

Decision No. R23-0027-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0473CP

IN RE 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
DISMISSING INTERVENTION AND SCHEDULING
SECOND REMOTE PREHEARING CONFERENCE**

Mailed Date: January 10, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Statement and Summary

1. This Decision schedules a second remote prehearing conference for January 24, 2023 and dismisses the Intervention filed by Flatirons Transportation LLC's doing business as Green Ride Charter Service and Green Ride Boulder (Green Ride).

B. Procedural History¹

2. On October 31, 2022, Al Razaq Import & Export LLC (Al Razaq or Applicant) initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

3. On November 21, 2022, Green Ride filed a timely "Petition for Intervention and Entry of Appearance" (Green Ride's Intervention) opposing the Application.

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

4. On November 28, 2022, Mountain Star Transportation LLC doing business as Explorer Tours (Mountain Star) filed a timely “Petition for Intervention and Entry of Appearance” (Mountain Star’s Intervention) opposing the Application.

5. On December 14, 2022, the Commission deemed the Application complete and referred the matter an Administrative Law Judge (ALJ) by minute entry.

6. On December 20, 2022, the ALJ: scheduled a remote prehearing conference for 1:00 p.m. on January 10, 2023; found that Al Razaq established it may be represented by a non-attorney; approved Al Razaq’s representation in this matter by non-attorney, Saidou Compaore; affirmed Mountain Star properly intervened of right and established that it may be represented by a non-attorney; approved Mountain Star’s representation in this matter by non-attorney, Roman Lysenko; affirmed that Green Ride properly intervened of right but found that it failed to establish that it may be represented by a non-attorney; and required Green Ride to either have counsel enter an appearance or make a filing establishing it may be represented by a non-attorney by January 4, 2023.²

7. To date, Green Ride has not made the required filings or any other filings since submitting its Intervention on November 21, 2022.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. January 10, 2023 Prehearing Conference

8. On the morning of the January 10, 2023 prehearing conference, the ALJ discovered an anomaly in the Certificate of Service for the Decision and Attachment scheduling the January 10, 2023 prehearing conference (Decision No. R22-0822-I and Attachment A).

² Decision No. R22-0822-I (mailed December 20, 2022) at 8-9.

Specifically, the Certificate of Service reflects that both Green Ride and Mountain Star were served with the Decision and Attachment but does not indicate that Al Razaq was served with the Decision and Attachment. In light of this, the ALJ emailed all the parties on the morning of January 10, 2023 a copy of Decision R22-0822-I and Attachment, with information on how to join the prehearing conference via Zoom.³ The ALJ used the email address that Al Razaq listed for itself in the Application. The ALJ also used the email addresses for Green Ride and Mountain Star that they provided when they registered for the Commission's E-Filing system, and, in an abundance of caution, another email address for Green Ride that is on file with the Commission.⁴

9. Al Razaq responded to the ALJ's email with questions, to which the ALJ replied to all parties, and again included Decision No. R22-0822-I and Attachment A thereto. The ALJ noted that the Decision explains the reason for the January 10, 2023 prehearing conference and confirmed that the hearing would be that same day at 1:00 and that the parties should appear remotely following the instructions in the email and in Decision No. R22-0822-I and Attachment A thereto.⁵

10. The ALJ held the prehearing conference at 1:00 p.m. on January 10, 2023 via Zoom. Mountain Star appeared but no other party appeared. Given the anomalies with serving Al Razaq the Decision scheduling the hearing, the ALJ waited until 1:15 p.m. for Al Razaq or Green Ride to join the hearing. Neither Al Razaq nor Green Ride joined the hearing.

11. During the prehearing conference, the ALJ noted Green Ride's failure to appear at the hearing despite receiving proper notice of it and its failure to comply with Decision No.

³ Email to Parties filed on January 10, 2023.

⁴ *Id.* As evident in the email the ALJ sent to the parties, a Commission staff member emailed Green Ride and Mountain Star the Zoom information for the January 10, 2023 hearing on January 3, 2023. *Id.* at 2-3.

⁵ *Id.* at 1.

