

Decision No. R25-0003-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0236CP

MOUNTAIN STAR TRANSPORTATION, LLC DOING BUSINESS AS RED ROCKS SHUTTLE,

COMPLAINANT,

V.

ON LOCATION EVENTS, LLC DOING BUSINESS AS SHUTTLES TO RED ROCKS, AND ACE EXPRESS COACHES, LLC AND RAMBLIN' EXPRESS, INC.,

RESPONDENTS.

**INTERIM DECISION
GRANTING MOTION TO DISMISS COUNTERCLAIM**

Issued Date: January 6,, 2025

I. STATEMENT

A. Procedural Background

1. This proceeding concerns the formal complaint filed by Mountain Star Transportation, LLC (“Mountain Star”) doing business as Red Rocks Shuttle on May 24, 2024, against On Location Events, LLC, doing business as Shuttles to Red Rocks (“On Location”), Ace Express Coaches, LLC, (“Ace Express”) and Ramblin’ Express, Inc. (“Ramblin’ Express”).

2. By Decision No. R24-0771-I, filed October 25, 2024, motions to dismiss the complaint filed by On Location, Ace Express, and Ramblin' Express were denied. Each respondent

was ordered to file their respective Answer to the Formal Complaint filed in this matter on or before November 12, 2024.

3. On November 12, 2024, the Ace Express and Ramblin' Express Answer to Formal Complaint was filed.

4. On November 12, 2024, the On Location Events, LLC Answer and Counterclaim was filed.

5. On December 2, 2024, the Mountain Star's Motion to Dismiss on Location Events' Counterclaim was filed.

6. On December 16, 2024, On Location Events' Response in Opposition to Mountain Star's Motion to Dismiss Counterclaim was filed.

B. Counterclaim

7. On Location filed a counterclaim against Mountain Star alleging that Mountain Star violated Commission Rule 1406(b) by improperly attempting to serve an unauthorized subpoena that was not granted or issued by the Commission or the Director, improperly attempted to serve a person other than the registered agent of On Location, and failed to comply with and disregarded applicable Commission rules in an attempt to further harass On Location and its employees.

C. Motion to Dismiss Counterclaim

8. In its motion, Mountain Star moves to dismiss the counterclaim by On Location Events pursuant to Rule 12(b)(5) C.R.C.P.

9. Mountain Star contends the remedy for any violation of rule as to issuance of a subpoena would have been to quash the subpoena. Any such opportunity was waived and moot in the present circumstances because (1) the hearing occurred, (2) Rick Van Patten appeared, and (3) without objection from On Location. Since the claim has been waived and is moot, relief cannot

be granted. A copy of the subpoena issued by the undersigned on November 29th, 2024, is attached to the motion as Exhibit A (the “Subpoena”).

10. In its response, On Location contends the motion to Dismiss should be denied. On Location states that the Subpoena was neither served upon Mr. Van Patten nor received by On Location or its counsel. On Location points to the fact that the Subpoena does not appear in the Commission’s E-Filings System.

11. On Location denies that it has waived the counterclaim. Rather, it claims that the company had no knowledge of the existence of the Subpoena and “not have an opportunity to quash or object to” the Subpoena. On Location contends the motion should be denied, as On Location could not have intentionally waived a known right about the Subpoena when it had no knowledge of the Subpoena.

12. Finally, On Location denies that any claim is moot, and alleges that Mountain Star violated Commission rules.

D. Subpoena Procedures

13. The Commission is authorized to issue subpoenas for the attendance of witnesses and the production of records, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. § 40-6-103(1), C.R.S. “No subpoena shall be issued except upon good cause shown. Good cause shown shall consist of an affidavit stating with specificity the testimony, records, or documents sought and the relevance of such testimony, records, or documents to the proceedings of the commission.” § 40-6-103(1), C.R.S.

14. Except as provided in Rule 1406(b) and §§ 40-6-102 and 103, C.R.S., subpoena practice before the Commission is governed by rule 45(a)-(d) of the Colorado Rules of Civil Procedure, as published in the 2012 edition of the Colorado Revised Statutes, incorporated into

the Rules of Practice and Procedure by reference. Rule 1400, 4 CCR 723-1. Rule 1406, 4 CCR 723-1.

