

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0599CP

IN THE MATTER OF THE APPLICATION OF CARING HANDS TRANSPORT, LLC DOING BUSINESS AS CARING HANDS COMMUNITY SERVICES, 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
ALENKA HAN
SETTING SECOND REMOTE PREHEARING
CONFERENCE,
SCHEDULING EVIDENTIARY HEARING, AND
ADOPTING PROCEDURAL SCHEDULE**

Mailed Date: April 25, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision sets a second remote prehearing conference for Monday, April 29, 2024, at 10:30 a.m.; schedules a fully remote evidentiary hearing for Tuesday, June 25, 2024, commencing at 9:00 a.m.; and adopts a procedural schedule to govern this matter.

B. Procedural History

2. On December 11, 2023, Caring Hands Transport, LLC, doing business as Caring Hands Community Services (Caring Hands or Applicant) initiated this matter by filing an Application for New Permanent Authority to Operate as a Common Carrier Under a Certificate of Public Convenience and Necessity.¹ Caring Hands' Application indicates that it seeks to provide

¹ Application for New Permanent Authority to Operate as a Common Carrier, p. 1, filed Dec. 11, 2023.

scheduled shuttle service for its senior clients and clients with special needs to and from its day program facility. Caring Hands seeks to provide such service to and from the Counties of Adams, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, Logan, Weld, Yuma, Pueblo, Morgan, Park, Mesa, Jackson, Lake, Gilpin, Elbert, Fremont, Garfield, and Grand.²

3. On December 26, 2023, the Public Utilities Commission (the Commission) provided public notice under § 40-6-108(2), C.R.S., of the Application. As noticed, the Application seeks:

Authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in scheduled service between all points in the Counties of Adams, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, Logan, Weld, Yuma, Pueblo, Morgan, Park, Mesa, Jackson, Lake, Gilpin, Elbert, Fremont, Garfield, and Grand, State of Colorado.³

The Notice of Applications and Petitions Filed also indicated that Applicant Caring Hands had not filed testimony with its Application and was seeking a Commission decision within 250 days.

4. Four entities subsequently submitted their Interventions:

- a) On January 2, 2024, Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer Tours), filed its Petition for Intervention and Entry of Appearance, submitted by Explorer Tours' president and owner, Roman Lysenko.
- b) Thereafter, on January 24, 2024, several entities represented by Mark Valentine of Keyes & Fox, LLP, filed a joint Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for Hearing. The entities who jointly intervened are: Tazco, Inc. (Tazco); Estes Park Charters, Corp. (Estes Park); and Home James Transportation Services, Ltd. (Home James) (collectively referred to as the Tazco Intervenors).

² *Id.* at p. 3.

³ Notice of Application and Petitions Filed, p. 2, filed Dec, 26, 2023.

5. On January 31, 2024, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

6. By Decision No. R24-0203-I, issued April 1, 2024, the ALJ acknowledged the Interventions of right filed by the four Intervenors.

7. Decision No. R24-0203-I also scheduled a prehearing conference to be held Tuesday, April 16, 2024, at 10:30 a.m. to move this Proceeding forward.

8. On April 16, 2024, the undersigned ALJ held the prehearing conference as scheduled. As permitted by Decision No. R24-0203-I, Matthew Staffiero appeared on behalf of Applicant Caring Hands, and Roman Lysenko appeared on behalf of Intervenor Explorer Tours. The Tazco Intervenors were represented at the prehearing conference by Mr. Valentine.

9. This Decision memorializes the issues discussed at the prehearing conference. In particular, it establishes a procedural schedule based on those discussions, schedules an evidentiary hearing, and, at the parties' request, schedules a second prehearing conference.

II. REMOTE PREHEARING CONFERENCE.

10. At the April 16, 2024, prehearing conference, the parties discussed the scope of Caring Hands' Application, and explored whether Caring Hands might be better served by pursuing a different form of authorization from the Commission, or no authority at all.

11. Mr. Staffiero expressed his willingness to consider Caring Hands' options and service offerings and indicated he would discuss the matter further with Caring Hands' leadership and the Commission's transportation section.

12. To ensure Caring Hands pursues authority tailored to the services it offers, the parties requested that the ALJ schedule a second prehearing conference to further discuss the issue.

