

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0908CP

IN THE MATTER OF THE APPLICATION OF DENVER DAY TOURS LLC, DOING
BUSINESS AS DENVER DAY TOURS, FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER
BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: February 21, 2017

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I. STATEMENT

1. The procedural history of this Proceeding is found in Interim Decisions previously issued in this matter. The procedural history is repeated here as necessary to put this Interim Decision in context.

2. On November 29, 2016, Denver Day Tours, LLC, doing business as Denver Day Tours (DDTours or Applicant),¹ filed an Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

3. On February 6, 2017, Applicant filed its supplement to the November 29, 2016 filing. Unless the context indicates otherwise, reference in this Interim Decision to the Application is to the November 29, 2016 filing as supplemented on February 6, 2017.

4. On December 12, 2016, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. On January 31, 2017, Decision No. R17-0091-I vacated that procedural schedule.

5. The following intervened as of right: Aspire Tours, LLC (Aspire);² Colorado Jitney, LLC, doing business as Colorado Jitney (Colorado Jitney);³ and Fresh Tracks Transportation LLC (Fresh Tracks).⁴

6. Aspire, Colorado Jitney, and Fresh Tracks, collectively, are the Intervenors; and each individually is an Intervenor. Applicant and Intervenors, collectively, are the Parties; and each individually is a Party.

¹ DDTours is represented in this Proceeding by Dr. Madhumati Ramesh, an individual who is not an attorney. Decision No. R17-0112-I, issued in this Proceeding on February 7, 2017.

² Aspire is represented in this Proceeding by legal counsel.

³ Colorado Jitney is represented in this Proceeding by Mr. Bradley J. Doran, an individual who is not an attorney. Decision No. R17-0132-I, issued in this Proceeding on February 14, 2017.

⁴ Fresh Tracks must be represented in this Proceeding by an attorney. Not later than February 24, 2017, Fresh Tracks' legal counsel is to enter an appearance in this Proceeding. Decision No. R17-0135-I, issued in this Proceeding on February 15, 2017.

7. On January 18, 2017, by Minute Order, the Commission deemed the November 29, 2016 filing complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission⁵ or Applicant's waiver of the statutory provision, a Commission decision in this Proceeding should issue no later than August 16, 2017.

8. On January 18, 2017, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

9. By Decision No. R17-0091-I, the ALJ ordered Applicant to consult with Intervenor and then to make, not later than February 15, 2017, a filing that: (a) contains a procedural schedule, including hearing date, that is satisfactory to the Parties; and (b) addresses the issues discussed in that Interim Decision. Decision No. R17-0091-I at ¶ 52 set out the minimum filings that the procedural schedule must contain. The ALJ also ordered Intervenor to cooperate with Applicant with respect to the February 15, 2017 filing.

10. Review of the Commission file in this Proceeding reveals that, on January 31, 2017, the Commission served, through the E-Filings System and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1205(b),⁶ notice of Decision No. R17-0091-I on the Parties, each of which is registered with the E-Filings System. On February 6, 2017, citing a requirement contained in Decision No. R17-0091-I, Applicant supplemented the November 29, 2016 filing. Applicant received notice of Decision No. R17-0091-I and has knowledge of the February 15, 2017 filing requirement contained in that Interim Decision.

⁵ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

⁶ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

11. Review of the Commission file in this Proceeding reveals that, as of the date of this Interim Decision, DDTours has not made the filing required by Decision No. R17-0091-I at ¶ 51 and Ordering Paragraph No. 18. Review of the Commission file in this Proceeding reveals that, as of the date of this Interim Decision, DDTours has not requested additional time within which to make that filing. DDTours's failure to make the filing required by Decision No. R17-0091-I at ¶ 51 and Ordering Paragraph No. 18 is unexplained and is unexcused.

12. Decision No. R17-0091-I at ¶ 58 advises the Parties that, if Applicant does not make the required February 15, 2017 filing, "the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties." *See also id.* at Ordering Paragraph No. 20 (same). In accordance with that advisement, the ALJ will schedule the evidentiary hearing and will establish a procedural schedule.

A. Procedural Schedule and Related Matters.

13. The ALJ will schedule the evidentiary hearing in this Proceeding for **April 20 and 21, 2017**. This will allow the Commission to issue its decision in this matter not later than August 16, 2017.

14. The ALJ will order the following procedural schedule: (a) not later than **March 10, 2017**, Applicant will file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) not later than **March 24, 2017**, each Intervenor will file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than **March 31, 2017**, each Party will file -- but only as necessary to correct an error in the previously-filed list of witnesses or a previously-filed exhibit -- a corrected list of witnesses and complete copies of corrected exhibits that it will offer in its case; (d) not later than **April 7, 2017**, each Party will file its prehearing motions, including dispositive motions and

motions *in limine*; (e) not later than **noon on April 14 2017**, the Parties will file any stipulation⁷ or settlement agreement⁸ that they have reached; (f) the evidentiary hearing will be held on **April 20 and 21, 2017**; and (g) not later than **April 28, 2017**, each Party will file its post-hearing Statement of Position.