15. Finally, Commission Rule 1406(b) requires in relevant part that “[u]pon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue . . . a subpoena duces tecum requiring . . . the production of documentary evidence . . . at a . . . deposition . . . consistent with § 40-6-103(1), C.R.S.”¹ As a result, to compel the production of documents pursuant to a subpoena duces tecum, the subpoena duces tecum must set the time and place for a deposition at which the requested documents will be produced.²

E. Conclusion

16. By Decision No. R24-0555-I, issued August 1, 2024, a limited hearing was scheduled to be held on September 9, 2024 to address representation, and subject matter jurisdiction was scheduled to be held in this matter. On or about August 19, 2024, Mountain Star properly filed its request for issuance of a subpoena compelling attendance of Rick Van Patten at that hearing with the undersigned. Meeting statutory requirements, the undersigned executed the subpoena that is attached as Exhibit A to the Mountain Star’s Motion to Dismiss on Location Events’ Counterclaim.

¹ 4 CCR 723-1.

² [For Your Information P-9, Requesting a Subpoena](#), available from the Commission’s website, accurately describes the process available for a party to obtain a subpoena:

A request (typically, a request appears very similar to a motion), a supporting affidavit, and the proposed subpoena must be provided to the person you are requesting to issue the subpoena. The process is designed to be an ex parte process, meaning that the request for a subpoena is without notice to, or the involvement of, others when making the request. The request should not be filed with the Commission in a proceeding; you provide the request and the supporting documents directly to the person you are requesting to issue the subpoena.

17. On Location admits receiving Mountain Star’s Request for Subpoena to Attend and Testify identifying Van Patten as On Location’s local manager. Counterclaim General Allegations ¶17.

18. On Location admits an “Affidavit of Good Cause” “setting forth allegations as to why Mountain Star believed the Commission had ‘good cause’ to subpoena Van Patten to attend the hearing.” Counterclaim General Allegations ¶19.

19. Based upon the record in this proceeding, including various allegations, statements and admissions, it is undisputed that the issued subpoena was never served upon Mr. Van Patten.

20. As argued by Mountain Star, if the subpoena had been served upon Mr. Van Patten, he would then have been afforded the opportunity to request any appropriate relief as to the subpoena, including if he believed the subpoena to be contrary to law or Commission rules.

21. Mr. Van Patten was not compelled to attend the hearing held in this matter on September 9, 2024.

22. On Location erroneously infers significance to the fact that the issued subpoena was not filed in the Commission’s E-Filing System to support “information and belief” that the subpoena was not issued by the undersigned. However, there is no appropriate basis for such an inference. The process for issuance of a subpoena is not contemplated to be upon motion and the potential recipient of the subpoena is provided no right to respond to the request for issuance.

23. Commission procedures are comparable to general civil litigation where the recipient of a subpoena is not entitled to notice of its existence prior to service. If, and only if, the process server hired by Mountain Star had been successful in serving the subpoena at issue would proof of service and notice to parties have been required. Rule 45(b)(4) and (5), C.R.C.P. incorporated by Rule 1406(a), 4CCR 723-1.

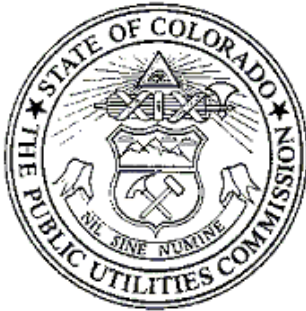
24. The subpoena having been properly requested and issued in accordance with Colorado statute and Commission rule, and the same having never been served upon Mr. Van Patten, it is found and concluded that On Location's counterclaim fails to state any claim upon which relief may be granted.

II. ORDER

A. It Is Ordered That:

1. Mountain Star's Motion to Dismiss on Location Events' Counterclaim filed on December 2, 2024, is granted.
2. The counterclaim filed by On Location Events, LLC on November 12, 2024, is dismissed.
3. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

Rebecca E. White,
Director