

Decision 99-03-024 March 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of A & M United Group, L.L.C., a Limited Liability Company, to acquire, and Isam M. Alziq to transfer, a passenger stage certificate of public convenience and necessity and certain other assets, pursuant to Section 851, et seq., of the California Public Utilities Code.

Application 98-06-051
(Filed June 30, 1998)

**ORDER GRANTING IMMEDIATE SUSPENSION
OF OPERATING AUTHORITY AND GRANTING AN ORDER
TO SHOW CAUSE WHY OPERATOR SHOULD NOT BE HELD
IN CONTEMPT AND/OR WHY OPERATING AUTHORITY
SHOULD NOT BE REVOKED**

Summary

This order grants a motion of the Commission's Rail Safety/Carriers Division (RSCD) to immediately suspend the operating authority of EZ Shuttle and Charter Service (EZ) and for an order requiring the present owner of EZ to show cause why he should not be held in contempt and/or his operating authority should not be revoked.

Discussion

On February 10, 1999, the RSCD filed a motion for immediate suspension of the operating authority of EZ and for its owner, Isam M. Alziq, to show cause why he should not be held in contempt and/or why the certificate of EZ should not be revoked. The motion of RSCD contains a declaration under oath of Barbara Santa Marina, an investigator of RSCD, that Alziq has violated Public Utilities (Pub. Util.) Code § 582 by failing to provide RCSD with records

pertaining to the business of EZ. The declaration further alleges that EZ has committed serious safety violations, citing portions of General Order 158-A.

Neither Alziq nor his counsel appeared at the prehearing conference (PHC) of February 17, 1999 before Assigned Commissioner Duque and Administrative Law Judge (ALJ) Rosenthal. Alziq had 15 days to respond to RSCD's motion, pursuant to Rule 45(f) of our Rules of Practice and Procedure (Rules). The time for response expired on February 26, 1999. There has been no response. Therefore, the motion of RSCD is unopposed.

At the PHC of February 17, 1999 the ALJ indicated that if the Commission granted the motion of RSCD, then the subject matter of that motion would be the first order of business at the evidentiary hearings now scheduled for March 11-12 in Los Angeles. Next would be consideration of the charges of forgery and fraud leveled by Alziq against Abdulghasam Ahmadpour, majority owner of A & M United Group, the applicant herein. Finally, the hearing would be concerned with the issue of whether the transfer would be in the public interest. (TR 39.)

On October 6, 1998 an Assigned Commissioner's Scoping Ruling was issued. There has been no appeal of this Ruling. The ratesetting categorization indicated in that Ruling should now be changed to adjudicatory because of the allegations of serious safety violations in the filing of RSCD. This change of category has the effect of prohibiting ex parte communications from the time that the designation is made. (Rule 7(b))

Due to RSCD's allegations of serious safety violations by EZ there is a need to act on this matter at the first opportunity, which is this Commission Meeting of March 4, 1999. The allegations constitute an unforeseen emergency situation, as defined in Rule 81(a), (c), (f), and (h), for purposes of Pub. Util. Code § 311(g)(2). Accordingly the otherwise applicable 30-day period for public review of this order is being waived. Similarly, the uncontested motion of RCSD containing

allegations of serious safety violations qualifies as an emergency situation under Government (Govt.) Code § 11125.5(a) and therefore permits consideration of this matter on less than the 10 days' notice otherwise required by Govt. Code § 11125.

Findings of Fact

1. RSCD filed a motion with attached declaration asking for immediate suspension of the operating authority of EZ and a motion asking for an order to show cause why Alziq, the owner of EZ, should not be held in contempt and the operating authority of EZ should not be revoked.

2. RSCD alleges that there are serious safety violations of General Order 158-A by EZ and that EZ has not made its books and records available to RSCD, in violation of Pub. Util. Code § 582.

3. No response to that motion has been received.

Conclusions of Law

1. The motion of RSCD should be granted.

2. This matter constitutes an unforeseen emergency situation as defined in Govt. Code § 11125.3(a)(1) and as such may be added to the Commission's agenda on less than 10 days' notice. The otherwise applicable provisions of Pub. Util. Code § 311(g)(2) requiring public review and comment should be waived pursuant to this unforeseen emergency situation, as set forth in Rule 81.

3. Hearing on the Order to Show Cause issued herein should be combined with the evidentiary hearings in this matter scheduled for March 11-12, 1999 at the Commission Courtrooms in Los Angeles.

4. The designation of this matter should be changed from ratesetting to adjudicatory.

O R D E R

IT IS ORDERED that:

1. The motion of Rail Safety/Carriers Division (RSCD) filed February 10, 1999, and unopposed by any party, is granted.
2. The operating authority of EZ Shuttle and Charter Service (PSC/TCP 7595) (EZ) is suspended until further order of this Commission. EZ shall immediately cease all transportation of passengers.
3. At the hearings scheduled for March 11-12, 1999, Isam Alziq, owner of EZ and holder of its operating authorities, shall show cause why he should not be found in contempt of the Commission for failure to produce documents as required by Public Utilities (Pub. Util.) Code § 582 and for violations of the Commission's General Order 158-A, as specified in the motion. He shall also show cause why the operating authority of EZ should not be revoked.
4. The order of procedure at the evidentiary hearings shall first be on the Order to Show Cause, next on the issues of forgery and fraudulent practices raised by Alziq against Abdulghasam Ahmadpour, and finally on the transfer application of Ahmadpour. This order may be changed by the Presiding Officer.
5. The Assigned Commissioner is authorized by the Commission to issue an order lifting the suspension established by this decision in the event that the Assigned Commissioner believes the evidence presented at the hearing demonstrates either that the safety violations alleged to exist do not, in fact, exist or they have been resolved such that no risk of imminent harm to the public remains.
6. This matter is categorized as adjudicatory and all ex parte communications are prohibited.

A.98-06-051 ALJ/SHL/mrj ★

7. Because of the allegations of serious safety violations, the effective date of this order is the date hereof.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners