

Decision No. R23-0500

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0110CP

IN THE MATTER OF THE APPLICATION HIGH COUNTRY CHAUFFEURS LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
DISMISSING APPLICATION WITHOUT PREJUDICE
AND CLOSING PROCEEDING**

Mailed Date: August 1, 2023

I. STATEMENT AND FINDINGS

1. On March 23, 2023, High Country Chauffeurs LLC (High Country or Applicant) filed with the Commission its Permanent Authority Application (Application), through which 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. 23A-0110CP. Applicant did not include a summary of witness testimony and exhibits with its Application.

2. On March 6, 2023, the Commission issued a Notice of Applications and Petitions Filed (Notice). The Notice set procedural deadlines, established a 30-day intervention period, and gave notice of the Application.

3. On April 5, 2023, NDW Enterprises LLC d/b/a Ski Town Transportation (Ski Town or Intervenor) timely filed its Petition for Leave to Intervene (Intervention).

4. On April 12, 2023, the Commission, via a minute entry, deemed the Application complete and referred Proceeding No. 23A-0110CP to an Administrative Law Judge (ALJ) for disposition.

5. By Decision No. R23-0298-I, issued May 5, 2023, the ALJ scheduled a prehearing conference in this matter for May 16, 2023 at 9:00 a.m. Decision No. R23-0298-I states that “[f]ailure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.”¹

6. The Certificate of Service for Decision No. R23-0298-I shows that Applicant is a registered filer with the Commission’s E-Filing System and that on May 5, 2023, Decision R23-0298-I was served on Applicant.

7. As noticed in Decision No. R23-0298-I, the prehearing conference was convened on the scheduled time and date. Intervenor appeared represented by counsel. Applicant did not appear at the prehearing conference.

8. By Decision No. R23-0333-I, issued May 18, 2023, the ALJ granted Ski Town’s Intervention and scheduled a hearing in this matter for July 17, 2023 at 9:30 a.m.

9. The Certificate of Service for Decision No. R23-0333-I shows that on May 18, 2023, Decision No. R23-0333-I was served on Applicant.

¹ Decision No. R23-0298-I, ¶ 5 and Ordering ¶ 1.

10. On July 17, 2023, Intervenor filed its Motion to Dismiss or Reschedule (Motion to Dismiss), requesting that the Commission “either dismiss this application in its entirety or in the alternative to reschedule the hearing on the merits...”²

11. On the scheduled time and date, the ALJ called this matter for a hearing. Applicant did not appear at the hearing. Intervenor appeared represented by counsel.

12. Applicant did not file or serve its summary of the testimony and exhibits in support of the Application, as required by Commission Rule 1405(k)(I),³ nor made any filings in this Proceeding since April 5, 2023.

13. Applicant never contacted the ALJ or Commission Staff regarding this Proceeding, nor made a filing requesting that the evidentiary hearing in this matter be continued, nor submitted a filing showing good cause for its failure to appear at the evidentiary hearing.

14. The ALJ finds that Applicant failed to prosecute the Application in a timely fashion and its failure to appear at the evidentiary hearing was unexcused.

II. RELEVANT LAW, ANALYSIS, AND CONCLUSIONS.

15. According to Rule 1500, of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, “[t]he burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision ...” An applicant in a Commission proceeding bears the burden of proof by a preponderance of the evidence and must pursue its application without unreasonable delay.⁴

² Motion to Dismiss at 1.

³ Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (requiring Applicant to file such documents within ten days of the expiration of the public notice period).

⁴ See § 13-25-127(1), C.R.S.; R19-0391; Decision No. R19-0391 in Proceeding No. 18A-0815CP, issued May 3, 2019; and *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

16. An application may be dismissed for failing to prosecute it when the applicant fails to appear at a properly noticed hearing.⁵

17. When a party registers as a filer with the Commission's E-Filing System, the party "expressly" agrees to accept service in all Commission proceedings through the E-Filings System.⁶ Filing through the Commission's E-Filing System constitutes service on registered users in the System.⁷

18. Because Complainant is a registered filer with the Commission's E-Filing System, and Decision Nos. R23-0298-I and R23-0333-I were served on Applicant through the Commission's E-Filing System, the ALJ concludes that the aforementioned Decisions were properly served on Applicant, and that Applicant received proper notice of the Prehearing conference and evidentiary hearing on May 16, 2023 and July 17, 2023, respectively.⁸

19. The ALJ finds and concludes that Applicant's failure to appear for the scheduled evidentiary hearing constitutes a failure to prosecute the Application. In addition, by not appearing for the scheduled evidentiary hearing, Applicant also failed to prove by a preponderance of the evidence that the Application should be granted.

20. Based on the foregoing, the ALJ concludes that the Application should be dismissed for failure to prosecute.

21. Given the findings and conclusions, and the dismissal of the Application ordered, herein, the Motion to Dismiss will be denied as moot, as ordered below.

⁵ See *Streu v. City of Colo. Springs*, 239 P.3d 1264, 1268-1269 (Colo. 2010) and *Rathbun v. Sparks*, 425 P.2d 296, 298 (Colo. 1967).

⁶ Rule 1205(b), 4 CCR 723-1.

⁷ *Id.*

⁸ See Certificates of Service for Decision Nos. R23-0298-I and R23-0333-I.

22. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Permanent Authority Application (Application), filed by High Country Chauffeurs LLC on March 3, 2023 is dismissed without prejudice.
2. The Motion to Dismiss or Reschedule filed by NDW Enterprises LLC d/b/a Ski Town Transportation (Intervenor) on July 12, 2023 is denied.
3. Proceeding No. 23A-0110CP is closed.
4. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.
 - a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision will become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they must not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge