

Decision No. R14-1104-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
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
AND CONTAINING ADVISEMENTS**

Mailed Date: September 10, 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. The procedural history of this Proceeding is set out in a previously-issued Interim Decision and is repeated here as necessary to put this Interim Decision in context.

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

4. On August 18, 2014, Denver filed its Answer. That filing put this case at issue as to Denver.

5. On August 19, 2014, Horizon filed its Answer. That filing put this case at issue as to Horizon.

6. Denver and Horizon, collectively, are the Respondents. Complainant and Respondents, collectively, are the Parties. Each party is represented by legal counsel.

A. Evidentiary Hearing and Procedural Schedule.

7. In response to Decision No. R14-1005-I,¹ on September 8, 2014, Complainant filed a proposed procedural schedule and evidentiary hearing dates that are satisfactory to the Parties. The ALJ finds to be acceptable, and will adopt, the proposed procedural schedule.

8. The ALJ will order the following procedural schedule: (a) not later than **October 10, 2014**, Jitney will file a motion to amend the Complaint;² (b) not later than **November 7, 2014**, each respondent will file a motion to dismiss the Complaint, including motions addressed to the Commission's subject matter jurisdiction in this matter; (c) not later than **January 23, 2015**, Jitney will file its written direct testimony and exhibits; (d) not later than **February 20, 2015**, each respondent will file its written answer testimony and exhibits; (e) not later than **March 6, 2015**, Jitney will file its written rebuttal testimony and exhibits; (f) not later than **March 20, 2015**, each respondent will file its written cross-answer testimony and exhibits;³

¹ This Interim Decision was issued on August 20, 2014 in this Proceeding.

² This is the last date on which an amended Complaint may be filed.

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

(g) notlater than **March 27, 2015**, each party will file, if necessary to correct errors in previously-filed testimony and exhibits, corrected written testimony and exhibits; (h) notlater than **April 1, 2015**, each party will file prehearing motions, including dispositive motions; (i) not later than **April 23, 2015**, the Parties will file any stipulation or settlement agreement reached; (j) the evidentiary hearing will be held on **April 30 and May 1, 2015**; and (k) notlater than **June 1, 2015**, each party will file its post-hearing statement of position to which (absent further order) nresponse will be permitted.

9. **The Parties are advised and are on notice that** November 7, 2014 is the last date on which to file a motion to dismiss for lack of subject matter jurisdiction.

10. **The Parties are advised and are on notice that:** (a) written testimony must be in question-and-answer format; and (b) if a witness sponsors one or more exhibits, the exhibits must be attached to the witness's written testimony. *See generally* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1202(e)⁴ (form and content of written testimony). One may find examples of written testimony and exhibits in Proceeding No. 13AL-0958E.

11. **The Parties are advised and are on notice that**, except in extraordinary circumstances and with the permission of the ALJ, no person will be permitted to testify unless the person has filed written testimony.⁵

B. Discovery.

12. Unless otherwise ordered, Rule 4 CCR 723-1-1405 will govern discovery.

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

⁵ If the ALJ grants leave to do so, an individual may be substituted as a witness in place of, and may adopt the written testimony of, another individual. A party that seeks such a substitution must file, not later than April 1, 2015, an appropriate motion.

13. The ALJ will order that, subject to the provisions of Rules 4 CCR 723-1-1100 and 723-1-1101, all discovery requests and discovery responses must be served on all Parties.

14. A motion pertaining to discovery may be filed at any time.

15. A motion pertaining to discovery must comply with the applicable Colorado Rules of Civil Procedure, as defined in Rule 4 CCR 723-1-1004(g) and incorporated by reference by Rule 4 CCR 723-1-1405(a), and must comply with Rule 4 CCR 723-1-1405(g). **The Parties are advised and are on notice that** the ALJ will deny a motion pertaining to discovery that does not comply with the requirements of the cited rules.

16. Unless otherwise ordered, responses to a motion pertaining to discovery must be written and must be filed within *three business days of service of the motion*.⁶ **The Parties are advised and are on notice that**, pursuant to Rule 4 CCR 723-1-1400(d), the ALJ may deem to be confessed a motion pertaining to discovery to which no response is filed.

17. If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion and the response are filed.

C. Confidential Information.

18. Unless otherwise ordered, Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential and of information that has been determined to be highly confidential.

19. A motion for extraordinary protection may be filed at any time.

20. A motion for extraordinary protection must comply with Rule 4 CCR 723-1-1101(b). *See also* Rule 4 CCR 723-1-1101(d) (service of motion for extraordinary

⁶ By this Interim Decision, the ALJ will shorten response time to a motion pertaining to discovery.

protection). **The Parties are advised and are on notice that** the ALJ will deny a motion for extraordinary protection that does not comply with the requirements of Rule 4 CCR 723-1-1101(b).

21. If necessary, the ALJ will hold a hearing on a motion for extraordinary protection as soon as practicable after the motion and the response are filed.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this Proceeding is scheduled for the following dates, at the following times, and in the following location:

DATES: April 30 and May 1, 2015
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The following procedural schedule is adopted: (a) notlater than October 10, 2014, Colorado Jitney, LLC (Jitney), shall file a motion to amend the Complaint; (b) notlater than November 7, 2014, each respondent shall file a motion to dismiss the Complaint, including motions addressed to the Commission's subject matter jurisdiction in this matter; (c) notlater than January 23, 2015, Jitney shall file its written direct testimony and exhibits; (d) notlater than February 20, 2015, each respondent shall file its written answer testimony and exhibits; (e) not later than March 6, 2015, Jitney shall file its written rebuttal testimony and exhibits; (f) notlater than March 20, 2015, each respondent shall file its written cross-answer testimony and exhibits; (g) notlater than March 27, 2015, each party shall file, if necessary to correct errors in previously-filed testimony and exhibits, corrected written testimony and exhibits;

(h) notlater than April 1, 2015, each party shall file prehearing motions, including dispositive motions; (i) notlater than April 23, 2015, the Parties shall file any stipulation or settlement agreement reached; and (j) notlater than June 1,2015, each party will file its post-hearing statement of position to which (absent further order) no response will be permitted.

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

4. Subject to the provisions of Rules 4*Code of Colorado Regulations* 723-1-1100 and 723-1-1101, discovery requests and responses shall be served on all Parties.

5. Unless otherwise ordered, responses to a motion pertaining to discovery shall be filed within three business days of service of the motion.

6. Rules 4*Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern the treatment of information claimed to be confidential and of information that has been determined to be highly confidential.

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

8. 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