

Decision No. R23-0141-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0335CP

IN THE MATTER OF THE APPLICATION OF TIPSY VELO LLC, DOING BUSINESS AS
TIPSY VOYAGE, 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
AVIV SEGEV
GRANTING IN PART MOTION TO COMPEL,
COMPELLING DISCOVERY, AND NOTICING LOCATION
OF EVIDENTIARY HEARING**

Mailed Date: February 24, 2023

I. STATEMENT

A. Procedural Background

1. On July 21, 2022, Topsy Velo, LLC, doing business as Topsy Voyage (Topsy Voyage or Applicant) filed its Permanent Authority Application (Application). Applicant seeks a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire. This filing commenced Proceeding No. 22A-0335CP.

2. On August 22, 2022, Absolute Prestige Limousine II LLC (Absolute Prestige) timely noticed its intervention of right.

3. On August 31, 2022, the Commission, via a minute entry, deemed the Application complete and referred Proceeding No. 22A-0335CP to an Administrative Law Judge (ALJ) for disposition.

4. By Decision No. R22-0824-I, the ALJ, among other things, established procedures and scheduled an in-person hearing in Grand Junction Colorado on March 16-17, 2023.

5. On February 9, 2023, Applicant's Motion to Compel Absolute Prestige Limousine II LLC to Respond to Discovery and for Other Relief (Motion to Compel) was filed by Applicant. Applicant's discovery requests dated December 6, 2022, were filed as Exhibit A to the Motion to Compel.

6. No response to the Motion to Compel was filed.

B. Applicant's Motion to Compel

7. In the Motion to Compel, Applicant states that on December 6, 2022, it propounded written discovery requests upon Absolute Prestige, the responses to which were due by December 20, 2022. Applicant further states that it did not receive any responses or objections to its discovery request. On December 29, 2022, Applicant sent Absolute prestige a letter, requesting Absolute Prestige to respond to Applicant's discovery requests dated December 6, 2022. Absolute Prestige did not respond to Applicant's letter dated December 29, 2022. Applicant seeks to compel Absolute Prestige to respond to Applicant's discovery requests and require Absolute Prestige to pay Applicant's costs, expenses, and attorney fees attributable to Absolute Prestige's lack of good faith.¹ Alternatively, Applicant seeks to have Absolute Prestige be dismissed as a party and require Absolute Prestige to pay Applicant's costs, expenses, and attorney fees attributable to Absolute Prestige's lack of good faith.²

¹ See Motion to Compel at 2.

² See *id.*

8. In accordance with Rule 1401(d) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, Applicant's failure to respond is deemed a confession of allegations made in the Motion to Compel.

9. Applicant demonstrated that Absolute Prestige failed to timely respond to the discovery requests propounded by Applicant in accordance with Commission rules. Based upon good cause shown, Applicant will be compelled to respond to the discovery requests propounded by Applicant, as ordered below.

10. Being that Absolute Prestige is not represented by legal counsel and there is no clear indication in the record that Absolute Prestige acted with a lack of good faith, the ALJ will not, at this time, grant Applicant's request for costs, expenses, and attorney fees. Likewise, the ALJ will not, at this time, entertain Applicant's alternative request to dismiss Absolute Prestige as a party.

C. Hearing Location

11. Because the evidentiary hearing is being held in Grand Junction pursuant to the parties' requests/preferences,³ the ALJ required additional time to secure a location for the evidentiary hearing. A hearing location has been secured and will be scheduled as ordered below.

³ See Decision No. R22-0824-I at 3.

II. ORDER**A. It Is Ordered That:**

1. Applicant's Motion to Compel Absolute Prestige Limousine II LLC to Respond to Discovery and for Other Relief, filed by Topsy Velo, LLC, doing business as Topsy Voyage (Applicant) on February 9, 2023, is granted in part, consistent with the discussion above.

2. Within ten calendar days of the mailed date of this Interim Decision, Absolute Prestige Limousine II LLC shall provide Applicant's counsel with discovery responses to Applicant's discovery requests, dated December 6, 2022. Applicant's discovery requests dated December 6, 2022, are attached hereto as Attachment 1.

3. A hearing on the merits of the Permanent Authority Application for a Certificate of Public Convenience and Necessity, filed by Applicant on July 21, 2022, as modified by Decision No. R23-0082-I, is scheduled as follows:

DATE:	March 16-17, 2023
TIME:	9:00 a.m., daily
PLACE:	Colorado Department of Transportation 222 South 6th Street, Room 101 Grand Junction, Colorado 81501

4. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director