

Decision No. R23-0326-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
DENYING MOTION TO STRIKE, ESTABLISHING
PROCEDURES, AND SETTING HEARING**

Mailed Date: May 16, 2023

I. STATEMENT

A. Procedural Background

1. On July 21, 2022, Topsy Velo, LLC, d/b/a Topsy Voyage (Topsy Voyage 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. 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, set procedural deadlines, and established a 30-day intervention period.

3. On August 22, 2022, Absolute Prestige Limousine II LLC (Absolute Prestige or Intervenor) timely noticed its intervention of right by filing its Entry of Appearance, Intervention,

Letter of Authority, and Legal Representation for Absolute Prestige Limousine II, LLC (Intervention).

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, filed December 27, 2022, the ALJ, among other things, scheduled an evidentiary hearing in this matter for March 16-17, 2023.

6. On March 8, 2023, Applicant's Motion to Strike the Intervention of Absolute Prestige Limousine II LLC and for Other Relief (Motion to Strike) was filed by Tippy Voyage.

7. On March 9, 2023, Intervenor filed its Response to Applicant's Motion to Strike the Intervention of Absolute Prestige Limousine II LLC and for Other Relief (Response to Motion to Strike).

8. By Decision No. R23-0177-I, filed March 17, 2023, the ALJ, among other things, vacated the evidentiary hearing on March 16-17, 2023.

9. By Decision No. R23-0251-I, issued April 21, 2023, the ALJ, ordered the parties to confer regarding proposed dates for the evidentiary hearing, the location of the evidentiary hearing, and the method by which the evidentiary hearing should be conducted.

10. On May 11, 2023, Applicant's Report in Compliance with Interim Decision No. R23-0251-I was filed by Tippy Voyage (Applicant's Conferral Report).

B. Motion to Strike

11. In the Motion to Strike, Applicant argues that Intervenor's statements in Intervenor's discovery responses to Applicant's discovery requests¹ and Intervenor's 2022 annual

¹ See Exhibit 2 to the Motion to Strike

report to the Commission² show that “any operations that may have been conducted by [Intervenor] were conducted [exclusively] under either a luxury limousine permit or a [*sic*] off-road scenic charter [permit].”³ Applicant argues that Intervenor’s exclusive operation under a luxury limousine and/or off-road scenic charter permits do not provide legitimate grounds upon which Absolute Prestige’s may base its intervention herein. More specifically, Applicant states that Intervenor’s statements in the Intervention that Intervenor “operates” CPCN No. 55925 and “provides” call-and-demand shuttle, call-and-demand charter, and call-and demand sightseeing services in Mesa County, Colorado are contradictory to the statements that Intervenor made in its discovery responses to Applicant’s discovery requests, that Intervenor “did not provide” common carrier services during the period of June 6, 2022 to December 6, 2022.⁴ Applicant also argues that Intervenor’s statements in the Intervention are contradictory to Intervenor’s discovery responses to Applicant’s discovery requests, in which Intervenor states that it did not have records pertaining to Intervenor’s call-and-demand sightseeing and call-and-demand charter services⁵ for the periods of June 1, 2022 through November 30, 2022 and May 1, 2022 through October 31, 2022, respectively. Finally, Applicant argues that Intervenor’s statements in the Intervention are contradictory to Intervenor’s statement in its 2022 annual report to the Commission, in which Intervenor states that it did not earn fare revenue, no lease fees were paid by Intervenor’s shuttle drivers for Intervenor’s call-and-demand shuttle services, and Intervenor had no intrastate operating revenue.⁶ Applicant further argues that Applicant appears to have abandoned its CPCN

² See Exhibit 4 to the Motion to Strike.

³ Motion to Strike at 1-3.

⁴ *Id.*

⁵ According to Applicant, despite Applicant’s request of Intervenor to produce documents relating to Absolute Prestige’s call-and-demand shuttle services, Intervenor’s response applied to call-and-demand charter services for a different period of time than the one requested by Applicant. See *id.* at 2-3 and Ex. 2 to the Motion to Strike at 3.

⁶ Motion to Strike at 3.

and the same should be cancelled by the Commission.⁷ Based on Intervenor's statements in Intervenor's discovery response to Applicant's discovery requests and Intervenor's 2022 annual report to the Commission, Applicant requests that Absolute Prestige's intervention be stricken, and, pursuant to Colo. R. Civ. Pro. 11, Applicant be awarded its attorney fees, expenses, and costs in connection with the Motion to Strike.⁸ Given the proximity in time between the Motion to Strike and the previously-scheduled, and now-vacated, evidentiary hearing on March 16-17, 2023, Applicant further requests that response time to the Motion to Strike be shortened.

