

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 AND
MOTION TO VACATE, COMPELLING DISCOVERY
VACATING HEARING, WAIVING RESPONSE TIME,
ORDERING CONFERRAL, AND CONDITIONING
SCHDEULING OF HEARING ON WAIVER OF THE
APPLICABLE STATUTORY PERIOD**

Mailed Date: March 14, 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 July 25, 2022, the Commission issued a Notice of Applications and Petitions Filed (Notice). The Notice gave notice of the Application and indicated that Applicant was seeking a Commission decision within 250 days.¹

¹ Notice at 3.

3. On August 22, 2022, Pali-Tours Ltd (Pali-Tours or Intervenor) timely noticed its intervention of right.

4. 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.

5. 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.

6. On March 3, 2023, Applicant's Motion to Compel Pali-Tours, Ltd to Respond to Discovery and for Other Relief (Motion to Compel) was filed by Applicant. Applicant's discovery requests dated January 30, 2023, were filed as Exhibit 2 to the Motion to Compel.

7. By Decision No. R23-0159-I, issued March 3, 2023, the ALJ shortened the response time to the Motion to Compel to three business days from the issuance date of Decision No. R23-0159-I.

8. On March 8, 2023, Applicant's Motion to Strike the Intervention of Absolute Prestige Limousine II LLC (Absolute Prestige) and for Other Relief (Motion to Strike) was filed by Applicant. This motion will be ruled upon by separate decision.

9. On March 9, 2023, Pali-Tours filed its response to the Motion to Compel (Pali-Tours' Response to the Motion to Compel).

10. Also on March 9, 2023, Absolute Prestige filed its Response to the Motion to Strike.

11. On March 13, 2023, Applicant's Motion to Vacate and Reschedule Hearing and to Waive Response Time (Motion to Vacate and Reschedule) was filed by Applicant.

B. Applicant's Motion to Compel

12. In the Motion to Compel, Applicant states that on January 30, 2023, it propounded written discovery requests upon Pali-Tours, the responses to which were due by February 13, 2023. Applicant further states that on February 13, 2023, Pali-Tours submitted its responses to Applicant's discovery requests and that all, but one, of Pali-Tours responses were deficient.² On February 28, 2023, Applicant sent a letter to Pali-Tours requesting that it supplement its discovery responses. Applicant states that Pali-Tours did not respond to Applicant's letter dated February 28, 2023. Applicant seeks to compel Pali-Tours to respond to Applicant's discovery requests and require Pali-Tours to pay Applicant's costs, expenses, and attorney fees attributable to Pali-Tours' lack of good faith.³ Alternatively, Applicant seeks to have Pali-Tours be dismissed as a party and require Pali-Tours to pay Applicant's costs, expenses, and attorney fees attributable to Pali-Tours' lack of good faith.⁴ Lastly, Applicant acknowledges that resolving the discovery dispute discussed herein may require postponement and location change of the currently-scheduled hearing.⁵

13. Pali-Tours generally states that it responded in good faith and to the best of its ability to Applicant's discovery requests, and claims that Applicant's counsel acted with the purpose of harassing Pali-tours and with lack of good faith.⁶

14. Rule 1405, 4 *Code of Colorado Regulations* (CCR) 723-1, governs discovery requests in Commission proceedings. Except as provided in Rule 1405(a)(II), the Colorado Rules

² Motion to Compel at 1.

³ *Id.* at 4.

⁴ *Id.*

⁵ *Id.* at 5.

⁶ Pali-Tours' Response to The Motion to Compel at 2-4 and Attachment B to Pali-Tours' Response to the Motion to Compel.

of Civil Procedure (C.R.C.P.) 26-37- are incorporated by reference into the Public Utilities Commission's Rules of Practice and Procedure. C.R.C.P. 26(B)(1) states in pertinent part:

...parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

15. Under Rule 26(b), relevance is to be construed liberally to effectuate the full extent of their truth-seeking purposes, the information sought pursuant to discovery need not be relevant to any particular issue in the case; it only needs to be pertinent to the subject matter of the suit. *Williams v. District Court*, 866 P.2d 908 (Colo.1993). Generally, discovery rules are to be liberally construed to eliminate surprise at trial, to permit the discovery of relevant evidence, simplify issues, and to promote the expeditious settlement of cases. *Jenkins v. District Court*, 676 P.2d 1201 (Colo.1984). However, the inclination for liberal discovery under Rule 26 must be balanced against the recognition that disproportionate discovery may increase the cost of litigation, harass the opponent, and tend to delay a fair and just determination of the legal issues. *Silva v. Basin Western, Inc.*, 47 P.3d 1184 (Colo.2002).

16. Discovery disputes are not looked upon with favor by the Commission. Parties are encouraged to resolve discovery disputes amongst themselves. However, in the event discovery disputes cannot be resolved by the parties, Rule 1405(b), 4 CCR 723-1 provides for sanctions on parties and attorneys who act with lack of good faith in discovery matters.

