

Decision No. R24-0019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0454TO

IN THE MATTER OF THE PETITION OF ARCTIC RECOVERY LTD TO REVERSE AN INITIAL TOWING PERMIT DENIAL PURSUANT TO 40-10.1-401(2)(B), C.R.S., AND RULE 6504(D).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING PETITION WITHOUT PREJUDICE AND
VACATING JANUARY 16, 2024 HEARING**

Mailed Date: January 10, 2024

I. STATEMENT AND BACKGROUND

A. Statement and Summary

1. This Decision dismisses Arctic Recovery, Ltd.'s (Arctic Recovery) above-captioned Petition without prejudice for failure to prosecute it and vacates the January 16, 2024 evidentiary hearing.

B. Procedural History¹

2. Arctic Recovery initiated this matter on September 18, 2023 by filing the Petition with the Public Utilities Commission (Commission). The Petition asks the Commission to reverse a Commission decision initially denying it a towing permit.

3. On September 27, 2023, the Commission referred this proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition.

¹ Only the procedural history to understand this Decision is included.

4. In addition to Arctic Recovery, Trial Staff of the Public Utilities Commission (Staff) is a party to this proceeding, having intervened.²

5. On December 4, 2023, Staff filed an Unopposed Motion to Approve Procedural Schedule and Waive Response Time (Motion), to which Arctic Recovery did not object.

6. On December 11, 2023, by Decision No. R23-0829-I, the ALJ granted the Motion, scheduled the matter for a fully-remote evidentiary hearing for January 16, 2023; and ordered that the parties file and serve exhibits and exhibit and witness lists by January 9, 2024.³ The same Decision notes that Arctic Recovery is not represented by an attorney, and that its Petition fails to establish that it is eligible to be represented by a non-attorney.⁴ The Decision explains that per Rule 1201 of the Commission's Rules of Practice and Procedure, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado, except that an individual may appear without an attorney on behalf of a company after establishing it is eligible to do so.⁵ The Decision outlines the legal requirements to establish eligibility to be represented by a non-attorney, and ordered that by December 29, 2023, Arctic Recovery must either have counsel enter an appearance on its behalf or make a filing establishing that it meets the legal requirements to be represented by a non-attorney.⁶ The Decision puts Arctic Recovery on notice that if fails to have counsel enter an appearance on its behalf or make a filing establishing that it is eligible to be represented by an identified non-attorney, without showing good cause for its failure, that the Petition may be dismissed without prejudice.⁷

² Decision No. R23-0829-I (mailed December 11, 2023).

³ *Id.* at 2 and 7-8.

⁴ *Id.* at 6.

⁵ *Id.* at 5, citing § 13-1-127, C.R.S.; Rule 1201(a) and (b)(II), 4 *Code of Colorado Regulations* (CCR) 723-1.

⁶ *Id.* at 5-6 and 8.

⁷ *Id.* at 6.

7. The Commission's Certificate of Service for the above Decision (Decision No. R23-0829-I) indicates that Arctic Recovery is registered with the Commission's E-Filing System (E-Filings), and that the Decision was served on Arctic Recovery via E-Filings on December 11, 2023.⁸

8. On January 10, 2024, Staff filed and served its exhibit and witness lists and pre-marked hearing exhibits along with a Notice of Technical Difficulties with E-Filing, stating that it faced technical difficulties preparing its exhibits for filing, which resulted in Staff being unable to make these filings by January 9, 2024, as required by Decision No. R23-0829-I.

9. Arctic Recovery has made no filings since submitting the Petition on September 18, 2023.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

10. As the party asking the Commission to grant the Petition, Arctic Recovery carries the burden to prove that the Petition should be granted.⁹ As such, Arctic Recovery also has the duty to prosecute (or pursue) its Petition without unnecessary or unreasonable delay.¹⁰

11. When determining whether to dismiss for failure to prosecute, the tribunal should "consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits," including the length of delay, the reason for the delay, any prejudice that may result to other parties based on the delay, and the extent to which the applicant has renewed efforts to prosecute the application.¹¹

⁸ See Certificate of Service for Decision No. R23-0829-I.

⁹ Rule 1500, 4 CCR 723-1.

¹⁰ See *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

¹¹ *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010).

12. When a party registers as a filer with E-Filings, the party “expressly” agrees to accept service in all Commission proceedings through E-Filings.¹² Filing through E-Filings constitutes service on registered users who are parties in E-Filings.¹³

13. Because Arctic Recovery is a registered filer with E-Filings, and Decision No. R23-0829-I was served on Arctic Recovery through E-Filings, the ALJ concludes that the Decision was properly served on Arctic Recovery. For the same reasons, the ALJ finds that Arctic Recovery received notice of that Decision and its requirements that either counsel enter an appearance on its behalf or that it make a filing establishing that it is eligible to be represented by an identified non-attorney by December 29, 2023, and that failure to do so may result in dismissal of the petition without prejudice. Similarly, the ALJ concludes that Arctic Recovery received notice of the Decision’s requirement to file and serve its witness and exhibit list and exhibits by January 9, 2024.

14. Given that Decision No. R23-0829-I specifically warns Arctic Recovery that failing to have counsel enter an appearance or make the required filing without showing good cause for such failure may result in the Petition being dismissed, the ALJ concludes that Arctic Recovery assumed the risk that the Petition would be dismissed when it failed to make the required filing.¹⁴

15. As noted, Arctic Recovery did not have counsel enter an appearance or make a filing establishing it is eligible to be represented by a non-attorney; nor did it make any filing establishing good cause for this failure. Similarly, Arctic Recovery has not filed exhibit or witness lists, or exhibits. In fact, Arctic Recovery has not filed anything since filing the Petition on September 18, 2023. All of the requirements that Arctic Recovery failed to comply with are necessary for the matter to proceed to an evidentiary hearing. Failing to comply with these

¹² Rule 1205(b), 4 CCR 723-1.

¹³ *Id.*

¹⁴ Decision No. R23-0829-I at 6.

requirements means the Petition cannot move forward. For these reasons, the ALJ concludes Arctic Recovery has failed to pursue or prosecute its Petition, has not provided good cause for this failure, and has provided no indication that it will pursue or prosecute its Petition. Based on all of this, the ALJ finds that Arctic Recovery's delay in pursuing or prosecuting the Petition is unreasonable. The ALJ has considered all factors relevant to determining whether the Petition should be dismissed, including policies favoring resolution of disputes on the merits and disfavoring unreasonable delay.¹⁵ The ALJ finds that Arctic Recovery's lack of action in this Proceeding, including failing to make the required filings, amounts to abandoning and failing to prosecute or pursue the Petition. For the foregoing reasons and authorities, the ALJ recommends that the Petition be dismissed without prejudice.

16. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Arctic Recovery, Ltd.'s above-captioned Petition filed on September 18, 2023 is dismissed without prejudice.
2. The evidentiary hearing in this Proceeding scheduled for January 16, 2024 is vacated.
3. Proceeding No. 23M-0454TO is closed.
4. 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.

¹⁵ See *Edmond*, 226 P.3d at 1253.

5. 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.

6. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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.

7. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

8. If exceptions to this Recommended 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director