12. In the Response to the Motion to Strike, Intervenor states that Intervenor's inactivity under its CPCN does not warrant the suspension of same, nor establish that Intervenor abandoned its CPCN.⁹

13. The Intervention was timely-filed. Intervenor asserts that it owns CPCN No. 55925 and that the authority sought in the Application overlaps Intervenor's authority under CPCN No. 55925. Applicant did not contest these assertions. The veracity Intervenor's material statements in the Intervention, Intervenor's discovery responses to Applicant's discovery requests, and Intervenor's annual report to the Commission, as well as whether CPCN No. 55925 has become dormant, are evidentiary issues that are irrelevant to Absolute Prestige's intervention by right. Therefore, Applicant's request to strike Absolute Prestige's intervention will be denied, as ordered below. Given the denial of Applicant's request to strike Absolute Prestige's intervention, Applicant's request to be awarded attorney fees, expenses, and costs in connection with the Motion to Strike will be denied. Lastly, because Intervenor timely responded to the Motion to Strike,

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ Response to Motion to Strike at 2.

before the issuance of this Decision, Applicant's request to shorten response time will be denied as moot.

C. Procedural Schedule, Discovery Procedures and Evidentiary Hearing

14. In Applicant's Conferral Report, Applicant indicates that: the parties agreed that if a hearing was to be held in this matter, it should take place in July 2023, on, or after, July 13, 2023; and Applicant's preference was to have an in-person hearing in Grand Junction, Colorado. Absolute Prestige position as to the method of the hearing was not identified in Applicant's Conferral Report.¹⁰

15. Given the preference indicated in Paragraph 14, above, the ALJ will accommodate an in-person hearing in Grand Junction, Colorado on July 13, 2023.

16. To facilitate the orderly and efficient litigation of this proceeding, each party will be ordered to file (or supplement), and to serve on each other, a list of witnesses the party intends to call, including a detailed summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

17. Parties are advised that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. Parties are advised further that no exhibit will be received in evidence, except in rebuttal, cross, or cross answer, unless filed and served in accordance with the procedural schedule.

¹⁰ However, during the pre-trial conference in this Proceeding, on December 13, 2023, Absolute Prestige indicated that it preferred a hearing in Grand Junction, Colorado.

18. Each Party is specifically reminded that all filings with the Commission must also be served upon the other Party and its counsel, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

19. Discovery in this matter is to be conducted in accordance with Rule 1405, 4 CCR 723-1.

20. Additional procedural requirements may be addressed in future Interim Decisions.

D. Hearing Exhibit Number Block Assignment

21. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Topsy Voyage is assigned hearing exhibit numbers 100 to 199; and
- Absolute Prestige is assigned hearing exhibit numbers 200 to 299.

E. Additional Procedural Notice

22. The parties are on notice that the ALJ will retain full discretion to adopt procedures governing this proceeding, including with respect to the method, location, and time of the evidentiary hearing.

II. ORDER

A. It Is Ordered That:

1. Applicant's Motion to Strike the Intervention of Absolute Prestige Limousine II LLC and for Other Relief, filed on March 8, 2023 by Topsy Voyage, is denied.

2. An in-person evidentiary hearing shall be conducted at the following date, time, and place:

DATE: July 13, 2023
TIME: 9:00 a.m.
PLACE: Colorado Department of Transportation
222 South 6th Street, Room 101
Grand Junction, Colorado 81501

3. Topsy Velo, LLC, d/b/a Topsy Voyage shall file and serve its final witness and exhibit lists no later than May 26, 2023.

4. Absolute Prestige Limousine II LLC shall file and serve its final witness and exhibit lists no later than June 5, 2023.

5. When filing copies of exhibits and lists of witnesses, parties shall file (or supplement) and serve (a) a list that identifies the witnesses each party intends to call at the hearing, including a detailed summary of the anticipated testimony of each witness and (b) copies of the exhibits each party will present at the hearing.

6. To the extent inconsistent with this Interim Decision, Decision Nos. R22-0824-I and R23-0141-I shall be superseded by this Interim Decision.

7. 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 that reads "Rebecca E. White".

Rebecca E. White,
Director