

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0111TO

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
SCHEDULING HEARING,
ESTABLISHING PROCEDURES, AND REQUIRING
DEBONAIR LIMITED TO MAKE FILING**

Mailed Date: June 6, 2024

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a fully remote evidentiary hearing in this matter for July 25, 2024; establishes filing deadlines and procedures relating to that hearing; and requires Debonair Limited Towing and Recovery (Debonair) to make a filing addressing its legal representation in this matter.

B. Procedural History¹

2. This Proceeding concerns Debonair's above-captioned Petition seeking to reverse a Commission decision initially denying it a towing permit.

3. On March 27, 2024, the Commission referred this proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition.

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

4. On April 10, 2024, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention of Right [...], Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

II. FINDINGS, ANALYSIS AND CONCLUSIONS

A. Remote Evidentiary Hearing

5. The evidentiary hearing will be held on July 25, 2024, commencing at 9:00 a.m., remotely by Zoom, as ordered below. A webcast of proceedings will be available to the public through the Commission's website.

6. This Decision, Attachment A, and Attachment B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

7. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video conference screen while the exhibits are being offered into evidence and witnesses testify about them.

8. The remote evidentiary hearing will be conducted via videoconference using the Zoom platform. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

9. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this proceeding. Given that the hearing will accommodate remote participation by videoconference, exhibits must be presented electronically.

10. If one or both parties are unavailable during the date and/or time of the scheduled hearing, either party may move to continue and/or vacate and reschedule the evidentiary hearing.

B. Unified Numbering System for Hearing Exhibits

11. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of remote evidentiary hearing.² As such, it is essential that the parties ensure they are able to access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

12. Each party must (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as page 1, regardless of content, before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

² Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

13. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

14. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Debonair is assigned hearing exhibit numbers 100 to 199; and
- Staff is assigned hearing exhibit numbers 200 to 299.

C. Additional Procedural Notices and Advisements

15. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

16. Debonair is on notice that failure to appear at the evidentiary hearing may result in dismissal of the Petition for failing to pursue or prosecute it.

17. At the hearing, Debonair bears the burden of proof by a preponderance of the evidence to show that the Commission's initial decision denying it a towing permit should be reversed.³ The preponderance standard requires that the evidence of the existence of a contested fact outweigh the evidence to the contrary.⁴ That is, the fact-finder must determine whether the

³ §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 Code of Colorado Regulations (CCR) 723-1. More information on the legal requirements that an applicant must meet to be granted a common carrier authority may found in the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and more specifically Rule 6203 and § 40-10.1-201(1), C.R.S.

⁴ *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

existence of a contested fact is more probable than its non-existence.⁵ A party meets this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.⁶

18. Staff is on notice that the ALJ will deem its failure to appear at the evidentiary hearing as abandoning or withdrawing its Intervention and opposition to the Petition and that failure to appear may result in granting the Petition without an evidentiary hearing.

19. 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.

20. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (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: <https://www.colorado.gov/pacific/dora/pucrules>.

21. Each party is specifically advised that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

22. Additional procedural requirements may be addressed in future Interim Decisions.

D. Informational Videoconference Practice Session

23. The ALJ will hold an informal practice videoconference session if requested by any Party to give the Parties an additional opportunity to practice using Zoom and box.com before the hearing.

⁵ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

⁶ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

24. The Parties may contact the Commission Legal Assistants by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us to schedule an informational practice video conference session.

25. The Parties will receive information and a link to participate in the informal practice session by email.

E. Debonair's Legal Representation

26. Generally, 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 their own behalf or on behalf of a company after establishing it is eligible to do so.⁷

For a company to be represented by a non-attorney, all the below conditions must be met:

- The company must not have more than three owners;
- The amount in controversy must not exceed \$15,000; and
- The non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating their authority to represent the company in the proceeding.⁸

27. As to the last factor, it is presumed that a corporation's officers, a partnership's partners, a limited partnership's members, and persons authorized to manage a limited liability company have authority to represent the company in the proceeding.⁹ A written resolution from a company specifically authorizing the individual to represent the company's interests in the proceeding may also be relied upon as evidence of the individual's authority to represent the company.¹⁰

⁷ § 13-1-127, C.R.S.; Rule 1201(a) and (b)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁸ § 13-1-127(2) and (2.3)(c), C.R.S.; Rule 1201(b)(II), 4 CCR 723-1.

⁹ § 13-1-127(2) and (2.3)(c), C.R.S.

¹⁰ § 13-1-127(3). C.R.S.

28. Debonair is not represented by an attorney in this Proceeding and its Petition fails to establish that it is eligible to be represented by a non-attorney.¹¹ As such, within 14 days of the issuance of this Decision, Debonair must either have counsel enter an appearance on its behalf or make a filing establishing that it meets the above requirements to be represented by a non-attorney in this Proceeding. ***Debonair is on notice*** that if it 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, its Petition may be dismissed without prejudice.

III. **ORDER**

It is Ordered That:

1. A fully-remote evidentiary hearing is scheduled as follows:

DATE: July 25, 2024

TIME: 9:00 a.m.

PLACE: Join by video-conference using Zoom

2. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

3. All participants in the hearing must comply with the requirements in this Decision and those in Attachments A and B to this Decision, which are incorporated as if fully set forth.

4. **Videoconference Participation.** Counsel for the parties, the parties, and witnesses must participate in the evidentiary hearing by videoconference using the Zoom platform and may not appear in person at the Commission's office for the hearing.

¹¹ See Petition.

5. **Evidence Presentation at the Evidentiary Hearing.** All evidence must be presented electronically during the hearing. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

6. **Deadline for Debonair to Make Filing Concerning Legal Representation.** Within 14 days of the issuance of this Decision, Debonair Limited Towing and Recovery (Debonair) must either have counsel enter an appearance on its behalf or make a filing establishing that it meets the requirements outlined in ¶¶ 25-26 above to be represented by an identified non-attorney in this Proceeding.

7. **Deadline for Hearing Exhibit and Witness Lists, and Exhibits.** By July 3, 2024, the parties must file and serve on each other their complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Also, by July 3, 2024, the parties must file and serve on each other all pre-marked exhibits that they intend to offer into evidence during the hearing.

8. **Deadline for Statements of Position.** Any party wishing to submit a written statement of position after the hearing must file their statement of position by August 8, 2024. However, this Decision does not mandate that the parties file statements of position.

9. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit

numbers: Debonair is assigned Hearing Exhibits 100 through 199; and Staff of the Colorado Public Utilities Commission is assigned hearing Exhibits 200-299.

10. 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