

Decision No. R14-1005-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0806CP

COLORADO JITNEY, LLC,

COMPLAINANT,

V.

CITY AND COUNTY OF DENVER AND

EVERGREEN TRAILS, INC., DOING BUSINESS AS HORIZON COACH LINES,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING COMPLAINANT TO OBTAIN
LEGAL COUNSEL, VACATING HEARING
DATE, REQUIRING COMPLAINANT TO MAKE
FILING, AND CONTAINING ADVISEMENTS**

Mailed Date: August 20, 2014

I. STATEMENT

1. On July 25, 2014, Colorado Jitney, LLC (Jitney or Complainant), filed a formal Complaint against the City and County of Denver (Denver) and Evergreen Trails, Inc., doing business as Horizon Coach Lines (Horizon). That filing commenced this Proceeding.

2. On July 30, 2014, the Commission issued to each respondent an Order to Satisfy or Answer.

3. On July 30, 2014, the Commission issued an Order Setting Hearing and Notice of Hearing. That Order scheduled an October 14, 2014 evidentiary hearing in this Proceeding. This Interim Decision will vacate that evidentiary hearing date.

4. On August 6, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

5. On August 18, 2014, Denver filed its Answer in which Denver contested the Complaint and asked that it be dismissed. That filing put this case at issue as to Denver.

6. On August 19, 2014, Horizon filed its Answer in which Horizon contested the Complaint and asked that it be dismissed. That filing put this case at issue as to Horizon.

7. Denver and Horizon, collectively, are the Respondents. Complainant and Respondents, collectively, are the Parties. Each respondent is represented by an attorney.

A. Complainant to Obtain Legal Counsel.

8. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)¹ requires a party in a Proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual may appear without an attorney to represent the interests of a closely-held entity provided the requirements in § 13-1-127, C.R.S., are met.

9. The Commission has held that, if the exception in Rule 4 CCR 723-1-1201(b)(II) does not apply, an entity (such as a limited liability company) must be represented by counsel in an adjudication. In addition, the Commission has held that, if a party must be, but is not, represented by an attorney, there are two consequences: first, any filing (including, in this case,

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

the Complaint) made by a non-attorney on behalf of the party is void and of no legal effect; and, second, the party cannot participate in a prehearing conference, in an evidentiary hearing, and in an oral argument.

10. This is an adjudication before the Commission.

11. Jitney is a limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding. The ALJ finds that the exception contained in Rule 4 CCR 723-1-1201(b)(II) does not apply because the amount in controversy (*i.e.*, the value of the contract at issue) in this Proceeding exceeds \$ 15,000. Thus, pursuant to Rule 4 CCR 723-1-1201(a), the ALJ finds that Jitney must be represented by an attorney in this case.

12. The ALJ will order Jitney to obtain legal counsel in this Proceeding. Jitney's counsel must be an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

13. Jitney's attorney must enter an appearance in this Proceeding not later than **close of business on August 29 2014.**

14. **Jitney is advised, and is on notice, that it will not be permitted to proceed in this matter without an attorney.**

15. **Jitney is advised, and is on notice, that the ALJ will dismiss the Complaint unless Jitney's attorney enters an appearance in accordance with this Interim Decision.**

B. Complainant to Make Filing Regarding Procedural Schedule and Evidentiary Hearing.

16. Respondents contest and oppose the Complaint. Thus, it is necessary to establish a procedural schedule and to schedule the evidentiary hearing. In addition, it is necessary to address issues pertaining to discovery and pertaining to the treatment of information claimed to

be confidential. To accomplish this, the ALJ will order Complainant, through its counsel, to consult with Respondents and to make, not later than **September 8, 2014**, a filing that: (a) contains a procedural schedule, including hearing date(s), that is satisfactory to all Parties; and (b) addresses the issues discussed below. The ALJ will order Respondents to cooperate with Complainant with respect to this filing.