15. Each witness who will be called to testify (except a witness called in Applicant's rebuttal case) must be identified on the list of witnesses that ¶ 14 of this Interim Decision requires each Party to file. The list of witnesses must contain the following information for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

16. **The Parties are advised and are on notice that** no person -- *including the non-attorney representative of Applicant* -- will be permitted to testify on behalf of a Party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 14 and 15 of this Interim Decision.

17. Complete copies of all exhibits (except an exhibit offered in rebuttal or an exhibit to be used in cross-examination) must be filed as required in ¶ 14.

18. **The Parties are advised and are on notice that** no document -- *including the Application and its supporting documents* -- will be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶¶ 14 and 17 of this Interim Decision.

⁷ Rule 4 CCR 723-1-1407 governs and pertains to stipulations.

⁸ Rule 4 CCR 723-1-1408 governs and pertains to settlement agreements.

19. **The Parties are advised and are on notice that** a document will not be considered by the ALJ in reaching a decision in this Proceeding unless the document is admitted into evidence in this Proceeding. **The Parties are advised and are on notice that** filing a document with the Commission (including prefilings the exhibits in accordance with ¶¶ 14 and 17 of this Interim Decision) does *not* mean that the document is an exhibit admitted into the evidentiary record of this Proceeding. For a document to be an exhibit admitted into the evidentiary record, the ALJ must admit the document into evidence during the hearing.

20. **The Parties are advised and are on notice that**, absent further order, the response period established in Rule 4CCR 723-1-1400(b) applies to motions (except motions pertaining to discovery) filed in this Proceeding. *See also* Rule 4CCR 723-1-1400(d) (effect of failure to file a response to a motion).

B. Discovery and Related Matters.

21. Rule 4 CCR 723-1-1405 will govern discovery in this Proceeding.

22. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to such motions must be written and must be filed within *three business days of service of the motion*.⁹ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

23. Parties may serve discovery requests not later than 5:00 p.m. Mountain Time (MT) on Monday through Thursday and may serve discovery requests not later than 3:00 p.m. MT on Friday. Discovery requests served later than these stated times will be deemed to be served on the next business day.

⁹ By this Interim Decision, the ALJ will shorten the response time to discovery-related motions.

24. Parties may not serve discovery requests using the E-Filings System. **The Parties are advised and are on notice that**, if the E-Filings System is used to propound discovery requests, the discovery request is deemed not to be served.

25. Parties may not serve discovery responses using the E-Filings System. **The Parties are advised and are on notice that**, if the E-Filings System is used to respond to discovery requests, the discovery response is deemed not to be served.

C. Confidential Information.

26. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

27. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the procedures a Party must use in order to have the Commission determine that information is highly confidential and to obtain extraordinary protection of that information.

D. Additional Advisements.

28. **The Parties are advised and are on notice that** it is the responsibility of each Party to have, at the evidentiary hearing, a sufficient number of copies of each document that the Party wishes to offer as an exhibit. **The Parties are advised, and are on notice, that** prefilings exhibits in accordance with this Interim Decision does *not* alter the requirement contained in this paragraph.

29. **The Parties are advised and are on notice that** the Commission will *not* make copies of documents that are offered as exhibits.

30. The Parties are reminded that, in Decision No. R17-0091-I, the ALJ advised the Parties that they are held to the requirements of the Rules of Practice and Procedure, Part 1 of 4 CCR 723.

II. ORDER

A. It Is Ordered That:

1. In accordance with Decision No. R17-0091-I and by this Interim Decision, the Administrative Law Judge schedules the evidentiary hearing; establishes the procedural schedule; and establishes the hearing procedures for this Proceeding.

2. The evidentiary hearing in this Proceeding shall be held on the following dates, at the following times, and in the following location:

DATES: April 20 and 21, 2017

TIMES: 9:00 a.m. each day

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The following procedural schedule is adopted: (a) notlater than March 10, 2017, Applicant Denver Day Tours, LLC, doing business as Denver Day Tours (Applicant), shall file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) notlater than March 24, 2017, each Intervenor shall file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) notlater than March 31, 2017, each Party shall file, but only as necessary to correct an error in the previously-filed list of witnesses or a previously-filed exhibit, its corrected list of witnesses and complete copies of the corrected exhibits that it will offer in its case; (d) notlater than April 7, 2017, each Party shall file its prehearing motions; (e) notlater than noon on April 14, 2017, the Parties shall file any stipulation or settlement agreement that they have reached; and (f) notlater than April 28, 2017, each Party shall file its post-hearing Statement of Position.

4. No person shall be permitted to testify on behalf of a party (except in Applicant's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 14 and 15 of this Interim Decision.

5. No document shall be admitted into evidence (except in Applicant's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶¶ 14 and 17 of this Interim Decision.

6. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 governs discovery.

7. The provisions of ¶¶ 21-25 govern discovery in this Proceeding.

8. Response time to a motion pertaining to discovery is shortened to three business days from the date of service of the motion.

9. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential.

10. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 govern the process by which information is determined to be highly-confidential and is granted extraordinary protection.

11. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

12. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director