13. The parties and the ALJ agreed that a second prehearing conference be held **Monday, April 29, 2024, at 10:30 a.m.** The ALJ will therefore schedule a fully remote prehearing conference for that date and time.

14. Participants will appear at the prehearing conference from remote locations by video conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

15. 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 participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.⁴

16. The parties, particularly Applicant, should be prepared to discuss the type(s) of transportation services Caring Hands seeks to provide; how clients will compensate Caring Hands for transportation services (if at all); whether Caring Hands intends to provide the services subject to a federal or state contract; and what PUC authority, if applicable, is necessary for Caring Hands to provide the transportation services it seeks to offer.

17. *All parties are on notice* that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties

⁴ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this proceeding. 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.

seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

III. PROCEDURAL SCHEDULE AND EVIDENTIARY HEARING

A. Procedural schedule

18. At the prehearing conference held on April 16, 2024, the ALJ and the parties agreed to the following deadlines and procedural schedule to govern this Proceeding:

ACTION	DEADLINE
Applicant's Exhibits, Exhibit List, and Witness List	May 3, 2024
Intervenors' Exhibits, Exhibit List, and Witness List	May 24, 2024
Prehearing Motions	May 31, 2024
Stipulations and/or Settlement	June 6, 2024
Applicant's Supplement Exhibits, Exhibit List, and Witness List	June 14, 2024
Evidentiary Hearing	June 25, 2024, at 9:00 a.m.
Post-hearing Statements of Position	July 12, 2024

19. The ALJ finds and concludes that the above schedule allows the parties sufficient time to address any disputed issues that may arise and prepare for the hearing, while ensuring that the matter can be fully resolved and a decision issued before the October 7, 2024 expiration of the statutory time period established by §40-6-109.5(2), C.R.S. The ALJ will therefore adopt this procedural schedule.

B. Evidentiary Hearing

20. All parties expressed a preference for holding a fully remote evidentiary hearing. The undersigned ALJ will therefore schedule a fully remote evidentiary hearing. If circumstances change, the parties may request a different hearing format or the ALJ may change the hearing format.

21. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web-conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

22. Based upon the discussion at the April 16, 2024, prehearing conference, the ALJ will schedule the fully remote evidentiary hearing for **June 25, 2024, commencing at 9:00 a.m.**

23. **Informal Video-Conference Practice Session:** The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

24. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us and stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

C. Unified Numbering System for Exhibits

25. 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) Caring Hands: | Hearing Exhibits 100-199 |
| b) Explorer Tours: | Hearing Exhibits 200-299 |
| c) Tazco Intervenors: | Hearing Exhibits 300-399 |

D. Advisements

26. 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.

27. Applicant Caring Hands 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.

28. 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.

29. 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.

30. 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>.

31. 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.

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

IV. ORDER**A. It is Ordered That:**

1. A second fully remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Monday, April 29, 2024
TIME: 10:30 a.m.
PLACE: Join by video conference using Zoom

2. A fully remote evidentiary hearing in this Proceeding is scheduled as follows:

DATE: Tuesday, June 25, 2024
TIME: 9:00 a.m.
PLACE: Join by video conference using Zoom

3. Participants in the hearings 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 hearings. Instead, they must participate in the hearings from remote locations, consistent with the requirements of this Decision.

4. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

5. The ALJ will hold an informal Zoom practice session upon request.

6. The following deadlines and procedural schedule are adopted:

ACTION	DEADLINE
Applicant's Exhibits, Exhibit List, and Witness List	May 3, 2024
Intervenors' Exhibits, Exhibit List, and Witness List	May 24, 2024
Prehearing Motions	May 31, 2024
Stipulations and/or Settlement	June 6, 2024
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Post-hearing Statements of Position	July 12, 2024

7. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will only accommodate remote participation 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 view documents available from box.com during the hearing.

8. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

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

PARTY	ASSIGNED EXHIBIT NUMBERS
Caring Hands Transport, LLC, doing business as Caring Hands Community Services	Hearing Exhibits 100-199
Mountain Star Transportation LLC, doing business as Explorer Tours	Hearing Exhibits 200-299
Tazco, Inc.; Estes Park Charters, Corp.; and Home James Transportation Services, Ltd. (Tazco Intervenors)	Hearing Exhibits 300-399

10. 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

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