

Decision No. R14-0350-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0205TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MICHAEL LEACH, DOING BUSINESS AS, ACE TOWING,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
VACATING AND RESCHEDULING
HEARING AND DEADLINES**

Mailed Date: April 2, 2014

I. STATEMENT

1. On March 5, 2014, Commission trial Staff (Staff) with the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108810 against Michael Leach, doing business as Ace Towing (Respondent or Mr. Leach) seeking to assess civil penalties against Respondent in the amount of \$36,300.00, which includes a 10 percent surcharge for violation of Colorado statutes and Commission Rules.

2. On March 19, 2014, Staff filed an “Entry of Appearance and Notice Pursuant to Rule 1007(a).”

3. On March 26, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

4. By Decision No. R14-0340-I, the ALJ scheduled this matter for a hearing on the CPAN, and established deadlines for the parties to disclose and file the evidence the parties will present at the hearing.

5. On April 2, 2014, Staff filed a Motion to Continue Hearing Date (Motion). The Motion seeks to continue the hearing date because Staff's primary witness is not available on the current hearing date, May 22, 2014. Staff's witness is not available because he has been subpoenaed to testify at a criminal trial in El Paso County. The Motion states that Respondent does not object to the relief sought by the Motion. Staff provided several available hearing dates.

6. Because the Motion is unopposed, the ALJ will waive the response time to it pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The ALJ finds that Staff has shown good cause for a continuance of the hearing. The ALJ will grant Staff's Motion, and will reschedule the hearing for one of the dates Staff identified in its Motion. The ALJ will also reschedule the parties' deadlines to disclose evidence.

A. Burden of Proof at Evidentiary Hearing

8. As stated in Decision No. R14-0340-I, the ALJ will hold an evidentiary hearing on the CPAN. At the hearing, Staff will carry the burden to prove by a preponderance of the evidence that Mr. Leach committed the violations charged in the CPAN.

9. Mr. Leach will have an opportunity to present evidence in his defense. This means that Mr. Leach will be given an opportunity to question any witness who testifies on behalf of Staff and will be able to present witnesses and evidence (in the form of exhibits).

10. Mr. Leach may have an attorney represent him in this proceeding, but he is responsible for hiring and paying for his own attorney.

11. Mr. Leach is advised that should he choose to represent himself in this proceeding, that he will be held to the same standards as an attorney.

B. Disclosure of Evidence to Be Offered at Hearing

12. In anticipation of the hearing, the ALJ will order the parties to make disclosures of the witnesses and exhibits that they intend to present at the hearing in support of their position.

13. Witness lists shall include a description of the witnesses' testimony and the witnesses' last known address, telephone number, and job title. Witnesses are those persons who will testify on behalf of a party. All witnesses shall be sworn in before commencing their testimony.

14. Mr. Michael Leach may testify without filing a witness list.¹ However, if Respondent wishes for any other person to testify on its behalf, Respondent must file a witness list as required by this Decision.

15. Whether Mr. Leach is required to file a witness list as stated above *does not* impact his responsibility to file and serve an exhibit list and exhibits.

16. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

17. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party to the proceeding. Service may be accomplished by United States Mail, or through the Commission's E-filing system, if the party being served is registered with the E-filing system.

¹ It is reasonable to presume that Mr. Leach will testify on his own behalf regarding his position on the CPAN.

18. Reference to filing a document means that the party shall provide the document to the Commission. The filing must include the proceeding name and number.

19. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and the Colorado Rules of Evidence. The ALJ expects the parties to comply with the Rules of Practice and Procedure and the Colorado Rules of Evidence.

20. A free copy of the Colorado Rules of Evidence may be found at the following link, under “Colorado Court Rules”: www.lexisnexis.com/hottopics/colorado. The Rules of Practice and Procedure and the Rules Regulating Transportation by Motor Vehicle are available on the Commission’s website (www.dora.colorado.gov/puc) and in hard copy from the Commission.

21. The parties are advised that failure to comply with the requirements of this Decision may result in an order barring the offending party from presenting evidence at the hearing.

II. ORDER

A. It Is Ordered That:

1. The hearing scheduled in this matter for May 22, 2014 at 10:00 a.m. is vacated. No hearing shall take place on that date.

2. A hearing on the merits of the Civil Penalty Assessment Notice in this matter will be held as follows:

DATE: June 12, 2014
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

3. At the above date, time, and place you will be given the opportunity to be heard if you so desire.

4. The deadlines for filing and serving exhibits set forth in Decision No. R14-0340-I are vacated. New deadlines are set forth below.

5. Commission Staff shall file and serve exhibit and witness lists and exhibits **on or by 5:00 p.m. on May 15, 2014.**

6. Michael Leach, doing business as Ace Towing shall file and serve exhibit and witness lists and exhibits **on or by 5:00 p.m. on May 22, 2014.** If Mr. Leach will be his only witness, he need not file a witness list. However, if Mr. Leach wishes for any other person to testify on its behalf, he must file a witness list as required by this Decision.

7. Witness lists shall include a description of the witnesses' anticipated testimony, along with their most recent address, telephone number, and job title.

8. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3). The exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties may utilize the Commission's exhibit stamp to include this information on

the exhibits; the parties are advised that they must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

9. At the hearing, the parties shall bring an original and two copies of each exhibit they intend to offer, along with a completed exhibit list in the format set forth in Appendix A, which was provided with Decision No. R14-0340-I. Appendix A will not be provided again with this Decision.

10. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit. The parties shall comply with all mandates in this Decision.

11. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge