

Decision No. R24-0454-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 GRANTING MOTION TO VACATE,
VACATING EVIDENTIARY HEARING, AND
SCHEDULING PREHEARING CONFERENCE**

Issued Date: June 26, 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), alleging 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 Commission’s Rules Regulating Transportation by Motor Vehicles, 4 *Code of Colorado Regulations* (CCR) 723-6, and requests relief.

2. By Decision No. R24-0246-I, issued April 18, 2024, the undersigned ALJ scheduled an in-person evidentiary hearing to be held this Thursday, June 27, 2024, in Estes Park, Colorado. Decision No. R24-0246-I also established a procedural schedule to govern this Proceeding.

3. Under that schedule, Complainant was to file its initial witness and exhibit list, (along with any exhibits), by May 31, 2024, and any supplemental witness and exhibit list by June 21, 2024. Respondents' exhibits and witness and exhibit list were due June 14, 2024. To date, Complainant has not filed its exhibits or its witness and exhibit list. Respondents state that although they provided Complainant with their witness and exhibit list, they inadvertently failed to file the list with the Commission. To remedy this, Respondents filed a Notice to Commission Regarding Witness and Exhibit List, along with a copy of their Witness and Exhibit List, on June 25, 2024, two days in advance of the scheduled evidentiary hearing.

4. Since the issuance of Decision No. R24-0246-I, the parties have engaged in contentious discovery disputes that culminated in Respondents' Motion for Protective Order and Complainant's responsive Motion to Strike the latter. In their Motion for Protective Order, Respondents argued that Complainant is attempted to relitigate issues addressed in Proceeding No. 23A-0078CP, Purple Mountain's Application for a Certificate of Public Convenience and Necessity (CPCN), and that Complainant's discovery requests were too broad. In Decision No. R24-0371-I, issued May 31, 2024, the ALJ partially agreed, granting Respondents' Motion for Protective Order in part and limiting discovery to events occurring after the evidentiary hearing held in Proceeding No. 23A-0078CP. Decision No. R24-0371-I also denied Complainant's Motion to Strike and request for attorney fees and ordered Respondents to

respond to the outstanding discovery requests within two weeks of issuance of Decision No. R24-0371-I, or on or before June 14, 2024.

5. On May 29, 2024, Respondents filed a Motion for Summary Judgment, arguing (among other things), that they had satisfied Complainant's Formal Complaint, that Complainant was improperly attempting to relitigate issues addressed in Purple Mountain's CPCN Application, Proceeding No. 23A-0078CP, and that Complainant had not asserted a cognizable claim against Respondents Bugg and Carswell.

6. Complainant responded to the Motion for Summary Judgment on June 10, 2024, with its Response in Opposition to Respondents' Motion for Summary Judgment Together With Complainant's Motion for Continuance and Attorney Fees and Costs (Response to Motion for Summary Judgment). The Response to Motion for Summary Judgment raises several arguments, including Complainant's assertion that each case before the Commission "must be decided on its own merits and there is no *stare decisis*;" that, at the prehearing conference, the undersigned ALJ "determined" that Respondents had not satisfied the Formal Complaint; and that claims asserted against Respondents Bugg and Carswell are proper because Purple Mountain's status as a closely-held corporation makes Purple Mountain Bugg's and Carswell's "alter ego."¹

7. On June 21, 2024, one week after Respondents served Complainant with their discovery responses, Complainant filed a Motion to Vacate and Reschedule Hearing[,] to Re-Set Pre-Hearing Deadlines Including Complainant's Witness List and Exhibits[,] and to Waive Response Time (Motion to Vacate).

¹ Complainant's Response in Opposition to Respondents' Motion for Summary Judgment together with Complainant's Motion for Continuance and Attorney Fees and Costs (Response to Motion for Summary Judgment), pp. 2-6, filed June 10, 2024.

