

Decision No. R14-0446-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0125TO

CHARLES SNYDER,

COMPLAINANT,

V.

RANDY'S HIGH COUNTRY TOWING, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
CONSTRUING REQUEST AS
MOTION FOR ABSENTEE TESTIMONY
AND DENYING REQUEST**

Mailed Date: April 30, 2014

I. STATEMENT

1. The captioned proceeding was initiated on February 6, 2014, when Charles Snyder (Complainant) filed a formal Complaint (Complaint) against Randy's High Country Towing, Inc. (Respondent).

2. On February 11, 2014, the Public Utilities Commission (Commission) issued an order to Respondent to answer or satisfy the Complaint. At the same time, the Commission scheduled the matter for an evidentiary hearing for March 24, 2014 at 9:00 a.m.

3. On February 19, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was originally assigned to ALJ Mirbaba. The matter was subsequently assigned to the undersigned ALJ.

4. By Interim Decision No. R14-0399-I issued April 14, 2014, this matter was set for hearing for May 22, 2014. In addition to setting a hearing, the Interim Decision also denied Complainant's request to appear by telephone at the hearing.

5. On April 15, 2014, Complainant filed a pleading again requesting permission to appear by telephone. The sole reason for the request is that Complainant lives out of state. The request will be construed as a Motion to Appear by Telephone (Motion).

6. Pursuant to Colorado Rule of Civil Procedure (CRCP) 43(i)(1), a party may request that testimony be presented at hearing by a person absent from the hearing room by means of telephone or other medium of communication. Under CRCP 43(i)(1), such a motion is to include the reason for allowing such testimony and a detailed description of all testimony which is proposed to be taken by telephone, as well as copies of all documents or reports which will be used or referred to in such testimony.

7. In making a determination as to whether the interests of justice weigh in favor of allowing absentee testimony, several facts are to be considered, including whether: a) there is a statutory right to absentee testimony; b) the cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person; c) the availability of appropriate equipment at the court to permit the presentation of absentee testimony; d) the availability of the witness to appear personally in court; e) the relative importance of the issue or issues for which the witness is offered to testify; f) if the credibility of the witness is an issue; g) whether the

presentation of absentee testimony would inhibit the ability to cross-examine the witness; and h) the efforts of the requesting party to obtain the presence of the witness. CRCP 43(i)(3).

8. In this matter, no statutory right to absentee testimony for Complainant exists. Further, the mere fact that Complainant resides out of state (the only reason provided in his request to appear by telephone) does not impede the Complainant's ability to appear at the hearing. The Complainant bears the burden of going forward and the burden of proof in this proceeding. Therefore, the issues for which he will offer to testify are of the utmost importance in determining the outcome of this proceeding, further buttressing the importance of his presence at the hearing. Moreover, the credibility of the Complainant is a key element in a complaint proceeding. Without Complainant's presence in the hearing room, the ability to assess credibility will be severely hampered. The ability of Respondent to cross-examine Complainant would also be compromised without Complainant's presence in the hearing room.

9. For all these reasons, Complainant's Motion is denied. Complainant must appear in person at the scheduled hearing. Complainant is on notice that failure to appear at the evidentiary hearing will result in dismissal of the formal Complaint.

II. ORDER

A. It Is Ordered That:

1. The request of Complainant, Mr. Charles Snyder to appear by telephone in this proceeding is construed as a Motion to Appear by Telephone.

2. The Motion to Appear by Telephone is denied consistent with the discussion above.

3. Complainant is on notice that failure to appear at the evidentiary hearing will result in dismissal of the Complaint.

4. This Decision shall be 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

PAUL C. GOMEZ

Administrative Law Judge