

Jennings-Fader, Mana

From: Jennings-Fader, Mana
Sent: Friday, December 07, 2007 4:08 PM
To: 'Gus Michaels'; 'Cowger, Larry M'
Subject: Rulings on pending motion to quash subpoenas

Counsel:

First, I attempted to reach each of you by telephone at approximately 3:27 p.m. this afternoon. Mr. Cowger's number (303.294.2225) went to voicemail, and the telephone number I have for Mr. Michaels (720.259.3412) went to the voicemail of someone at his office, but not to the voicemail of Mr. Michaels. Consequently, I must contact each of you by this e-mail.

Second, my thanks to the parties for bringing to my attention the fact that the depositions are scheduled for 10 and 11 December 2007.

My decision with respect to the pending motion to quash and/or modify subpoenas is as follows:

1. The subpoena addressed to **Public Service Company of Colorado** is not quashed. The subpoena (both as to testimony and as to production of documents) is limited as follows: (a) **solely** to the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (b) **solely** to the billings made for the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004 and to any meter readings which underpin such billings; (c) to the written notification made to Complainant with respect to billings and rebillings for electric and natural gas service provided to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (d) to bullet item three (true-up letter) on the subpoena duces tecum; (e) to bullet item four (position concerning dispute) on the subpoena duces tecum; (f) to bullet item five (dispute resolution) on the subpoena duces tecum; (g) to bullet item eight (spoliation of records) on the subpoena duces tecum; and (h) to bullet item nine (paragraph 13(b) of affidavit) on the subpoena duces tecum, limited to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004.

In addition, Public Service Company shall not be required to provide copies of documents previously provided to Complainant.

2. The subpoena addressed to Andy Borchers is not quashed. The subpoena (both as to testimony and as to production of documents) is limited (a) **solely** to the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (b) **solely** to the billings made for the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004 and to any meter readings which underpin such billings; (c) to the written notification made to Complainant with respect to billings and rebillings for electric and natural gas service provided to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; and (d) to the true-up letter and the development (including any investigation) of that letter.

The subpoena duces tecum is modified to **eliminate** the following (both as to testimony and as to production of documents): (a) bullet item three (dispute of bill); (b) bullet item four (items *consulted* as incident to the testimony sought at the deposition); (c) "explanation of how XCEL reconciled company records that were deliberately falsified, including the daily mileage/meters read log[.]"

I will be in Grand Junction, Colorado in the period 10-14 December 2007 as I will be presiding at a hearing. Consequently, I will not be available to respond to questions, to make rulings on disputes during the course of the depositions, or to issue a written ruling on this motion or on any other pending motion. When I return, I will reduce my rulings (as set out above) to writing when I have time to do so.

Mana L. Jennings-Fader
Administrative Law Judge
Colorado Public Utilities Commission
Telephone: 303.894.2842
E-mail address: mana.jennings-fader@dora.state.co.us