No. 54696, and that the Commission approved Estes Park Shuttle's Application to Transfer this permit to it by Decision No. C21-0123 issued on March 4, 2021 in Proceeding No. 21A-0050CP-Transfer. *Id.* The permit transferred to Estes Park Shuttle is the same permit that formed the basis for Estes Valley's intervention and interest in this matter. *See* Response to Response of Petitioner and Motion to Strike at 4-8 filed on February 12, 2021; Entry of Appearance, Intervention and Response of Estes Valley Transport, Inc. filed on April 8, 2021; and filing titled "Attachment – PUC Confirmation Letter" filed on April 8, 2021. Given that Estes Valley's interest in this proceeding has been transferred to Estes Park Shuttle, and that no party has objected, Estes Park Shuttle will be permitted to intervene and Estes Valley will be dismissed as a party.

16. The Motion to Withdraw seeks to withdraw Estes Valley and its counsel from this proceeding because Estes Valley's permit has been transferred to Estes Park Shuttle. Motion to Withdraw at 1. For the same reasons discussed above, counsel for Estes Valley is permitted to withdraw from this proceeding. As noted, Estes Valley is dismissed as a party, so there is no need to address Estes Valley's request to withdraw from this proceeding.

17. The Motion to Withdraw also asks that Estes Valley's counsel continue to be served with filings in this proceeding after his withdrawal is granted. While it may not be possible to leave counsel on the service list after withdrawal, counsel will be able to receive filings in this proceeding through a different function in E-Filings that has already been or will be set up for counsel as a courtesy. Counsel should monitor the proceeding to confirm that he is receiving filings and if not, is responsible for following-up on his own with Commission Staff. The ALJ will take no additional action on this issue.

II. ORDER

A. **It Is Ordered That:**

1. Estes Valley Transport, Inc. (Estes Valley) is dismissed as a party and counsel for Estes Valley is permitted to withdraw. Consistent with the above discussion, Estes Park Charters Corp., doing business as Estes Park Shuttle is permitted to intervene in the place of Estes Valley.

2. The remote evidentiary hearing on the above-captioned Petition scheduled for September 13 and 14, 2021 is vacated and rescheduled as follows:

DATES: September 23 and 24, 2021
TIME: 9:00 a.m. each day
WEBCAST: Hearing Room A
PLACE: Join by video-conference using Zoom

3. 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, parties will participate in the hearing from remote locations, consistent with the requirements of this Decision.

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

5. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using Zoom. The parties must ensure that they and their respective witnesses are ready and able to participate in the evidentiary hearing by video-conference using Zoom.

6. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by video-conference, 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) are able to download and view documents available from box.com *during the hearing*.

7. **Dispositive Motions, Responses, and Replies Thereto.** The parties must file and serve dispositive motions by June 24, 2021. Responses to dispositive motions are due 21 days after the dispositive motion is served. The parties are permitted, but not required, to file replies to dispositive motions. Such replies are due 14 days after the response to a dispositive motion is served.

8. **Discovery.** Consistent with the above discussion, the parties must serve discovery requests by August 31, 2021. The parties are limited to issuing 20 interrogatories; 20 requests for production of documents; and 20 requests for admission. The parties must respond to discovery requests within seven days of the date the discovery requests are served. The parties may not take depositions.

9. **Hearing Exhibits, Hearing Exhibit Lists, and Witness Lists.** Wild Side must file and serve pre-marked hearing exhibits, hearing exhibit lists, and witness lists by August 19, 2021. Interveners must file and serve pre-marked hearing exhibits, hearing exhibit lists, and witness lists by August 30, 2021. The parties are not required to pre-file and serve hearing exhibits which will be used solely for impeachment, to refresh recollection, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and need not file them separately. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the title of each hearing exhibit (*i.e.*, substantive title of the document), and provide a

brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing.

10. **Stipulations and Prehearing Motions.** The parties must file and serve stipulations and prehearing motions by September 13, 2021.

11. **Statements of Position.** The parties must file and serve statements of position by October 15, 2021. No responses are 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 *Code of Colorado Regulations* 723-1.

13. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director