

Decision No. R23-0103-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0473CP

IN THE MATTER OF THE APPLICATION OF AL RAZAQ IMPORT & EXPORT LLC 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
MELODY MIRBABA
APPROVING AMENDMENT TO APPLICATION, AND
REQUIRING FILING**

Mailed Date: February 15, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Statement and Summary

1. This Decision amends the above-captioned Application as requested in a filing that Razaq Import & Export LLC's (Al Razaq) made on January 30, 2023 (Motion to Amend). In addition, this Decision requires Mountain Star Transportation LLC doing business as Explorer Tours (Mountain Star) or Al Razaq, with Mountain Star's approval, to make a filing on or by February 22, 2023, stating: (a) whether the Application, as amended by this Decision (Amended Application) resolves Mountain Star's Intervention and objection to the authority sought in this Proceeding; and (b) whether Mountain Star objects to the Amended Application. If Al Razaq makes this filing, the filing ***must also specifically state*** that (a) Al Razaq has conferred with Mountain Star; and (b) that Mountain Star authorizes Al Razaq to make the representations as to Mountain Star's position that are included in the filing. Put simply, if Al Razaq makes the filing,

it must address all four issues identified above, and if Mountain Star makes the filing, it need only address the first two issues.

2. If Mountain Star does not object to the Amended Application, the Administrative Law Judge (ALJ) may grant the Amended Application without a hearing based on the record, and therefore, may vacate the procedural schedule and hearing in this Proceeding.

B. Procedural History¹

3. On October 31, 2022, Al Razaq Import initiated this matter by filing the above-captioned Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

4. The Commission referred the matter an ALJ for disposition on December 14, 2022.

5. Mountain Star timely intervened of right on November 28, 2022.² In its Petition for Intervention and Entry of Appearance (Intervention), Mountain Star opposes the Application and requests a hearing on the same.³ Mountain Star is the only other party to this Proceeding.⁴

6. After holding a prehearing conference on January 24, 2023, with the parties' input, the ALJ scheduled this matter for an evidentiary hearing on whether to grant the Application for April 10, 2023, and established procedural deadlines to accommodate that hearing date.⁵

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. R22-0822-I at 8 (mailed December 20, 2022); Petition for Intervention and Entry of Appearance filed November 28, 2022 (Intervention).

³ Intervention at 1-2.

⁴ Flatirons Transportation LLC doing business as Green Ride Charter Service and Green Ride Boulder (Green Ride) was also a party to this Proceeding but was dismissed as a party for the reasons described in Decision No. R23-0027-I. Decision No. R23-0027-I at 7 (mailed January 10, 2023).

⁵ Decision No. R23-0060-I at 5-8 (mailed January 26, 2023).

7. On January 30, 2023, Al Razaq filed its Motion to Amend, seeking to restrictively amend the Application as discussed below.

II. FINDINGS AND CONCLUSIONS

8. The Application seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service between all points in in the following Colorado Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson.⁶

9. The Motion to Amend seeks to restrict the authority requested in the Application to providing call-and-demand shuttle service to and from: Red Rocks Park and Amphitheater, Rocky Mountain National Park, Pikes Peak, Garden of the Gods, Mount Evans, and LookOut Mountain.⁷ The Amendment states that Al Razaq's representative spoke with Mountain Star's representative and that Mountain Star agrees to the proposed restrictive amendment.⁸

10. To be acceptable, changes to an application's requested authority must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

⁶ See Application at 3.

⁷ Motion to Amend.

⁸ *Id.*

11. Amending the Application as requested would restrict Al Razaq to transporting passengers from one of the counties listed in the authority to or from one of the specific locations identified in the Motion to Amend (*e.g.*, Red Rocks Park and Amphitheater). Thus, the proposed amendments would require that all of Al Razaq's transportation originate or terminate at one of the listed locations. The ALJ finds that minor modifications to the proposed amendment to clarify that transportation must originate or terminate at one of the listed locations will improve clarity, understandability, and the Commission's ability to enforce the restrictions on the authority (should Al Razaq ultimately be granted the requested authority).

12. With the minor modification discussed above, the ALJ finds that the proposed amendments are restrictive, clear, understandable, and administratively enforceable. The ALJ concludes that the proposed amendments meet the remaining requirements discussed above. Consequently, the ALJ grants the Motion to Amend and amends the Application. With the changes, the Amended Application now seeks a CPCN with authority to operate as a common carrier by motor vehicle for hire for the:

Transportation of passengers in call-and-demand shuttle service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, State of Colorado.

RESTRICTIONS:

This authority is restricted to transportation that originates or terminates at any of the following locations: Red Rocks Park and Amphitheater, Rocky Mountain National Park, Pikes Peak, Garden of the Gods, Mount Evans, and LookOut Mountain.

13. While the Motion to Amend states that Mountain Star agrees to the above amendments, it does not state whether these changes have any impact on Mountain Star's objection to the authority that Al Razaq seeks in this matter. If the Amendment does resolve Mountain Star's objection, then the Amended Application would be deemed unopposed and could be decided based

on the record without an evidentiary hearing.⁹ This would dramatically impact how this Proceeding moves forward. Indeed, the ALJ could vacate the evidentiary hearing and all procedural deadlines and issue a recommended decision on the Amended Application based on the record.

14. As such, the ALJ will require Mountain Star, or Al Razaq, with Mountain Star's approval, to make a filing indicating whether the amendment approved herein resolves Mountain Star's opposition to Al Razaq's requested authority, and whether Mountain Star objects to the Amended Application. Al Razaq may only make this filing if it discusses these issues with Mountain Star's representative and Mountain Star authorizes Al Razaq to make the representations as to Mountain Star's position that are included in the filing. This option is available to decrease the burden on Mountain Star while also giving Al Razaq the opportunity to ensure that the appropriate filing is made as soon as possible so that this Proceeding can advance to the next step. However, Mountain Star may still choose to make the filing itself, should it wish to do so. Either way, the filing must be made no later than February 22, 2023, and must include the information set forth below.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Al Razaq Import & Export LLC's (Al Razaq) Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire filed on October 31, 2022, is amended as set forth in paragraph 12 above.

2. On or by February 22, 2023, Mountain Star Transportation LLC doing business as Explorer Tours (Mountain Star) or Al Razaq, with Mountain Star's approval, must make a filing

⁹ § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

stating: (a) whether the approved Amendment resolves Mountain Star's Intervention and objection to authority sought in this Proceeding and (b) whether Mountain Star objects to the Amended Application. ***If Al Razaq makes this filing, the filing must also specifically state*** that (a) Al Razaq has conferred with Mountain Star and (b) that Mountain Star authorizes Al Razaq to make the representations as to Mountain Star's position that are included in the filing.

3. 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, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director