17. The procedural schedule filing must contain at least the following: (a) the date by which each respondent will file a motion to dismiss the Complaint, including motions addressed to the Commission's subject matter jurisdiction in this matter;² (b) the date by which Complainant will file its written direct testimony and exhibits; (c) the date by which each respondent will file its written answer testimony and exhibits; (d) the date by which Complainant will file its written rebuttal testimony and exhibits; (e) the date by which each respondent will file its cross-answer testimony and exhibits;³ (f) the date by which each party will file, if necessary to correct errors in previously-filed testimony and exhibits, corrected written testimony and exhibits; (g) the date by which each party will file prehearing motions, including dispositive motions;⁴ (h) the date by which the Parties will file any stipulation or settlement agreement reached;⁵ (i) the proposed evidentiary hearing dates;⁶ and (j) the date by which each party will file its post-hearing statement of position to which no response will be permitted.

² This date must be at least 45 calendar days before the filing of direct testimony and exhibits. This will be the only date for filing motions to dismiss for lack of subject matter jurisdiction.

³ Cross-answer testimony and exhibits responds to, and addresses, only the answer testimony and exhibits of another respondent.

⁴ This date can be no later than 20 calendar days before the first day of hearing.

⁵ This date can be no later than five business days before the first day of hearing.

⁶ Complainant must contact the ALJ to clear hearing dates. The ALJ's contact information is: telephone number: 303.894.2842; e-mail address: mana.jennings-fader@state.co.us.

18. Unless modified, Rule 4 CCR 723-1-1405 governs discovery.⁷ The September 8, 2014 filing must contain: (a) any modifications or special provisions that the Parties wish the ALJ to order with respect to discovery; and (b) a statement of the Parties' reasons for requesting the modifications or special provisions.

19. Rules 4 CCR 723-1-1100 and 723-1-1101 govern the treatment of information claimed to be confidential. If the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate, the September 8, 2014 filing must contain: (a) any special provisions that the Parties wish the ALJ to order with respect to the treatment of information claimed to be confidential; and (b) a statement of the Parties' reasons for requesting the special provisions.

20. When the September 8, 2014 filing is received, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

21. **The Parties are advised, and are on notice, that** if Applicant fails to make the September 8, 2014 filing regarding the proposed hearing dates and proposed procedural schedule to which the Parties agree, the ALJ will schedule the evidentiary hearing and will establish the procedural schedule without input from the Parties.

C. Advisements and Other Matters.

22. **The Parties are advised, and are on notice, that** they must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

⁷ **The Parties are advised, and are on notice, that** in the Interim Decision that schedules the hearing and establishes the procedural schedule, the ALJ will order that, subject to the provisions of Rules 4 CCR 723-1-1100 and 723-1-1101, discovery requests and discovery responses must be served on all Parties.

23. **The Parties are advised, and are on notice, that** a document is filed with the Commission on the date that the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is *not* filed timely with the Commission.

24. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at www.dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. Complainant Colorado Jitney, LLC, must be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

2. Not later than August 29, 2014, legal counsel for Complainant Colorado Jitney, LLC, shall enter an appearance in this proceeding.

3. Failure of Complainant Colorado Jitney, LLC's legal counsel to enter an appearance as required by Ordering Paragraph No. 3 will result in dismissal of the Complaint.

4. The evidentiary hearing in this Proceeding scheduled for October 14, 2014 is vacated.

5. Not later than September 8, 2014, Complainant Colorado Jitney, LLC, shall make a filing that complies with the requirements of ¶¶ 16-19, above.

6. Respondent City and County of Denver and Respondent Evergreen Trails, Inc., doing business as Horizon Coach Lines, shall cooperate with Complainant Colorado Jitney, LLC, in the preparation of the filing required by Ordering Paragraph No. 5.

7. Consistent with the discussion above, if Complainant Colorado Jitney, LLC, fails to make the filing required by Ordering Paragraph No. 5, the Administrative Law Judge, without input from the parties, will schedule the evidentiary hearing and will establish the procedural schedule.

8. The Parties are held to the advisements in this Interim Decision.

9. 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