

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
RESCHEDULING HEARING,
SETTING PROCEDURAL DEADLINES, AND
PERMITTING NON-ATTORNEY REPRESENTATION**

Mailed Date: July 26, 2024

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a fully remote evidentiary hearing in this matter for September 23, 2024; establishes filing deadlines and procedures relating to that hearing; and permits Petitioner Debonair Limited, doing business as Debonair Limited Towing and Recovery (“Petitioner” or “Debonair”) to be represented in this Proceeding by its owner/operator Cournell Fannings.

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 February 5, 2024, Debonair filed Towing Permit Application No. 1021161. On February 14, 2024, the Transportation Section of the Public Utilities Commission (“PUC” or “Commission”) sent a letter to Mr. Fannings notifying him that Debonair was ineligible

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

for a towing carrier permit “until after July 1, 2025,” because its owner, Mr. Fannings, had pled guilty to a felony in Adams County District Court in July 2020.²

4. On March 6, 2024, Debonair filed this Petition, accompanied by a copy of the February 14, 2024, denial letter, asking that the denial be reversed.

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

6. On April 10, 2024, Trial Staff of the 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.

7. By Decision No. R24-0389-I, issued June 6, 2024, the undersigned ALJ scheduled this matter for an evidentiary hearing to be held July 25, 2024.

8. Decision No. R24-0389-I also ordered Petitioner to provide the Commission with proof that it could be represented in this Proceeding by a non-attorney — its owner/operator Cournell Fannings — within two weeks of the issuance of the Decision, or on or before June 20, 2024.

9. Subsequently, on June 28, 2024, Staff filed a Motion for Summary Judgment requesting that the Petition be dismissed on the grounds that Petitioner is barred from obtaining a towing permit under Rule 6504(b)(II) of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6, which expressly prohibits the Commission from granting a towing permit “if the applicant has: (A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any felony under any Title of [the Colorado Revised Statutes] or any towing-related offense.”

² See Towing Permit Application Denial Letter, dated February 14, 2024, attached to Petition.

10. Petitioner did not respond timely to either Decision No. R24-0389-I requiring it to file proof of its representation, or to Staff's Motion for Summary Judgment.

11. Because the Commission could not serve Petitioner by email and was unable to reach Petitioner by telephone, the undersigned ALJ became concerned that Petitioner was not receiving pleadings or proper notice of pleadings filed in this proceeding. By Decision No. R24-0507-I, issued July 16, 2024, the undersigned ALJ therefore vacated the evidentiary hearing to be held July 25, 2024, and instead scheduled a prehearing conference to be held July 25, 2024, commencing at 11:00 a.m.

II. PREHEARING CONFERENCE

12. The ALJ held the prehearing conference as scheduled on July 25, 2024, at 11:00 a.m., remotely by Zoom. Mr. Fannings appeared on behalf of Debonair. Justin Cox appeared on behalf of Respondent, Trial Staff of the Commission ("Staff").

13. At the prehearing conference, the parties discussed the status of this proceeding with the ALJ, established contact information for Mr. Fannings and Debonair so that Petitioner can receive filings and pleadings electronically going forward, determined Mr. Fannings' ability to represent Petitioner in this Proceeding, and set an evidentiary hearing and other procedural deadlines.

14. This Decision memorializes the decisions made at the prehearing conference.

III. REPRESENTATION OF PETITIONER DEBONAIR

15. 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.³

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.⁴

16. Mr. Fannings, a non-attorney, appeared at the prehearing conference on Petitioner's behalf.

17. At the prehearing conference, the ALJ asked Mr. Fannings about his relationship with Petitioner Debonair. Mr. Fannings stated that he is the sole owner and operator of Debonair. He also confirmed that the amount in controversy does not exceed \$15,000.

18. Because Debonair met the criteria to be represented in this Proceeding by a non-attorney, Mr. Fannings, the ALJ stated on the record that she will permit Mr. Fannings to represent Petitioner in this Proceeding.

19. Staff did not object to Mr. Fannings' representation of Debonair.

IV. PROCEDURAL SCHEDULE

20. At the prehearing conference, the undersigned ALJ explained to Mr. Fannings that the Commission has not yet received Debonair's response to Staff's Motion for Summary Judgment or Debonair's exhibits, and witness and exhibit list.

³ § 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.

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

21. The ALJ therefore inquired whether Petitioner intends to continue pursuing this Petition, despite not having filed anything in this Proceeding since filing the initial Petition. Mr. Fannings confirmed that he did indeed intend to pursue the Petition.

22. The ALJ therefore announced at the prehearing conference the following deadlines by which Petitioner Debonair may file outstanding pleadings with the Commission:

ACTION	DEADLINE
Petitioner's Response to Staff's Motion for Summary Judgment	August 8, 2024
Petitioner's Exhibits, and Exhibit and Witness List	September 3, 2024

23. Petitioner is on notice that failure to submit a response to Staff's Motion for Summary Judgment and file its exhibits by the deadlines set forth above could be construed as a confession of the Motion for Summary Judgment or a desire not to proceed with this Petition, and could result in an adverse decision against Petitioner.

24. Petitioner is reminded that pleadings filed with the Commission must be filed through the Commission's efilings system. If Petitioner or Mr. Fannings require assistance in filing pleadings, Mr. Fannings should contact one of the Commission's legal assistants: Casey Federico at casey.federico@state.co.us or Stephanie Kunkel at stephanie.kunkel@state.co.us.

V. REMOTE EVIDENTIARY HEARING

25. Finally, after consulting with the parties at the prehearing conference, the ALJ will reschedule the evidentiary hearing to **Monday, September 23, 2024**, commencing at **9:00 a.m.** The hearing will be conducted fully remotely.

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

27. 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.

28. 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.

29. 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.

30. 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.

A. Unified Numbering System for Hearing Exhibits

31. 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.⁵ 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.

32. 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.

33. 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.

34. 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

⁵ 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.

- Staff is assigned hearing exhibit numbers 200 to 299.

B. Additional Procedural Notices and Advisements

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

36. 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.

37. 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.⁶ The preponderance standard requires that the evidence of the existence of a contested fact outweigh the evidence to the contrary.⁷ That is, the fact-finder must determine whether the existence of a contested fact is more probable than its non-existence.⁸ A party meets this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.⁹

38. 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.

39. 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.

40. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and the Commission's Rules Regulating Transportation by Motor

⁶ §§ 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.

⁷ *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

⁸ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

⁹ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

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>.

41. 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.

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

C. Informational Videoconference Practice Session

43. 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.

44. 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.

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

VI. ORDER

It is Ordered That:

1. Petitioner Debonair Limited, doing business as Debonair Limited Towing and Recovery ("Petitioner" or "Debonair") may be represented in this Proceeding by its non-attorney owner/operator, Cournell Fannings.

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

DATE: September 23, 2024

TIME: 9:00 a.m.

PLACE: Join by video-conference using Zoom

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

4. 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.

5. **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.

6. **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.

7. The following procedural schedule setting deadlines by which Petitioner is to take the named actions is adopted:

ACTION	DEADLINE
Petitioner's Response to Staff's Motion for Summary Judgment	August 8, 2024
Petitioner's Exhibits, and Exhibit and Witness List	September 3, 2024

8. **Deadline for Statements of Position.** Any party wishing to submit a written statement of position *after* the evidentiary hearing must file their statement of position by October 11, 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 exhibit numbers 100 to 199; and
- Staff is assigned hearing exhibit numbers 200 to 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