

Decision No. R24-0478-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0073CP

GREEN JEEP TOURS LLC,

COMPLAINANT,

V.

PURPLE MOUNTAIN TOUR COMPANY LLC AND ZACHARY BUGG AND BROOKE
LYNN CARSWELL,

RESPONDENTS.

**INTERIM DECISION
RESCHEDULING EVIDENTIARY HEARING, AND
MODIFYING PROCEDURAL SCHEDULE**

Issued Date: July 8, 2024

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I. STATEMENT AND PROCEDURAL HISTORY

1. On February 12, 2024, Green Jeep Tours LLC (“Complainant” or “Green Jeep”) commenced this Proceeding by filing a Formal Complaint against Purple Mountain Tour Company LLC (“Purple Mountain”); Zachary Bugg, Lay Representative of Purple Mountain; and Brooke Lynn Carswell, Managing Director of Purple Mountain (collectively, “Respondents”). Green Jeep alleges that Respondents have “offered to sell and ha[ve] sold individual tickets” for transportation services without the proper certificate of public convenience and necessity in violation of Rule 6016 of the Public Utilities Commission’s (“PUC” or “Commission”) Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6.

2. On February 16, 2024, after receiving the Formal Complaint, the Commission issued a Notice of Hearing setting this Proceeding for an evidentiary hearing to be held on April 22, 2024, commencing at 9:00 a.m.

3. Also on February 16, 2024, the Commission issued and sent to Respondents an Order to Satisfy or Answer the Formal Complaint notifying Respondents that a Formal Complaint had been asserted against them and ordering Respondents to answer or satisfy the Formal Complaint within 20 days, or on or before March 7, 2024.

4. On February 21, 2024, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

5. Because the Commission had not received a response from Respondents within the time period established by the Order to Satisfy or Answer, on March 22, 2024, the

undersigned ALJ issued Decision No. R24-0188-I ordering Respondents to file a responsive pleading to the Formal Complaint.

6. On April 5, 2024, Respondents filed their Evidence of Satisfaction, Response to Complaint and Statement Regarding Hearing, along with exhibits indicating that Respondents were no longer offering or accepting payment for single-ticket transportation sales. By Decision No. R24-0229-I, issued April 12, 2024, the undersigned ALJ granted Respondents' request for an extension of time within which to file a responsive pleading to the Formal Complaint and accepted Respondents' late-filed Evidence of Satisfaction and Response to Complaint.

7. On April 11, 2024, the undersigned ALJ held a prehearing conference at which the parties, their counsel and the undersigned ALJ discussed a new hearing date and the establishment of a procedural schedule to govern this Proceeding. After the prehearing conference, on April 18, 2024, the ALJ issued Decision No. R24-0246-I vacating the evidentiary hearing set for April 22, 2024, and rescheduling the evidentiary hearing to June 27, 2024, in Estes Park, Colorado.

8. Under the procedural schedule adopted by Decision No. R24-0246-I, the parties were to conduct any depositions by May 15, 2024, and complete discovery by May 31, 2024. Decision No. R24-0246-I also set deadlines for the parties to exchange their exhibits and exhibit and witness lists: Complainant's exhibits and lists were due May 31, 2024; Respondents' exhibits and lists were due by June 14, 2024; and Complainant's supplemental exhibits and supplemental witness and exhibit lists were due by June 21, 2024.

9. Complainant served discovery requests on Respondents before the discovery deadline. Respondents objected to some of the discovery requests propounded upon them and filed a Motion for Protective Order on May 6, 2024.

10. Rather than filing a response addressing the issues raised in Respondents' Motion for Protective Order, on May 20, 2024, Complainant moved to strike the Motion for Protective Order.

11. By Decision No. R24-0371-I, issued May 31, 2024, the undersigned ALJ granted the Motion for Protective Order in part and ordered Respondents to answer the discovery requests, within the limits set by Decision No. R24-0371-I, by June 14, 2024.

12. On May 29, 2024, Respondents moved for summary judgment, seeking the dismissal of the claims asserted against them. Complainant filed a Response in Opposition to Respondents' Motion for Summary Judgment Together with Complainant's Motion for Continuance and Attorney Fees and Costs on June 10, 2024.

13. Although Respondents submitted their exhibits and witness and exhibit lists to Complainant on June 19, 2024 (rather than on June 14, 2024, as required by Decision No. R24-0246-I), Respondents did not file their exhibits and witness and exhibit lists with the Commission until June 25, 2024.

