

Decision No. R23-0060-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
SCHEDULING HEARING AND ESTABLISHING
PROCEDURES AND DEADLINES**

Mailed Date: January 26, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Statement and Summary

1. This Decision schedules a hybrid evidentiary hearing for April 10, 2023 and establishes procedures and deadlines relating to that hearing.

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. The Commission referred the matter an Administrative Law Judge (ALJ) for disposition on December 14, 2022.

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

4. In addition to Al Razaq, Mountain Star Transportation LLC doing business as Explorer Tours (Mountain Star) is the only other party to this Proceeding.² Mountain Star opposes the Application.

5. In anticipation of an evidentiary hearing on the Application, on January 10, 2023, the ALJ scheduled a remote prehearing conference for January 24, 2023, at 1:00 p.m.³

6. The ALJ held the January 24, 2023 prehearing conference as noticed. All parties appeared through their approved non-attorney representatives. With the parties' input, the ALJ established the below hearing date, procedures, and procedural schedule for the evidentiary hearing.

II. FINDINGS AND CONCLUSIONS

A. Issues Addressed During Prehearing Conference

7. During the prehearing conference, the parties provided their position on the manner in which the hearing should be held (in-person, remote, or hybrid). Specifically, Applicant prefers an in-person hearing while Mountain Star prefers a remote hearing. To accommodate both parties, the ALJ scheduled an evidentiary hearing for April 10, 2023 as a hybrid hearing, which allows those who wish to appear in person to do so and those who wish to appear remotely to do so using the web-based platform Zoom.

8. As the hearing date approaches, the ALJ will evaluate whether it is necessary or appropriate to convert the hearing to a fully remote hearing based on the circumstances then

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

³ Decision No. R23-0027-I at 7.

existing (such as an increased risk of exposure to COVID-19 or other similar illnesses). Depending on the circumstances, the ALJ may modify this hearing to be held fully remotely or may enter such other orders as appropriate.

9. During the prehearing conference, the ALJ also established several deadlines to accommodate the hearing, as set forth in the ordering paragraphs below. The ALJ advised the parties that additional procedures would be put in place to allow for a hybrid evidentiary hearing. Those procedures are described in the ordering paragraphs below and in Attachments A and B to this Decision.

10. Attachment A includes important technical information and requirements to facilitate remote testimony and appearances.

11. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Indeed, as explained in Attachment B, to accommodate a hybrid hearing, all evidence must be presented electronically during the hearing. This means that all parties must prepare any documentary evidence (to be filed as exhibits) for electronic presentation.⁴ This will allow parties participating remotely to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

12. As such, *it is extremely important* that all parties carefully review and follow the instructions and requirements in Attachment B to this Decision.

⁴ Depending on the nature in which the parties maintain the exhibits, this may require parties to electronically scan paper-only documents so that they may be presented in electronic form during the hearing. Given the hearing date and deadlines, the parties should have ample time to prepare for this.

B. Advisements to Parties

13. Al Razaq is on notice that failure to appear at the evidentiary hearing may result in dismissal of the Application for failing to pursue or prosecute it.

14. At the hearing, Al Razaq bears the burden of proof by a preponderance of the evidence to show that it has met the legal requirements to be granted the requested authority.⁵ Among the legal requirements, Applicant must establish that: there is a public need for the proposed service; granting the authority is in the public interest; *and* the existing service is inadequate.⁶ The question is not whether the extent of business in a particular area is sufficient to warrant more certified carriers, but whether the public convenience and necessity demand the service of an additional carrier.⁷

15. As noted, Al Razaq must demonstrate by a preponderance of the evidence that it meets these and other applicable legal standards to be granted an authority. The preponderance standard requires that the evidence of the existence of a contested fact outweigh the evidence to the contrary.⁸ That is, the fact finder must determine whether the existence of a contested fact is more probable than its non-existence.⁹ A party meets this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.¹⁰

⁵ §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 *Code of Colorado Regulations* (CCR) 723-1. More information on the legal requirements that an applicant must meet to be granted a common carrier authority may found in the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and more specifically Rule 6203 and § 40-10.1-201(1), C.R.S.

⁶ Rule 6203(a)(XVII), 4 CCR 723-6.

⁷ See *Ephraim Freightways Inc. v. Public Utilities Comm'n*, 380 P.2d 228, 231 (Colo. 1963).

⁸ *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

⁹ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹⁰ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

16. Intervener Mountain Star is on notice that the ALJ will deem its failure to appear at the evidentiary hearing as abandoning or withdrawing its Intervention and opposition to the Application and may result in granting the Application without an evidentiary hearing.

17. The parties are on notice that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

18. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at: <https://www.colorado.gov/pacific/dora/pucrules>.

III. **ORDER**

A. **It Is Ordered That:**

1. A hybrid evidentiary hearing on the above-captioned Application is scheduled as follows:

DATE: April 10, 2023
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

OR

Join by video conference using Zoom.

2. To minimize the potential that the hybrid hearing may be disrupted by non-participants, the hearing link and meeting ID or access code to attend the hearing by Zoom

will be provided to the parties by email before the hearing, and participants in the hearing may not distribute this Zoom information to anyone not participating in the hearing.¹¹

3. **Hearing Procedures.** Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. This means that all parties must prepare any documentary evidence (exhibits) for electronic presentation.¹² All those participating in the hearing remotely *must comply* with the requirements in Attachment A to this Decision, which is incorporated into this Decision as if fully set forth. *All parties must comply* with the requirements in Attachment B to this Decision, which is incorporated into this Decision as if fully set forth. As noted, Attachment B includes instructions and requirements relating to presenting evidence electronically at the hearing, and thus, it is extremely important that all parties review and follow the requirements in Attachment B.

4. **Deadlines to File Exhibits and Exhibit Lists.**

a. **Applicant's Initial Exhibit Deadlines.** Al Razaq Import & Export LLC (Al Razaq or Applicant) must file with the Commission and serve on all parties its pre-marked exhibits and its exhibit list on or by the close of business on February 28, 2023.

b. **Intervener's Exhibit Deadlines.** Mountain Star Transportation LLC doing business as Explorer Tours must file with the Commission and serve on all parties its pre-marked exhibits and exhibit list on or by the close of business on March 14, 2023.

¹¹ Approximately one week before the hearing, the parties will receive an email with information needed to join the hearing via Zoom at the email addresses on file with the Commission for this proceeding. As such, the parties must ensure that the Commission has their most current email address.

¹² This may require parties to electronically scan documentary exhibits so that they may be presented in electronic form during the hearing.

c. **Applicant’s Supplemental Exhibit Deadline.** Al Razaq may supplement its exhibits in response to Mountain Star’s exhibits but must do so by filing and serving any additional pre-marked exhibits not already filed with an amended exhibit list on or by the close of business on March 27, 2023. The amended exhibit list must list all the exhibits that Al Razaq intends to present at the hearing and will substitute its prior exhibit list.¹³ Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

5. **Deadline to File Witness Lists.** All parties must file a witness list identifying all witnesses that will be called to testify during the hearing on or by the close of business on March 27, 2023. Witness lists must include a brief description of the witnesses’ anticipated testimony and the witnesses’ contact information.

¹³ This is intended to avoid Applicant filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

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 black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director