

Decision No. R22-0691-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22G-0435CP

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COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

WILD SIDE 4 X 4 TOURS LLC,

RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
ESTABLISHING PROCEDURAL DEADLINES AND  
SCHEDULING HEARING**

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Mailed Date: November 15, 2022

**I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS**

**A. Summary**

1. This Decision establishes procedural deadlines and schedules an in-person evidentiary hearing for January 27, 2023.

**B. Procedural History<sup>1</sup> and Background**

2. On October 12, 2022, Wild Side 4x4 LLC (Wild Side) was served with Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 132328 in which Staff of the

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

Colorado Public Utilities Commission (Staff) alleges three violations of Commission Rules or relevant statutes. The CPAN requires Wild Side to respond by October 24, 2022 or contest the violations and schedule a hearing.<sup>2</sup>

3. On October 27, 2022, Wild Side filed a Stipulated Motion for Brief Extension of Time to Schedule Hearing (Stipulated Motion), explaining that it mailed payment for the first violation alleged in the CPAN, and that it contests the second and third alleged violations. Wild Side asks for additional time through November 3, 2022 to schedule a hearing on the remaining CPAN counts because Staff's lead counsel has been unavailable to coordinate scheduling the hearing date.

4. On November 2, 2022, by Decision No. C22-0680-I, the Commission granted the Stipulated Motion and referred this matter to an Administrative Law Judge (ALJ) for disposition.

**C. Findings and Conclusions**

5. The ALJ informally communicated with the parties as to potential hearing dates and a procedural schedule to move this matter forward. The parties indicated their availability on the selected hearing date; that Wild Side prefers an in-person hearing; that they will abide by any procedural schedule the ALJ establishes; that they do not believe prehearing motions are necessary; and that should they chose to issue discovery, that the existing limits in the Commission's rules are acceptable.

6. Given Wild Side's preference for an in-person hearing, the ALJ will schedule the hearing to take place in-person at a hearing room at the Commission's office in Denver, Colorado. The parties are advised that the ALJ will evaluate whether the hearing should remain

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<sup>2</sup> See Decision No. C22-0680-I at 2 (mailed November 2, 2022).

in-person in the weeks leading up to the hearing and if circumstances warrant converting the hearing to a remote hearing, the ALJ will do so. In evaluating this issue, the ALJ will consider whether the state has seen an influx of COVID-19 cases or other similar illnesses such that an in-person hearing would risk further spread of such viruses, thereby jeopardizing the health and safety of the parties, the Commission, and Commission staff.

7. If the ALJ converts the hearing to a remote hearing, she will do so with ample time for the parties to prepare for any procedural changes necessary to appear remotely.

## II. ORDER

### A. **It Is Ordered That:**

1. An in-person evidentiary hearing on Civil Penalty Assessment or Notice of Complaint to Appear No. 132328 is scheduled as follows:

DATE: January 27, 2023  
TIME: 9:00 a.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado 80202

2. **Deadline to File and Exchange Exhibits, and Exhibit and Witness Lists.** The parties must file and exchange exhibits that they intend to offer into evidence, exhibit lists, and witness lists on or by the close of business on January 12, 2023. The parties are not required to prefile and exchange exhibits that may solely be used for impeachment, to refresh recollection, or for rebuttal.<sup>3</sup>

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<sup>3</sup> As Staff carries the burden of proof, only Staff is entitled to present rebuttal evidence, which it may do after Wild Side 4x.4 LLC has presented its evidence.

3. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. All exhibits must be marked for identification with an exhibit number within the party's designated hearing exhibit number block. 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. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit).

4. **Hearing Exhibit Number Block Assignments.** To efficiently organize exhibits that will be presented during the evidentiary hearing, the parties must use a unified numbering system for all hearing exhibits. The parties must pre-mark each exhibit they intend to offer into evidence using a number within their assigned block; the exhibit number must be placed at the top right corner of each exhibit, along with the proceeding number. Colorado Public Utilities Commission Staff (Staff) is assigned hearing exhibit numbers 1 through 99 and Wild Side 4x4, LLC (Wild Side) is assigned hearing exhibit numbers 100 to 199. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Staff will use hearing exhibit numbers 1000-1099 and Wild Side will use hearing exhibit numbers 1100-1199).

5. **Page Numbering Exhibits.** Regardless of content, the parties must sequentially page number each exhibit that is longer than two pages with the first page numbered as page 1, and each additional page numbered in succession. For example, the cover page must be numbered page 1, and all following pages must be numbered sequentially, including blank pages, executive summaries, tables of contents, and lists of attachments.

6. **Paper Copies of Exhibits.** So long as the hearing is scheduled to be held in-person, the parties must bring to the hearing an original (to be admitted) and four copies of each exhibit they plan to offer into evidence. This accommodates providing the following persons with copies of exhibits: opposing counsel, the witness, the court reporter, and the Administrative Law Judge.

7. **Deadline for Statements of Position.** Should the parties wish to submit written statements of position in lieu of a verbal closing argument, they must file their statements of position on or by the close of business on February 17, 2023.

8. 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 "Doug Dean".

Doug Dean,  
Director