14. As of the date of this Decision, Complainant has filed neither its original nor its supplemental exhibits and witness and exhibit lists.

15. Instead, on June 21, 2024 — the date on which its Supplemental exhibits and witness and exhibit list were due — Complainant filed a Motion to Vacate and Reschedule Hearing[,] to Re-Set Pre-Hearing Deadlines Including Complainant's Witness List and Exhibits and to Waive Response Time ("Motion to Vacate"). Citing the complicated discovery posture and pending motions, Complainant requested that the June 27, 2024 evidentiary hearing be vacated and rescheduled to allow the parties time to complete discovery.

16. After considering Respondents' Response to the Motion the Vacate, by Decision No. R24-0454-I, issued June 26, 2024, the ALJ granted the Motion to Vacate, vacated the June 27, 2024 evidentiary hearing, and scheduled a prehearing conference to be held June 27, 2024, at 11:00 a.m. for the purpose of rescheduling the evidentiary hearing.

17. The same day Decision No. R24-0454-I was issued, Complainant filed its own Motion for Summary Judgment, asking that Proceeding No. 23A-0078CP — which granted Purple Mountain CPCN No. 55999S — be reopened “for the purpose of cancelling . . . CPCN 55999S in its entirety for illegal operations,” to make findings that “Purple [Mountain], Bugg and Carswell are individually and severally unfit to hold any PUC certificate of public convenience and necessity,” to award Complainant its attorney fees and costs, and to impose civil penalty assessments against Respondents.¹

II. SUMMARY OF PREHEARING CONFERENCE

18. The ALJ held the June 27, 2024 prehearing conference as scheduled. Richard Bara appeared on behalf of Complainant and J. Aaron Atkinson appeared on behalf of Respondents.

A. Rescheduling of Evidentiary Hearing

19. As noted above, the evidentiary hearing scheduled for June 27, 2024, to be held in Estes Park, Colorado, was vacated by Decision No. R24-0454-I at Complainant's request.

20. At the prehearing conference, the ALJ advised the parties that the evidentiary hearing would be rescheduled to **Tuesday, August 20, 2024, commencing at 9:00 a.m.** The rescheduled hearing will be held in a hybrid format. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in

¹ Complainant's Motion for Summary Judgment, p. 7, filed June 26, 2024.

Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform.

21. Complainant requested that the evidentiary hearing be held in person in Estes Park. The undersigned ALJ advised Complainant that an in-person hearing could be scheduled in Estes Park, but that Complainant would have to arrange for an appropriate hearing location in Estes Park.

22. On July 8, 2024, Complainant’s counsel advised the undersigned ALJ that his client had reserved a room at the Estes Valley Library for the evidentiary hearing to be held on August 22, 2024. As the ALJ and parties had discussed this option, and the ALJ had indicated the evidentiary hearing could be scheduled in person in Estes Park if the Complainant arranged a satisfactory location, the ALJ will schedule an in-person evidentiary hearing to be held **Thursday, August 22, 2024, commencing at 12:00 p.m.**

B. Modifying Procedural Schedule

23. To accommodate the rescheduled evidentiary hearing and ensure the parties can prepare for the hearing, the ALJ will modify the procedural schedule adopted by Decision No. R24-0246-I as follows:

ACTION	OLD DEADLINE	NEW DEADLINE
Complainant’s Exhibits, Witness Lists, and Exhibit Lists	May 31, 2024	July 12, 2024
Respondents’ Exhibits, Witness Lists, and Exhibit Lists	June 14, 2024	July 26, 2024
Complainant’s Supplemental Exhibits, Witness Lists, and Exhibit Lists	June 21, 2024	August 2, 2024
Stipulations and/or Settlement	June 14, 2024	August 9, 2024
Evidentiary Hearing	June 27, 2024, at 12:00 p.m.	August 22, 2024, at 12:00 p.m.
Post-hearing Statements of Position	July 12, 2024	September 6, 2024

C. Denial of Request for Additional Discovery

24. At the prehearing conference, Complainant requested that it be permitted to conduct additional discovery, in particular depositions of Respondents, in advance of the August 20, 2024, evidentiary hearing.

25. Respondents objected to this request as untimely and burdensome.

26. Respondents represented, and Complainant did not dispute, that Complainant has not, at any time during the pendency of this Proceeding, made any formal request(s) of Respondents to conduct depositions.

27. The deadline for conducting depositions set by Decision No. R24-0454-I expired on May 15, 2024, six weeks before the prehearing conference at which Complainant requested the opportunity to take depositions.

