

Decision No. R23-0829-I

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)

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING,
ESTABLISHING PROCEDURES, AND REQUIRING
ARCTIC RECOVERY TO MAKE FILING**

Mailed Date: December 11, 2023

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a fully remote evidentiary hearing in this matter for January 16, 2023; establishes filing deadlines and procedures relating to that hearing; and requires Arctic Recovery, Ltd. (Arctic Recovery) to make a filing addressing its legal representation in this matter.

B. Procedural History¹

2. This Proceeding concerns Arctic Recovery's above-captioned Petition seeking 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.

4. On October 13, 2023, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right [. . .] Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

5. On December 4, 2023, Staff filed an Unopposed Motion to Approve Procedural Schedule and Waive Response Time (Motion).²

II. FINDINGS, ANALYSIS AND CONCLUSIONS

A. Evidentiary Hearing and Procedural Schedule

6. The Motion states that Arctic Recovery supports the Motion, and as such, requests that the response time to the same be waived.³ Given that the Motion is unopposed, the ALJ finds good cause to waive the response time and does so.

7. The Motion requests that a fully-remote evidentiary hearing on the Petition be scheduled for January 16, 2024; that exhibits and exhibit and witness lists be filed and served on or by January 9, 2024; and that if the parties or the ALJ request statements of position in lieu of verbal closing argument, that statements of position be filed by January 30, 2024.⁴ The parties also agree that because Arctic Recovery bears the burden of proof, Arctic Recovery's witnesses will testify first, followed by Staff's witnesses.⁵

8. The ALJ finds that the proposed hearing date, deadlines, and order of witnesses (at hearing) are reasonable and appropriate. As such, the ALJ adopts and approves the parties'

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

² The ALJ informally directed the parties to confer on a procedural schedule and make a filing by December 4, 2023 outlining their agreed-upon procedural schedule.

³ Motion at 3.

⁴ *Id.* at 2-3.

⁵ *Id.* at 3.

proposals. Consistent with the parties' agreement, the ALJ will hold the hearing as a fully-remote hearing.

B. Procedures to Facilitate Fully Remote Evidentiary Hearing

9. As the hearing will be fully remote, the parties and witness will appear by 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 before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

10. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documents (hearing exhibits), testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision in this case.

11. Given that the hearing requires remote participation by videoconference, exhibits must be presented electronically. The parties are responsible for ensuring they are able to present electronic evidence during the hearing. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented at remote hearings.⁶ As such, it is essential that the parties ensure they can access and use box.com before and during the hearing.

⁶ 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.

12. The ALJ is entering orders to facilitate using box.com to manage exhibits during the hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload documents and exhibits for use during the hearing; and (b) download documents and exhibits once they are presented during the hearing.

13. 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 numbered 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.

14. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Indeed, as explained in Attachment B, to accommodate a fully-remote hearing, all evidence must be presented electronically during the hearing. This means that all parties must prepare any documentary evidence (to be filed as exhibits) for electronic presentation.⁷ This will allow parties participating remotely to view exhibits on the videoconference screen while the exhibits are being offered into evidence and witnesses testify about them.

15. As such, *it is extremely important* that all parties carefully review and follow the instructions and requirements in Attachment B to this Decision.

⁷ Depending on the nature in which the parties maintain the exhibits, this may require parties to electronically scan paper-only documents so that they may be presented in electronic form during the hearing.

16. Each party is specifically reminded 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.

17. The parties may request an informal practice videoconference session to give the parties an additional opportunity to practice using Zoom and box.com before the hearing by contacting casey.federico@state.co.us or stephanie.kunkel@state.co.us.

C. Arctic Recovery's Legal Representation

18. 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.⁸ 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 his or her authority to represent the company in the proceeding.⁹

19. 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.¹⁰ A written resolution from a company specifically authorizing the individual to represent the company's interests in the

⁸ § 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.

⁹ § 13-1-127(2) and (2.3)(c), C.R.S.; Rule 1201(b)(II), 4 CCR 723-1.

¹⁰ § 13-1-127(2) and (2.3)(c), C.R.S.

proceeding may also be relied upon as evidence of the individual's authority to represent the company.¹¹

20. Arctic Recovery 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.¹² As such, on or 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 above requirements to be represented by a non-attorney in this Proceeding. *Arctic Recovery 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.

D. Additional Advisements to Parties

21. Arctic Recovery 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.

22. At the hearing, Arctic Recovery 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.¹³ The preponderance standard requires that the evidence of the existence of a contested fact outweigh the evidence to the contrary.¹⁴ That is, the fact-finder must determine whether the

¹¹ § 13-1-127(3), C.R.S.

¹² See Petition.

¹³ §§ 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 be 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.

¹⁴ *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.¹⁵ A party meets this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.¹⁶

23. 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.

24. 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.

25. 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>.

26. The parties are on notice that they are required to serve a copy of any filing they make in this Proceeding on each other when they make the filing.

27. Additional procedural requirements may be issued in future Interim Decisions.

III. **ORDER**

A. **It Is Ordered That:**

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

DATE: January 16, 2024

TIME: 9:00 a.m.

¹⁵ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹⁶ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

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.

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 Arctic Recovery to Make Filing Concerning Legal Representation.** On or by December 29, 2023, Arctic Recovery Ltd., (Arctic Recovery) must either have counsel enter an appearance on its behalf or make a filing establishing that it meets the requirements outlined in ¶¶ 18-19 above to be represented by an identified non-attorney in this Proceeding.

7. **Deadline for Hearing Exhibit and Witness Lists, and Exhibits.** By January 9, 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 January 9, 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 in lieu of verbal closing argument must file their statement of position by January 30, 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: Arctic Recovery Ltd. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director