

Decision No. R25-0131

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0387CP

IN THE MATTER OF THE APPLICATION OF CHARIOT TRANSPORTATION CO. FOR PERMANENT AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55977.

**RECOMMENDED DECISION
GRANTING-IN-PART AND DENYING AS MOOT-IN-PART
MOTION TO MOTION IN LIMINE AND MOTION TO
DISMISS WITHOUT PREJUDICE AND REQUEST TO
SHORTEN RESPONSE TIME, VACATING HEARING,
DISMISSING APPLICATION, AND CLOSING
PROCEEDING**

Issued Date: February 24, 2025

I. STATEMENT

A. Background

1. On September 13, 2024, Chariot Transportation Co. (“Chariot Transportation”) filed the application described in the caption above (“Application”).

2. On September 16, 2024, the Commission issued public notice of the authority sought by Chariot Transportation in the Application as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service between all points in the County of Montrose, and between said points, on the one hand, and all points in the Counties of Delta, La Plata, Mesa, Ouray, and San Miguel, on the other hand.

3. On October 8, 2024, Tazco, Inc., doing business as Sunshine Taxi, (“Sunshine Taxi”) filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for Hearing.

4. On October 16, 2024: (a) Wilson Peak Limo LLC, doing business as Mountain Limo (“Mountain Limo”), filed a Notice of Intervention by Right, or Alternatively, Motion to Permissively Intervene, and Request for Hearing; and (b) Western Slope Rides LLC (“Western Slope Rides”) filed a Notice of Intervention by Right, Entry of Appearance, and Request for Hearing. Sunshine Taxi, Mountain Limo, and Western Slope Rides are hereinafter referred to collectively as “Intervenors.”

5. On October 17, 2024, Western Slope Rides filed an Amended Notice of Intervention by Right, Entry of Appearance, and Request for Hearing.

6. On October 23, 2024, the Commission deemed the Application complete and referred the proceeding by minute entry to an Administrative Law Judge. The proceeding was subsequently assigned to the undersigned ALJ.

7. On November 19, 2024, the ALJ issued Decision No. R24-0842-I that established a deadline of December 12, 2024 for: (a) Western Slope Rides to either have legal counsel file an entry of appearance on its behalf or establish that Rule 1201 of the Commission’s Rules of Civil Procedure¹ does not require it to be represented by an attorney in this proceeding; and (b) for the parties to file a Statement Regarding Hearing specifying the type of hearing (in-person, remote, or hybrid) it prefers, the location of the hearing, and an explanation of why the hearing should not take place in one of the Commission’s hearing rooms in Denver if an alternate location is preferred. Decision No. R24-0842-I also set a procedural schedule requiring Chariot

¹ 4 *Code of Colorado Regulations* (CCR) 723-1.

Transportation to file and serve witness and exhibits lists by January 10, 2025, and each intervenor to do the same by January 31, 2025.

8. On December 10, 2024, Western Slope Rides filed a document “request[ing] exemption of legal representation during hearings held to discuss the application in question.”

9. On December 12, 2024, Mountain Limo filed a Statement Regarding Hearing stating that it prefers a remote hearing “in the interest of administrative economy and avoiding undue travel time and expense.” No other party expressed a preference for the hearing.

10. On December 24, 2024, the ALJ issued Decision No. R24-0942-I: (a) holding that Western Slope Rides’ December 10, 2024 filing did not comply with the directive in Decision No. R24-0842-I to either obtain counsel or establish that Rule 1201 does not require it to be represented in this proceeding by an attorney currently in good standing before the Supreme Court of the State of Colorado; (b) extending the deadline for Western Slope Rides to comply with the directive; and (c) scheduling a remote hearing in this proceeding for February 28, 2025.

11. Chariot Transportation did not file and serve witness and exhibits lists by January 10, 2025, as ordered in Decision No. R24-0842-I.

12. On January 17, 2025, the ALJ issued Decision No. R25-0035-I that dismissed Western Slopes Ride’s intervention for failure to comply with the directive in Decision No. R24-0942-I and provided instructions for remote participation in the hearing scheduled for February 28, 2025.

13. On January 28, 2025, Mountain Limo filed a Motion in Limine and Motion to Dismiss without Prejudice and Request to Shorten Response Time (“Motion”). In the Motion, Mountain Limo requested, among other things, the Application to be dismissed without prejudice

for failure to comply with the order in Decision No. R24-0892-I for Chariot Transportation to file its witness and exhibit lists and exhibits by January 10, 2025.

14. On January 30, 2025, Sunshine Taxi filed a response to the Motion stating that it supported the Motion.

15. On January 31, 2025, Mountain Limo and Sunshine Taxi filed their witness and exhibit lists and exhibits, in compliance with the order in Decision No. R24-0892-I.

B. Analysis

16. Chariot Transportation disregarded the order in Interim Decision No. R24-0892-I to file and serve its witness list and marked exhibits by January 10, 2025. The purpose of this requirement was “[t]o facilitate the orderly and efficient litigation of this proceeding... so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at the hearing.”² Chariot Transportation’s failure to comply with this requirement has thus prejudiced the intervenors by denying them the opportunity to review the evidence that Chariot Transportation intends to introduce at the hearing and prepare their cases in light of that evidence.

17. In addition, Chariot Transportation has not filed any response to the Motion. In fact, Chariot Transportation has not filed any document since the Application. Chariot Transportation has failed to provide any cause, much less good cause, for its failure to file its witness and exhibit lists and marked exhibits. Pursuant to Commission Rule 1400(d), the ALJ deems Chariot Transportation’s “failure to file a response as a confession of the motion.”³

² Decision No. R24-0842-I at p. 5 (¶ 17).

³ 4 *Code of Colorado Regulations* 723-4.

18. Finally, Decision No. R24-0892-I warned that:

(a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.⁴

19. Based on the foregoing, the ALJ would not allow Chariot Transportation to present any evidence at the hearing given its failure to comply with Decision No. R24-0842-I and the resulting prejudice to the intervenors. The ALJ thus finds that Chariot Transportation cannot carry its burden of proof and, as a result, a hearing is unnecessary. The Motion will be granted and the Application will be dismissed without prejudice.

II. ORDER

A. The Commission Orders That:

1. The Motion in Limine and Motion to Dismiss without Prejudice and Request to Shorten Response (“Motion”) Time filed by Wilson Peak Limo LLC, doing business as Mountain Limo on January 28, 2025 is granted in part and denied as moot in part. The request to dismiss without prejudice is granted. The remainder of the relief requested in the Motion is denied as moot.

2. The evidentiary hearing scheduled for February 25, 2025 is vacated.

3. The Application filed by Chariot Transportation Co. on September 13, 2024 is dismissed without prejudice.

4. Proceeding No. 24A-0387CP is closed.

⁴ *Id.* at p. 7 (¶ 25).

5. This Recommended Decision shall 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.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall 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 shall 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.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director