

Decision No. R24-0246-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0073CP

GREEN JEEP TOURS LLC,

COMPLAINANT,

V.

PURPLE MOUNTAIN TOUR COMPANY LLC AND ZACHARY BUGG AND BROOKE
LYNN CARSWELL,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
VACATING AND RESCHEDULING
EVIDENTIARY HEARING, AND
ESTABLISHING PROCEDURAL SCHEDULE**

Mailed Date: April 18, 2024

I. STATEMENT AND PROCEDURAL HISTORY

1. On February 12, 2024, Green Jeep Tours LLC (Complainant or Green Jeep) commenced this Proceeding by filing a Formal Complaint against Purple Mountain Tour Company LLC (Purple Mountain); Zachary Bugg, Lay Representative of Purple Mountain; and Brooke Lynn Carswell, Managing Director of Purple Mountain (collectively, Respondents). Green Jeep alleges that Respondents have “offered to sell and ha[ve] sold individual tickets” for transportation services without the proper certificate of public convenience and necessity in

violation of Rule 6016 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6 and requests relief.

2. Specifically, Green Jeep seeks 13 distinct grounds for relief based on Purple Mountain's alleged regulatory violation, including that findings be entered establishing Purple Mountain's alleged violation of Commission rules; that Bugg and Carswell "aided and abetted" Purple Mountain in violating Commission rules; that Respondents be enjoined from engaging in violative behavior; that cease and desist orders be entered against Respondents and their activities; and that Respondents be barred from obtaining Commission authority to operate in the future.

3. On February 16, 2024, after receiving the Formal Complaint, the Commission issued a Notice of Hearing setting this Proceeding for an evidentiary hearing to be held on April 22, 2024, commencing at 9:00 a.m.

4. Also on February 16, 2024, the Commission issued and sent to Respondents an Order to Satisfy or Answer the Formal Complaint notifying Respondents that a Formal Complaint had been asserted against them. The Order to Satisfy or Answer advised Respondents that a responsive pleading to the Formal Complaint or evidence that they had satisfied the allegations of the Formal Complaint was due "20 days from service upon you of this order and copy of the attached complaint." The Order to Satisfy or Answer was accompanied by a copy of the Notice of Hearing, Formal Complaint, verification, and attachments to the Formal Complaint. Twenty days after service of the Formal Complaint expired on March 7, 2024.

5. On February 21, 2024, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

6. Because the Commission had not received a response from Respondents within the time period established by the Order to Satisfy or Answer, on March 22, 2024, the undersigned ALJ issued Decision No. R24-0188-I ordering Respondents to file a responsive pleading within seven days of the Decision and requesting the parties to advise the ALJ of their preferred hearing format.

7. One week later, on March 29, 2024, Respondents moved for a one-week extension of time, up to and including April 5, 2024, within which to respond to the Formal Complaint.¹

8. On April 5, 2024, Respondents filed their Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing, along with exhibits indicating that Respondents were no longer offering or accepting payment for single-ticket transportation sales.

9. On April 9, 2024, Complainant filed its Response in Opposition to Motion for Extension of Time to Respond to Complaint.

10. By Decision No. R24-0220-I, issued April 9, 2024, the undersigned ALJ scheduled a prehearing conference to be held April 11, 2024, to discuss issues raised by Respondents' Motion for Extension of Time to Respond to Complaint; address the timing and location of the hearing; and establish a procedural schedule.

11. On April 11, 2024, the undersigned ALJ held the prehearing conference as scheduled. Richard Bara appeared on behalf of Complainant. Aaron Atkinson appeared on behalf of Respondents, along with Zachary Bugg and Brooke Lynn Carswell.

¹ See Respondents' Motion for Extension of Time to Respond to Complaint (Motion for Extension of Time), filed Mar. 29, 2024.

12. The ALJ granted Respondents' Motion for Extension of Time and accepted Respondents' Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing into the record by Decision No. R24-0229-I, issued April 12, 2024.

13. This Decision memorializes the issues discussed at the prehearing conference, including issues related to Respondents' Motion for Extension of Time, establishes a procedural schedule based on those discussions, and vacates and reschedules the evidentiary hearing.

II. VACATION AND RESCHEDULING OF EVIDENTIARY HEARING

14. As noted above, an evidentiary hearing is scheduled in this Proceeding for Monday, April 22, 2024, commencing at 9:00 a.m.

15. In separate statements filed with the Commission on April 5, 2024, both parties expressed their preference for an in-person evidentiary hearing.

16. At the prehearing conference, Complainant explained that it would like to engage in discovery prior to the hearing, but, because Respondents had not filed their responsive pleading until April 5, 2024, Complainant would not have enough time to conduct discovery before the April 22, 2024 hearing. Complainant therefore requested that the hearing be delayed until September 2024 to allow time to conduct discovery and to accommodate the upcoming busy summer transportation season in Estes Park.