8. Subsequently, on June 24 and 25, 2024, Respondents filed their Response to the Motion to Vacate.

II. MOTION TO VACATE

9. Complainant raises several arguments in its Motion to Vacate. Primarily, Complainant asserts that although Respondents have filed responses to the outstanding discovery requests as required by Decision No. R24-0371-I, those “responses are incomplete” and “some requests for production were completely ignored.”² Complainant contends that the delay and alleged inadequacy of Respondents’ responses to discovery requests have rendered Complainant “unable to file its witness list and exhibits.”³

10. By way of example, Complainant indicates that Respondents have “not yet produced” contracts Respondents allegedly included with “Get Your Guide,” “Trip Advisor,” or “Viator.”⁴ Complainant maintains that Decision No. R24-0371-I “mandated” that Respondents produce the requested documents and that Respondents’ alleged failure to produce the requested documents further warrants the vacation of the June 27, 2024 evidentiary hearing.

11. In response, Respondents argue that Complainant has failed to establish the good cause necessary to support the vacation and continuance of the evidentiary hearing. As Respondents note, “[g]ood cause exists where the movant shows ‘unforeseen and exceptional

² Complainant’s Motion to Vacate and Reschedule Hearing to Re-Set Pre-Hearing Deadlines Including Complainant’s Witness List and Exhibits and to Waive Response Time (Motion to Vacate), p. 3, § IV, filed June 21, 2024.

³ *Id.* at pp. 3-4, § V.

⁴ *Id.* at p. 4, § V.

circumstances requiring a continuance.’”⁵ Respondents argue that Complainant has not met this test. Respondents point out that, despite receiving their Motion for Summary Judgment on May 29, 2024, and knowing that Respondents’ discovery responses were not due until June 14, 2024, Complainant waited nearly two weeks before seeking a continuance in its Response to the Motion for Summary Judgment.

12. Respondents also highlight Complainant’s “recurring struggle to meet case management obligations,”⁶ pointing out that despite Complainant’s assertion that responding to Respondents’ two motions “have had the effect of stymying Complainant’s ability to prepare for hearing and meet the deadlines set forth in [Decision No.] R24-0246-I,”⁷ Complainant’s deadlines to respond to the motions and file its witness and exhibit lists actually fell over a 23-day period.⁸ Respondents contend that Complainant’s time management issues do not constitute good cause for a continuance.

13. Finally, Respondents point out a number of deficiencies in Complainant’s Motion to Vacate and failures to comply with the applicable rules of procedure, first by improperly incorporating a motion into its “response to the original motion” in violation of Colorado Rule of Civil Procedure (C.R.C.P.) 121(c), § 1-15(1)(d); and second by failing to certify that the Motion to Vacate “has also been served upon the moving attorney’s client” as required by C.R.C.P.

⁵ Respondents’ Brief in Opposition to Complainant’s Request for Continuance (Brief in Opposition), p. 4, § 2, filed June 24, 2024, quoting *Todd v. Bear Valley Village Apts.*, 980 P.2d 973, 976, (Colo. 1999) (Noting that delaying litigation “devalues judgments, creates anxiety in litigants and uncertainty for lawyers, results in loss or deterioration of evidence, wastes court resources, needlessly increases the costs of litigation, and creates confusion and conflict in allocation of court resources. . . . As a result, ‘continuance of scheduled trials should be limited to circumstances in which unforeseen and exceptional circumstances require diligent attorneys to request an adjournment.’ (quoting *Solomon and Somerlet*, 980 P.2d 973, 976 (Colo. 1999)).

⁶ Brief in Opposition, p. 5.

⁷ Response in Opposition to Respondents’ Motion for Summary Judgment together with Complainant’s Motion for Continuance and Attorney Fees and Costs (Response to Motion for Summary Judgment), p. 7, § III, ¶ 2, filed June 10, 2024.

⁸ Brief in Opposition, p. 5.

121(c), § 1-11. Most notably, Respondents assert that Complainant “failed to confer” with Respondents before filing the Motion to Vacate.⁹ Conversely, Complainant represents that it “conferred with Respondents’ counsel” and notes “Respondents are opposed to this motion. This is understandable.”¹⁰ It is impossible for the undersigned ALJ to know, based on these diametrically-opposed declarations, whether the parties conferred or not.