28. Complainant's counsel, Mr. Bara, informed the ALJ that Complainant was unable to meet the deposition deadline because he ("Mr. Bara") was in Italy for two weeks during May 2024. Yet, Complainant knew of the May 15, 2024 deposition deadline on April 11, as the procedural schedule was discussed and announced at the April 11, 2024 prehearing conference and set by Decision No. R24-0246-I issued one week later, on April 18, 2024. Thus, Complainant's counsel had at least 5 weeks after learning of the deposition deadline to request and/or take depositions before departing for his trip but did not do so.

29. Nor did Complainant file any motion seeking to extend the deposition or discovery deadlines to accommodate his schedule. Indeed, to date Complainant has made no such motion.

30. Moreover, the deposition deadline expired six weeks *before* Complainant raised the issue of taking depositions for the first time at the June 27, 2024 prehearing conference; the discovery deadline had expired four weeks prior to this request.

31. Based on this history, the ALJ finds and concludes that new discovery and the taking of depositions at this point in the Proceeding, so long after the expiration of the discovery and deposition deadlines, would be inappropriate, burdensome, and prejudicial to Respondents.

32. Complainant's request to take depositions long after the expiration of the discovery deadline will therefore be denied.

III. UNIFIED NUMBERING SYSTEM FOR EXHIBITS

33. To ensure the parties are prepared for the evidentiary hearing and in order to efficiently organize the numbering and preparation of exhibits for the hearing, the ALJ reminds the parties that by Decision No. R24-0246-I, they have been assigned blocks of exhibit numbers. The exhibit numbers assigned to the parties by Decision No. R24-0246-I will remain in effect.

34. All exhibits shall be identified by sequential numbers (i.e. Exhibit 100, Exhibit 101, Exhibit 102, etc.). Every page of each exhibit shall include a heading with the following information: the identity of the party offering the exhibit; the exhibit number; the name of the witness who will testify to the exhibit's foundation; this Proceeding number; the date of the hearing; and pagination in the form of "page ___ of ___ pages".

IV. ADVISEMENTS

35. All parties are on notice that failure to appear at the evidentiary hearing 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 hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

36. Complainant Green Jeep Tours bears the burden of proof by a preponderance of the evidence that its Formal Complaint is meritorious. The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. That is, the fact finder must determine whether the existence of a contested fact is more probable than its non-existence. A party meets this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

37. 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.

38. The parties are also on notice that if circumstances change before the hearing date, the ALJ may modify this hearing to be held fully remote, in person, or may enter such other orders as appropriate in the circumstances.

39. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 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: puc.colorado.gov/pucrules.

40. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

41. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

V. ORDER

A. It Is Ordered That:

1. An **in-person** evidentiary hearing is scheduled as follows:

DATE: August 22, 2024
 TIME: 12:00 p.m.
 PLACE: Hondius Room
 Estes Vally Library
 335 East Elkhorn Avenue
 Estes Park, Colorado 80517

2. The procedural schedule adopted by Decision No. R24-0246-I, issued April 18, 2024, is modified as follows:

ACTION	OLD DEADLINE	NEW DEADLINE
Complainant’s Exhibits, Witness Lists, and Exhibit Lists	May 31, 2024	July 12, 2024
Respondents’ Exhibits, Witness Lists, and Exhibit Lists	June 14, 2024	July 26, 2024
Complainant’s Supplemental Exhibits, Witness Lists, and Exhibit Lists	June 21, 2024	August 2, 2024
Stipulations and/or Settlement	June 14, 2024	August 9, 2024
Evidentiary Hearing	June 27, 2024, at 12:00 p.m.	August 22, 2024, at 12:00 p.m.
Post-hearing Statements of Position	July 12, 2024	September 6, 2024

3. The parties may not propound new discovery requests on the opposing party. Complainant’s request to conduct depositions made at the prehearing conference held on June 27, 2024, is denied.

4. As set out in Decision No. R24-0246-I, the parties shall adhere to the following numbering system for their respective exhibits and prefiled testimony, as set forth below:

Complainant Green Jeep Tours, LLC	Exhibits 100-199
Respondents Purple Mountain Tour Company, LLC; Zachary Bugg; and Brooke Lynn Carswell	Exhibits 200-299

5. Every page of each exhibit shall include a heading with the following information: the identity of the party offering the exhibit; the exhibit number; the name of the witness who will testify to the exhibit’s foundation; this Proceeding number; the date of the hearing; and pagination in the form of “page ___ of ___ pages”.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director