R22-0822-I's requirement to have counsel enter an appearance or make a filing establishing that it may be represented by a non-attorney by January 4, 2023. In light of these failures, the ALJ dismissed Green Ride's Intervention and noted that a written decision would issue confirming that Green Ride has made no filings in this Proceeding since submitting its Intervention on November 21, 2022. Decision No. R22-0822-I specifically warns Green Ride that if it fails to have counsel enter an appearance or make a filing establishing it is entitled to be represented by a non-attorney by the established deadline, that its "intervention will be dismissed."⁶ For these reasons, the ALJ finds that Green Ride has abandoned and failed to prosecute its Intervention, which warrants its dismissal.⁷ For all these reasons and those stated during the prehearing conference, the ALJ dismisses Green Ride's Intervention. Green Ride is not a party to this Proceeding.

12. Also, during the prehearing conference, the ALJ noted the anomalies with the Certificate of Service (discussed above), and found that in light of these anomalies, it would be inappropriate to take consequential action on the Application due to Al Razaq's failure to appear at the prehearing conference. As such, the ALJ established a new date for a prehearing conference, that is, January 24, 2023 at 1:00 p.m.

B. Upcoming Prehearing Conference

13. As noted, to move this matter forward, and in anticipation of a hearing on the Application, the ALJ is scheduling a second remote prehearing conference per Rule 1409(a), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 for January 24, 2023 at 1:00 p.m.

⁶ Decision No. R22-0822-I at 4-5.

⁷ See *Rathbun v. Sparks*, 425 P.2d 296, 298-99 (Colo. 1967); *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010); *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

14. Participants will appear at the prehearing conference from remote locations by video-conference via Zoom and *may not appear in person* for the prehearing conference.

15. At the prehearing conference, an evidentiary hearing on the Application will be scheduled and related procedural deadlines will be established (*e.g.*, deadlines to file exhibits, exhibit lists, and witness lists). During the prehearing conference, the ALJ will address the manner or location in which the hearing will be held, that is, in-person, remote, or hybrid. In-person hearings require all parties, witnesses, and the ALJ to appear in person at a Commission hearing room located in downtown Denver. Remote hearings require all parties, witnesses, and the ALJ to appear remotely via Zoom. Hybrid hearings allow parties and witnesses to appear in person or remotely by Zoom and the ALJ to appear in person. The parties must be prepared to provide their position on the manner in which the hearing will be held, and to address the other issues discussed above during the prehearing conference. Other issues relevant to this Proceeding may be raised or addressed at the prehearing conference.

16. The remote prehearing conference will be held using the web-hosted service, Zoom. While video-conference participation is preferred, parties may also appear by telephone.

17. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

18. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link, telephone number, meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

19. To ensure that the parties receive this Zoom information, the parties must ensure the Commission has the correct email addresses on file for them; the Commission uses the email addresses that parties provide when registering for the Commission's E-Filing System. Since Al Razaq has not yet registered for the Commission's E-Filing system, the Commission will use the email address that Al Razaq included in its Application.

20. *Al Razaq is strongly encouraged* to register for the Commission's E-Filing System; this will ensure that it receives immediate notice of decisions and filings in this Proceeding via E-Filings when they are made. To register with the Commission's E-Filing System, Al Razaq should go to the Commission's website at the following link: <https://www.dora.state.co.us/pls/efi/EFI.register> and complete the required "Filer Registration" information. Doing so should also help avoid any future anomalies in Al Razaq receiving decisions in this Proceedings. Should Al Razaq require assistance in registering for the Commission's E-Filing System, its representative may contact Commission staff Alison Torvik at: alison.torvik@state.co.us.

C. Consequences for Failing to Appear at Next Prehearing Conference

21. As noted, given the anomalies with serving Al Razaq notice of the January 10, 2023 prehearing conference, it was inappropriate to take adverse action against Al Razaq's Application due to its failure to appear at that hearing. This will not hold true for the January 24, 2023 remote prehearing conference. Notice of this hearing will be properly served on Al Razaq, and thus, if it fails to appear at the January 24, 2023 prehearing conference, the ALJ may take adverse action against its Application, including dismissing the Application, or granting the complete relief opposing parties seek.

22. *All parties are on notice that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.*

III. ORDER

A. It Is Ordered That:

1. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: January 24, 2023

TIME: 1:00 p.m.

PLACE: Join by video conference using Zoom.

2. Participants in the hearing may not distribute the hearing link, telephone number, access, or ID code to anyone not participating in the hearing.

3. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

5. Consistent with the above discussion, the Intervention filed on November 21, 2022 by Flatirons Transportation LLC doing business as Green Ride Charter Service and Green Ride Boulder (Green Ride) is dismissed. Green Ride is no longer a party to this Proceeding.

6. 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