17. In considering the record as a whole⁷, the ALJ finds that Pali Tours responses to Applicant's discovery requests I-2, I-3, R-9, and R-10 are deficient. As it relates to the tax and financial documentation requested by Applicant⁸, Pali-Tours need only produce such records containing Pali-Tours' (and not its owners' and/or directors') tax and financial information.

18. Applicant demonstrated that Pali-Tours failed to adequately respond to the discovery requests propounded by Applicant in accordance with Commission rules.

19. Consistent with the discussion above, Pali-Tours will be compelled to respond to the discovery requests propounded by Applicant, as ordered below.

20. Being that Pali-Tours is not represented by legal counsel, Pali-Tours' responded to Applicant's counsel, and there is no clear indication in the record that Pali-Tours 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 deny without prejudice Applicant's alternative request to dismiss Pali-Tours as a party.

C. Motion to Vacate and Reschedule, Conferral, Waiver of Applicable Statutory Period, and Outstanding Motion

21. In the Motion to Vacate and Reschedule, Applicant requests to the evidentiary hearing scheduled for March 16-17, 2023, be vacated and that the hearing be rescheduled for a later date.

⁷ In making the findings herein, the ALJ considered all filings made in this case, including Pali-Tours' discovery responses dated February 13, 2023, Pali Tours' Response to the Motion to Compel, and Pali-Tours' email to Applicant's counsel, dated March 3, 2023.

⁸ See Requests for Production Nos. 9 and 10 in Applicant's discovery request to Pali-Tours dated January 30, 2023.

22. In the Motion to Compel and Motion to Vacate and Reschedule, Applicant acknowledges that resolving the discovery disputes referenced herein may require postponement and location change of the hearing.⁹

23. Given the discovery dispute discussed herein, Applicant's outstanding Motion to Strike, and Applicant's Motion to Vacate and Reschedule, it is appropriate to vacate and reschedule for a later date the evidentiary hearing in this matter. Accordingly, the Motion to Vacate and Reschedule will be granted, in part, as to Applicant's request to vacate the evidentiary hearing on March 16-17, 2023, as ordered below.

24. The ALJ finds that the response time to the Motion to Vacate and Reschedule would otherwise expire after the evidentiary hearing and that Applicant's ability to prepare for hearing has been impaired by the failure of Pali-Tours to comply with discovery obligations. Therefore, response time to the Motion to Vacate and Reschedule will be waived.

25. The parties shall confer, regarding their proposed alternative dates for the evidentiary hearing, the location of the evidentiary hearing, and the method by which the hearing should be conducted. The parties are on notice that, at this time, the ALJ may not be able to accommodate an in-person hearing in Grand Junction, Colorado. The ALJ will retain the discretion to change the date and location of the hearing, and the method by which the hearing will be conducted.

26. Applicant shall file a report of the results of the conferral, as ordered below. The conferral report shall detail any agreements and/or disagreements regarding the topics noted above.

⁹ *Id.* at 5 and Motion to Vacate and Reschedule at 3.

If there are disagreements between the parties, the report shall identify the competing proposed hearing dates, locations, and/or methods for conducting the hearing proposed by the parties.

27. In light of the quickly-approaching applicable period for a Commission decision,¹⁰ the discovery dispute discussed herein, the outstanding Motion to Strike, and the need to reschedule the hearing in this matter, Applicant must agree to a waiver of the applicable statutory period for a Commission decision.

28. The Motion to Strike will be addressed by separate interim decision.

II. ORDER

A. It Is Ordered That:

1. Applicant's Motion to Compel Pali-Tours Ltd to Respond to Discovery and for Other Relief, filed by Tipsy Velo, LLC, doing business as Tipsy Voyage (Applicant) on March 3, 2023, is granted in part, consistent with the discussion above.

2. Within ten calendar days of the effective date of this Interim Decision, Pali-Tours Ltd (Pali-Tours) shall provide Applicant's counsel with discovery responses to Applicant's discovery requests Nos. I-2, I-3, R-9, and R-10, dated January 30, 2023. Pali-Tours need only produce such records containing Pali-Tours' (and not its owners' and/or directors') tax and financial information. Applicant's discovery requests dated January 30, 2023, are attached hereto as Attachment A.

¹⁰ See Notice at 3 and § 40-6-109.5, C.R.S.

3. Response time to Applicant's filed Motion to Vacate and Reschedule Hearing and to Waive Response Time (Motion to Vacate and Reschedule) filed by Applicant on March 13, 2023, is waived and Applicant's requested relief is granted in part, consistent with the discussion above.

4. The Motion to Vacate and Reschedule is granted, in part, as to Applicant's request to vacate the evidentiary hearing.

5. The evidentiary hearing scheduled for March 16-17, 2023, is vacated.

6. The parties shall confer regarding their proposed alternative dates for the evidentiary hearing, the location of the evidentiary hearing, and the method by which the evidentiary hearing should be conducted.

7. Within ten calendar days of the effective date of this Interim Decision, Applicant shall file a waiver of the applicable statutory period for a Commission decision and a report of the results of the parties' conferral ordered herein. The conferral report shall detail any agreements and/or disagreements regarding the proposed hearing dates, locations, and/or methods for conducting the hearing proposed by the parties.

8. 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