17. However, Respondents indicated that a lengthy delay in the Proceeding would be prejudicial to them. They expressed their desire to resolve this dispute as quickly as possible.

18. Complainant responded that if a hearing were to be scheduled during the busy summer season, its preference would be to hold the hearing in-person in Estes Park, Colorado, where the parties, but not their respective counsel, are based.

19. The ALJ finds and concludes that Complainant would not have enough time to conduct discovery between the filing of Respondents' Evidence of Satisfaction and Response to Complaint on April 5, 2024, and the scheduled hearing date of April 22, 2024. A delay and rescheduling of the evidentiary hearing is therefore appropriate.

20. However, the ALJ agrees with Respondents that a 6-month delay until September 2024 would likewise be prejudicial to Respondents. Respondents are entitled to have the issues heard and resolved in a timely manner.

21. The ALJ will therefore vacate the April 22, 2024 evidentiary hearing, and reschedule the evidentiary hearing for Thursday, June 27, 2024, commencing at 1:00 p.m., in Estes Park, Colorado. The ALJ will advise the parties of the precise location of the hearing as soon as possible. The ALJ has scheduled the hearing to commence in the afternoon to allow parties and their counsel time to travel between their respective locations and Estes Park in one day.

22. In the event circumstances make holding the hearing in-person in Estes Park untenable, the ALJ may, at her discretion, change the location or the format of the hearing.

III. PROCEDURAL SCHEDULE

23. To ensure that this matter proceeds smoothly, the ALJ is adopting the following deadlines and procedural schedule to govern this Proceeding:

Service of Written Discovery Requests	April 25, 2024
Deposition Deadline	May 15, 2024
Discovery Deadline	May 31, 2024
Complainant's Exhibits, Witness Lists, and Exhibit Lists	May 31, 2024
Prehearing Motions	June 7, 2024
Respondents' Exhibits, Witness Lists, and Exhibit Lists	June 14, 2024
Stipulations and/or Settlement	June 14, 2024
Complainant's Supplemental Exhibits, Witness Lists, and Exhibit Lists	June 21, 2024
Evidentiary Hearing	June 27, 2024, at 1:00 p.m.
Post-hearing Statements of Position	July 12, 2024

IV. UNIFIED NUMBERING SYSTEM FOR EXHIBITS

24. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- a) Complainant Hearing Exhibits 100-199
- b) Respondents Hearing Exhibits 200-299

25. The parties are instructed to adhere to this exhibit numbering system for any prefiled testimony filed in this Proceeding, as well as any documentary evidence sought to be offered into evidence.

26. All exhibits offered into evidence at the evidentiary hearing must be labeled with a header bearing: a) the identity of the party offering the exhibit; b) the proceeding number; and c) the exhibit number.

V. ADVISEMENTS

27. All parties are on notice that failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

28. Complainant Green Jeep Tours bears the burden of proof by a preponderance of the evidence that its Formal Complaint is meritorious. The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. That is, the fact finder must determine whether the existence of a contested fact is more probable than its non-existence. A party meets this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

29. The parties are on notice that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

30. The parties are also on notice that if circumstances change before the hearing date, the ALJ may modify this hearing to be held fully remote or hybrid (in person with the option for witnesses, parties, and/or representatives to appear virtually), or may enter such other orders as appropriate in the circumstances.

31. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at: <https://www.colorado.gov/pacific/dora/pucrules>.

32. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

33. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

VI. ORDER

A. It Is Ordered That:

1. The evidentiary hearing scheduled for April 22, 2024, is vacated.
2. An **in-person** evidentiary hearing is scheduled as follows:

Date: **June 27, 2024**

Time: **1:00 p.m.**

Location: Estes Park, Colorado

The parties will be advised of the precise location for the hearing as soon as that information is available.

3. The following deadlines and procedural schedule are adopted:

Service of Written Discovery Requests	April 25, 2024
Deposition Deadline	May 15, 2024
Discovery Deadline	May 31, 2024
Complainant's Exhibits, Witness Lists, and Exhibit Lists	May 31, 2024
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Evidentiary Hearing	June 27, 2024, at 1:00 p.m.
Post-hearing Statements of Position	July 12, 2024

4. The parties shall adhere to the following numbering system for their respective exhibits and prefiled testimony, as set forth below:

Complainant Green Jeep Tours, LLC	Exhibits 100-199
Respondents Purple Mountain Tour Company, LLC; Zachary Bugg; and Brooke Lynn Carswell	Exhibits 200-299

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director