

Decision No. R03-0132-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02F-505CP

DAVID J. ARCHULETA AND KEITH L. NIETERT,

COMPLAINANTS,

V.

BROADMOOR HOTEL, INC., D/B/A BROADMOOR HOTEL GARAGE,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REOPENING EVIDENTIARY RECORD
FOR LIMITED PURPOSE, TAKING
ADMINISTRATIVE NOTICE OF CERTAIN
COMMISSION RECORDS, ALLOWING
OPPORTUNITY FOR PARTIES TO COMMENT,
AND AMENDING BRIEFING SCHEDULE**

Mailed Date: February 3, 2003

I. STATEMENT

1. On January 28 and 29, 2003, the undersigned Administrative Law Judge (ALJ) held a hearing in the captioned docket. At the end of the hearing, the ALJ closed the evidentiary record and established a schedule for the filing of post-hearing statements of position.

2. The ALJ has determined that she will take administrative notice of six documents from the Commission's official files. To effectuate this administrative notice, the ALJ will reopen the evidentiary record in this proceeding for the limited purpose of taking administrative notice of the six documents and, in conjunction with taking administrative notice, providing the

parties an opportunity to comment on the documents. *See* § 40-6-113(6), C.R.S.; *see also* §§ 24-4-105(8) and 105(14)(a), C.R.S. *Cf. Colorado Energy Advocacy Office v. Public Service Company of Colorado*, 704 P.2d 298, 304-05 (Colo. 1985) (Commission must give parties notice of, and an opportunity to comment on, facts determined by the Commission as a result of its own investigation).

3. Each document of which administrative notice will be taken pertains to the Broadmoor Hotel's employee shuttle and is a document from the Commission's official files. The ALJ has assigned an exhibit number to each document. Each document, with its exhibit number, is attached to this Decision.

4. Exhibit 10 is Decision No. C01-354 (mailed date April 9, 2001), entered in Docket No. 01A-055CP-Extension. It is the Commission decision granting Broadmoor Hotel, Inc.'s application to operate an employee shuttle and authorizing Broadmoor Hotel, Inc., to extend operations under Certificate of Public Convenience and Necessity (CPCN) PUC No. 275 by the addition of Part III and Restriction C.

5. Exhibit 11 is the Broadmoor Hotel, Inc.'s Colorado Tariff PUC No. 28. It is the passenger tariff governing, and contains the rates, rules, and regulations governing, transportation of Broadmoor Hotel employees pursuant to CPCN PUC No. 275. This tariff was effective on June 9, 2001.

6. Exhibit 12 is the Broadmoor Hotel, Inc.'s Passenger Time Schedule No. 1. This schedule shows the times of departure between pick up points within Colorado Springs and the Broadmoor Hotel for the employee shuttle service operated pursuant to CPCN PUC No. 275. This time schedule was effective on June 9, 2001.

7. Exhibit 13 is a letter dated June 20, 2001, from Ms. Marsha Nemo of the Commission Staff informing the Broadmoor Hotel, Inc., that it has met the requirements of Decision No. C01-354. Attached to the letter is CPCN PUC No. 275.

8. Exhibit 14 is General Adoption Notice No. 3, filed by Ramblin' Express, Inc. This notice is dated March 22, 2002 (to be effective April 1, 2002), and notices the adoption by Ramblin' Express, Inc., of Colorado Tariff PUC No. 28 (the Broadmoor Hotel, Inc., tariff regarding the employee shuttle). This adoption was done to comply with the filing requirements of Decision No. R02-216 (mailed date March 4, 2002).

9. Exhibit 15 is General Adoption Notice No. 3, filed by Ramblin' Express, Inc. This notice is dated March 22, 2002 (to be effective April 1, 2002), and notices the adoption by Ramblin' Express, Inc., of Time Schedule 1 (the time schedule for the Broadmoor Hotel, Inc., employee shuttle service). This adoption was done to comply with the filing requirements of Decision No. R02-216 (mailed date March 4, 2002).

10. As stated above, the ALJ will take administrative notice of each of these six documents. If they wish to do so, the parties may file comments on any or all of the six documents. The purpose of the comments is *not* to discuss or to debate whether administrative notice should be or will be taken; that issue has been decided. Rather, the purpose of the comments is to provide any other information or documents which a party believes should be considered to put one or more of the administratively-noticed documents into context. If a party references another document in its comments, the referenced document must be filed with the comments *unless* the referenced document is an exhibit admitted into evidence in this proceeding.

11. The parties must file their comments concerning the six administratively-noticed documents on or before February 14, 2003. The evidentiary record will close at the close of business on February 14, 2003, and will include both the six documents (which should be referenced by the assigned exhibit number) and any comment filed by a party, *provided* the comment comes within the parameters established in ¶ 10, *supra*.

12. Written comments by the parties must be, and will be, strictly limited to comment on the six documents of which administrative notice is being taken. Comments which do not follow the mandates and parameters established in ¶ 10, *supra*, will not be considered.

13. Because the evidentiary record in this matter is being reopened, the briefing schedule previously ordered must be vacated and a new schedule established. The new briefing schedule will be: (a) Complainants' opening statement of position will be due on February 24, 2003; (b) Respondent's statement of position will be due on the later of March 6, 2003, or ten days after the transcript of the hearing is filed; and (c) Complainants' reply to Respondent's statement of position will be due ten days from the date of service of Respondent's statement of position.

14. The page limits and service requirements previously agreed-to and ordered will remain in effect.

II. ORDER

A. It Is Ordered That:

1. The evidentiary record in this proceeding is reopened for the limited purpose of taking administrative notice of six documents and, in conjunction with taking administrative

notice, providing the parties an opportunity to file comments on the six administratively-noticed documents.

2. The administrative record will remain open until the close of business on February 14, 2003, for the limited purpose stated above.

3. The previously-ordered schedule for filing statements of positions is vacated, and a new schedule is adopted.

4. Complainants' statement of position is due on or before February 24, 2003.

5. Respondent's statement of position and response to Complainants' statement of position is due on the later of March 6, 2003, or ten days after the transcript of the hearing in this docket is filed.

6. Complainants' reply to Respondent's statement of position is due ten days from the date of service of Respondent's statement of position.

7. The page limits and service requirements previously agreed-to and ordered remain in effect.

8. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read 'Bruce N. Smith'.

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge