

Decision No. R14-0230-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1329TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

PROCEEDING NO. 13G-1346TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

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

Mailed Date: March 3, 2014

I. STATEMENT

1. On December 13, 2013, the Commission served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107699 on Parking Authority LLC (Parking Authority or Respondent). That CPAN commenced *Proceeding No. 13G-1329TO*.

2. On December 26, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1329TO. By filing this request, Respondent entered a general appearance in that Proceeding.

3. On January 8, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1329TO to the undersigned Administrative Law Judge (ALJ).

4. On January 9, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in Proceeding No. 13G-1329TO. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in Proceeding No. 13G-1329TO.

5. On December 19, 2013, the Commission served, by certified mail (return receipt requested), CPAN No. 108156 on Parking Authority. That CPAN commenced *Proceeding No. 13G-1346TO*.

6. On December 31, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1346TO. By filing this request, Respondent entered a general appearance in that Proceeding.

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

7. On January 10, 2014, counsel for Staff entered his appearance in Proceeding No. 13G-1346TO. In that filing and pursuant to Rule 4 CCR 723-1-1007(a), Staff counsel identified the trial Staff and the advisory Staff in Proceeding No. 13G-1346TO.

8. On January 15, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1346TO to ALJ Mirbaba.

9. On January 28, 2014, by Decision No. R14-0107-I and among other things, the ALJ granted Staff's Motion to Consolidate Proceeding Nos. 13G-1329TO and 13G-1346TO (Consolidated Proceeding). The Consolidated Proceeding is assigned to the undersigned ALJ.

10. Staff and Parking Authority, collectively, are the Parties in the Consolidated Proceeding. Staff is represented by legal counsel. By Decision No. R14-0107-I, the ALJ permitted Respondent to be represented by Mr. Jon L. Florey, who is not an attorney.²

11. By Decision No. R14-0107-I, the ALJ ordered Staff to make, not later than February 14, 2014, a filing that contained a list of three proposed hearing dates, each of which is agreeable to the Parties. On February 14, 2014, Respondent filed a Motion and Request to Extend the Submission of Proposed Hearing Dates. The ALJ waived response time to that motion and changed Staff's filing date to February 24, 2014.³

12. On February 12, 2014, Respondent filed its Proposed Hearing Dates/Potential Conflict of Dates Miscellaneous Filing. In that filing at ¶ 3, Respondent "respectfully requests that the proposed hearing dates be set for dates **no sooner than April 7, 2014** so as not to jeopardize [Mr. Florey's] attendance [at the evidentiary hearing] and [to] avoid any conflicts in

² In that Interim Decision, the ALJ set out the conditions under which Mr. Florey represents Respondent.

³ On February 14, 2014, by electronic mail, the ALJ notified the Parties of her rulings on the motion and of the change in the filing date. This Interim Decision memorializes the rulings.

any hearing dates during the period of stated possible jury duty.” (Bolding and underlining in original.) Paragraph 2 of that filing states that Mr. Florey has been called to jury duty for the period March 3 through April 4, 2014.

13. On February 24, 2014, Staff filed proposed hearing dates (Staff Filing). Staff proposes four hearing dates (*i.e.*, April 15 through 18, 2014);⁴ represents that those dates are acceptable to Staff and that the evidentiary hearing will take no longer than one-half day to complete; and states that, notwithstanding its attempts to do so, Staff was unable to reach agreement with Respondent with respect to either the hearing dates or the length of time that it will take to hear this Consolidated Proceeding.

14. With respect to the inability to reach agreement with Respondent, Staff states:

Respondent has not indicated that it [is] unavailable during the April [15-18] dates ..., but only that its witnesses had not confirmed their availability. Staff does not believe that the unavailability of witnesses should delay scheduling of this matter, especially as the witness’ attendance can be compelled by subpoena.

Staff Filing at ¶ 4. Staff also opines that the hearing should take no longer than one-half day to complete. Staff further states that one of its witnesses is not available during the last week of May 2014. Staff asserts that it has a strong desire to proceed to hearing in this Consolidated Proceeding “in an expeditious manner and does not want ... a long delay in the proceedings.” *Id.* at ¶ 3. Staff does not provide the factual basis for its assertions.

15. On February 25, 2014, Respondent filed its Comments on Staff’s Proposed Hearing Dates (Respondent Filing) in which it proposes four hearing dates (*i.e.*, May 27 through 30, 2014)⁵ and at least one full day of hearing. The Respondent Filing states: (a) Staff originally

⁴ These dates satisfy the Respondent’s request in the February 12, 2014 filing.

⁵ Respondent also proposed a May 26, 2014 hearing date. That date is Memorial Day and is a State holiday on which the Commission is not open for business.

requested information about Respondent's availability in, and requested Respondent to determine its witnesses' availability in, April and May 2014; (b) Staff provided its dates of unavailability, which did not include the last week of May 2014; (c) Respondent informed Staff's counsel that Respondent's witnesses are available the last week of May 2014; and (d) Staff's counsel informed Respondent that Respondent's proposal is not acceptable to Staff because one Staff witness is unavailable the last week of May 2014. Respondent asserts that the unavailability of Staff's witness should not "override the availability of Respondent's witnesses" (Respondent Filing at ¶ 4) given Staff's position (as quoted above) that the availability of witnesses should not delay the scheduling of the hearing. Respondent does not state that its witnesses are *only* available to testify during the last week of May 2014.