14. “The decision to grant or deny a request for a continuance is left to the sound discretion of the trial court.”¹¹

15. As Complainant notes, though, it also true that a fact finder can abuse that discretion by refusing to continue a hearing if one or more parties was improperly deprived of sufficient time to pursue to discovery to prepare for hearing or respond to outstanding motions.¹²

16. Here, the ALJ concurs with Respondents that Complainant’s Motion to Vacate fails to comply with several rules. Perhaps most glaringly, the Motion to Vacate does not certify that Green Jeep’s counsel served a copy of the motion on Complainant. C.R.C.P. 121(c), § 1-11 makes plain that any motion for continuance omitting such certification “will not be considered.”

17. Nevertheless, and despite the reasons for this Proceeding’s posture, it is evident that the parties to this Proceeding—particularly Complainant—are not currently prepared to commence an evidentiary hearing tomorrow. As Respondents implicitly acknowledge, delays have caused the discovery and motion deadlines to bump up closely against the evidentiary hearing date.

⁹ *Id.* at p. 6.

¹⁰ Motion to Vacate, p. 4, § VI.

¹¹ *Todd*, 980 P.2d at 976.

¹² See *Miller v. First Nat’l Bank*, 399 P.2d 99, 100-01 (Colo. 1965) (finding trial court abused its discretion by refusing to grant a continuance to allow nonmovant time to conduct discovery to respond to pending motion for summary judgment).

18. Respondents demonstrated that they served their Witness and Exhibit List on Complainant on June 19, 2024, however, the ALJ notes that, pursuant to Decision No. R24-0246-I, Respondents' Witness and Exhibit List was due five days earlier on June 14, 2024, and was not filed with the Commission until eleven days after the deadline on June 25, 2024. Even if inadvertent, Respondents' delay in filing their Witness and Exhibit List until two days before the hearing has impeded the Commission's ability to prepare for the hearing.

19. Moreover, this morning (June 26, 2024) — the day before the scheduled evidentiary hearing — Complainant filed a cross Motion for Summary Judgment, attaching numerous exhibits, and seeking an order finding that Respondents have violated Commission rules. These cross motions for summary judgment need to be addressed before the commencement of an evidentiary hearing in this Proceeding. The ALJ notes that vacating and continuing the hearing will provide the Commission with additional time necessary to give the parties' various late-filed motions their due consideration.

20. Simply put, this Proceeding is not currently postured to proceed to hearing.

21. For these reasons, the ALJ finds and concludes that continuing the hearing is necessary to give all parties, as well as the Commission, sufficient time post-discovery to prepare for the hearing.

22. The ALJ will therefore grant Complainant's Motion to Vacate and Reschedule the evidentiary hearing scheduled to be held June 27, 2024.

23. However, the ALJ admonishes the parties—particularly Complainant—that additional delays in this Proceeding will not be tolerated and future requests to continue the hearing, in the absence of true emergency circumstances, will not be considered. Nor will new

discovery be permitted. Under the existing procedural schedule, discovery in this Proceeding should be concluded. The only discovery in which the parties should now be engaged is the completion of any outstanding discovery requests. With this continuance, Complainant should now have the time it claims to need to complete its hearing preparation.

III. PREHEARING CONFERENCE

24. To ensure that this Proceeding is not further and unnecessarily delayed, the ALJ will schedule a fully remote prehearing conference on **Thursday, June 27, 2024, at 11:00 a.m.** for the purpose of rescheduling the evidentiary hearing. The parties and their counsel are instructed to come to the prehearing conference with their calendars and prepared to reschedule the evidentiary hearing.

25. Any prehearing deadlines that need to be re-set will also be scheduled at the prehearing conference.

26. 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 seek and dismissing or sustaining the Formal Complaint. 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.

IV. ORDER

A. It Is Ordered That:

1. Complainant's Motion to Vacate and Reschedule Hearing, filed June 21, 2024, is granted.

2. The evidentiary hearing scheduled for Thursday, June 27, 2024, in Estes Park, Colorado, is vacated.

3. The parties may not engage in further discovery.

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

DATE: Thursday, June 27, 2024

TIME: 11:00 a.m.

PLACE: Join by video conference using Zoom

5. 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, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

7. 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

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director