

Decision No. R24-0836-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0236CP

MOUNTAIN STAR TRANSPORTATION, LLC DOING BUSINESS AS RED ROCKS SHUTTLE,

COMPLAINANT,

V.

ON LOCATION EVENTS, LLC DOING BUSINESS AS SHUTTLES TO RED ROCKS, AND ACE EXPRESS COACHES, LLC AND RAMBLIN' EXPRESS, INC.,

RESPONDENTS.

**INTERIM DECISION
DENYING MOTION FOR PROTECTIVE ORDER**

Issued Date: November 15, 2024

I. STATEMENT

1. This proceeding concerns the formal complaint filed by Mountain Star Transportation, LLC doing business as Red Rocks Shuttle ("Mountain Star" or "Complainant") on May 24, 2024, against On Location Events LLC, doing business as Shuttles to Red Rocks ("On Location"), Ace Express Coaches, LLC ("Ace Express") and Ramblin' Express, Inc. ("Ramblin' Express").

2. On June 5, 2024, the Commission issued its Order Setting Hearing and Notice of Hearing and Order to Satisfy or Answer, which was then amended on June 6, 2024. The Order to Satisfy or Answer, as amended, required the respondents to satisfy the matters in the complaint or to answer the complaint within 20 days from service.

3. On June 12, 2024, the Commission referred this proceeding by minute entry to an Administrative Law Judge.

4. On June 25, 2024, the On Location Events, LLC Motion to Dismiss was filed by On Location. Similarly, on June 26, 2024, the Motion to Dismiss and Notice of Technical Difficulty was filed by Ace Express and Ramblin' Express (collectively, "Joint Movants"). Based upon the technical difficulties incurred, the Motion to Dismiss was filed nunc pro tunc to June 25, 2024.¹

5. On July 10, 2024, the Response to Motion to Dismiss was filed by Complainant. Complainant did not address the merits of the motion, but rather contended that such matters should be addressed at the scheduled evidentiary hearing.

6. On July 25, 2024, the Ace Express and Ramblin' Express Motion for Protective Order [sic] was filed. At the time of the filing, no Answers to the Complaint had been filed by any of the Respondents, due to the pending Motions to Dismiss.

7. By Decision No. R24-0555-I, issued August 1, 2024, a limited hearing was scheduled to address Complainant's representation and to resolve disputed jurisdictional facts.

8. At the scheduled time and place, the limited hearing was convened.

9. By Decision No. R24-0771-I, issued October 25, 2024, the Motion to Dismiss filed by the Joint Movants and the Motion to Dismiss filed by On Location were both denied.

¹ Rule 1201(d) of the Rules of Practice and Procedure, 4 CCR 723-1.

10. By Decision No. R24-0771-I, Ace Express, Ramblin' Express, and On Location were each ordered to file their respective Answer to the Formal Complaint filed in this proceeding on or before November 12, 2024.

II. MOTION FOR PROTECTIVE ORDER

11. The motion for protective order filed by Joint Movants states that it is filed pursuant to Rule 1101(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and seeks a protective order for information sought in discovery requests from Complainant served on July 14, 2024.

12. Specifically, Complainant requested from the Joint Movants:

...the number of round-trips you made for On Location Events, LLC DBA Shuttles to Red Rocks for each of the years 2021, 2022, 2023, 2024, and up to today's date.

...the rate paid by On Location Events, LLC for each round-trip to Red Rocks made by ACE Express Coaches, LLC for each of the years 2021, 2022, 2023, and 2024.²

13. Joint Movants state that Complainant seeks to discover the price paid by On Location to Joint Movants for service pursuant to their contract and to know the degree to which service was provided to On Location pursuant to those contracts. This information is at the heart of the market for service to Red Rocks and should be treated as highly confidential.³

14. As noted, at the time of the filing of the Motion, multiple Motions to Dismiss were pending and the limited evidentiary hearing on the issues of representation and jurisdictional facts had not occurred. Joint Movants thus argued that the case was not at issue yet, as they had not filed

² Ace Express and Ramblin Express Motion for Protective Order [sic], p. 1-2, filed July 25, 2024.

³ *Id.* at 2.

their Answer yet and it would be inappropriate for the Complainant to receive discovery responses if it was determined Complainant had failed to state a valid claim.⁴

15. Joint Movants also argue that this type of information has been protected in other cases, citing to Proceeding No. 22A-0315EG and Decision No. C22-0843-I.⁵

16. Joint Movants argue that the owner of Complainant, Mr. Roman Lysenko, was not represented by counsel and should not be permitted to receive highly confidential information that would give him a competitive advantage in the market for services to Red Rocks.⁶ However, it should be noted that Mr. Lysenko obtained counsel for the limited hearing and has counsel as of the date of this Decision.

17. Based on these representations, Joint Movants thus seek a protective order indicating that Mr. Lysenko and Complainant may not receive pricing and performance information as set forth in their requests and that he could not receive any requests until the case is at issue.

18. As stated above, Joint Movants state that the Motion is filed pursuant to Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1. Under Rule 1101(b), a motion seeking highly confidential protection:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protections for the highly confidential information; and that, if

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;

- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

19. Joint Movants have plainly failed to comply with the requirements of Rule 1101(b). They have not included information that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protections for the highly confidential information or that, if adopted, the highly confidential protections proposed by the Joint Movants will afford sufficient protection for the highly confidential information. Joint Movants also did not include a specific form of nondisclosure agreement that they request be filled out by anyone seeking access to the information, nor did they include an affidavit containing names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known. Finally, they did not attach to their Motion an exhibit containing the information for which highly confidential protection is requested or explain why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

20. Given Joint Movants' failure to comply with Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1, and that their arguments regarding the case not yet being at issue and Mr. Lysenko's representation being moot after the limited evidentiary hearing, the

undersigned ALJ will deny the Motion without prejudice. Joint Movants may file an updated Motion for Protective Order that complies with Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1, should they see fit.

III. ORDER

A. It Is Ordered That:

1. The Ace Express and Ramblin Express Motion for Protective Order [sic] filed by Ace Express Coaches, LLC and Ramblin' Express, Inc. on July 25, 2024, is denied without prejudice.

2. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

Rebecca E. White,
Director