16. In Decision No. R14-0107-I, as pertinent here, the ALJ stated:

By this Interim Decision, the ALJ will order Staff to contact Respondent in order to discuss dates for the evidentiary hearing in this Consolidated Proceeding. By this Interim Decision, the ALJ will order Staff to file, not later than **February 14, 2014**, *a list of three proposed hearing dates, each of which is agreeable to the Parties*. If possible, the ALJ will select one of the proposed dates. By this Interim Decision, the ALJ will order Respondent to cooperate with Staff with respect to the required filing.

The Parties are advised, and are on notice, that if Staff fails to make the required filing, the ALJ will select the evidentiary hearing date without input from the Parties.

Id. at ¶¶ 39-40 (bolding in original; italics supplied) (footnote omitted). *See also id.* at Ordering Paragraphs No. 11-13 (same).

17. It is obvious that the Parties did not reach agreement with respect to either the proposed hearing dates or the number of days for which the hearing should be scheduled. As a result, the ALJ finds that Staff failed to make the filing required by Decision No. R14-0107-I.

18. Pursuant to the advisement in Decision No. R14-01017-I (quoted above), the ALJ will schedule the evidentiary hearing in this matter. The ALJ will schedule the evidentiary hearing for **May 8, 2014**. By choosing this hearing date, the ALJ avoids the dates that the Parties have stated that they are not available.

19. The ALJ will order the following procedural schedule: (a) not later than **March 21, 2014**, Staff 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 **April 11, 2014**, Respondent will file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than **April 18, 2014**, each party will file, if necessary, corrected copies of its lists of witnesses and corrected complete copies of the exhibits that it will offer; (d) not later than **April 25, 2014**, each party will file its prehearing motions, including motions *in limine*;⁶ and (e) not later than **May 6, 2014**, the Parties will file any settlement agreement or stipulation that they have reached.

20. Each witness who will be called to testify (except a witness called in Staff's rebuttal case) must be identified on the list of witnesses that ¶ 19 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.

21. **The Parties are advised, and are on notice, that** no person -- *including Respondent's representative Mr. Florey* -- will be permitted to testify on behalf of a party

⁶ As a preliminary matter on the day of hearing, the ALJ will hear argument on pending prehearing motions and will rule on those motions.

(except in Staff's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 19 and 20 of this Interim Decision.

22. Complete copies of all exhibits (except an exhibit offered in Staff's rebuttal case or used in cross-examination) must be filed as required by ¶ 19.

23. **The Parties are advised, and are on notice, that** no document -- *including the CPAN* -- will be admitted into evidence (except in Staff's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶¶ 19 and 22 of this Interim Decision.

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

25. Except as modified by this Interim Decision, Rule 4 CCR 723-1-1405 will govern discovery in this Proceeding.

26. Responses to discovery requests will be served within *five business days from the date of service of the requests*.⁷ Discovery served after 3:00 p.m. Mountain Time on a Friday will be deemed served on the next business day.

27. Motions pertaining to discovery may be filed at any time.⁸ Unless otherwise ordered, responses to motions pertaining to discovery will be written and will 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.

⁷ By this Interim Decision, the ALJ will shorten response time to discovery.

⁸ The prefiling procedures contained in Rule 4 CCR 723-1-1405 apply.

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

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 it wishes to offer as an exhibit.¹⁰ **The Parties are advised, and are on notice, that** the fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out 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 previous Interim Decisions, the ALJ advised the Parties that the ALJ will hold the Parties to the requirements of the Rules of Practice and Procedure, Part 1 of 4 CCR 723.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this matter shall be held on the following date, at the following time, and in the following location:

DATE: May 8, 2014

TIME: 9:00 a.m.

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

2. The following procedural schedule is adopted: (a) not later than March 21, 2014, Staff of the Commission (Staff) 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) not later than April 11, 2014,

¹⁰ This means that, at the hearing, a party must have at least four copies of each document: one to be marked and retained by the Commission as the hearing exhibit; one to be given to the opposing party; one to be given to the ALJ; and one to be retained by the party offering the exhibit.

Respondent Parking Authority LLC shall file its list of witnesses and complete copies of the exhibits that it will offer in its case; (c) not later than April 18, 2014, each party shall file, if necessary, corrected copies of its list of witnesses and corrected complete copies of the exhibits that it will offer; (d) not later than April 25, 2014, each party shall file its prehearing motions; and (e) not later than May 6, 2014, the Parties shall file any settlement agreement or stipulation that they have reached

3. No person shall testify on behalf of a party (except in Staff's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

4. No document shall be admitted into evidence (except in Staff's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

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

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

7. Response time to discovery is shortened to five business days from the date of service of the discovery.

8. Discovery served after 3:00 p.m. Mountain Time on a Friday is deemed served on the next business day.

9. Response time to a discovery-related motion is shortened to three business days from the date of service of the motion.

10. The Motion and Request to Extend the Submission of Proposed Hearing Dates filed on February 14, 2014 is granted.

11. Not later than February 24, 2014, Staff of the Commission shall submit the filing required by Decision No. R14-0107-I.

12. Response time to the Motion and Request to Extend the Submission of Proposed Hearing Dates filed on February 14, 2014 is waived.

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

14. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge