

Decision No. R14-1213-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
ADDRESSING UNOPPOSED MOTION,
MODIFYING PROCEDURAL SCHEDULE,
AND WAIVING RESPONSE TIME**

Mailed Date: October 2, 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 previously-issued Interim Decisions 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.

7. On September 10, 2014, by Decision No. R14-1104-I, the ALJ, *inter alia*: (a) established the procedural schedule in this Proceeding; (b) scheduled the evidentiary hearing in this Proceeding; and (c) stated that, unless otherwise ordered, Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405¹ governs discovery in this matter.

8. Pursuant to the procedural schedule and not later than October 10, 2014, Complainant is to file a motion to amend the Complaint. Unless otherwise ordered, this is the last date on which Complainant may file a motion to amend the Complaint.

9. On October 2, 2014, Horizon filed (in one document) an Unopposed Motion to Extend Time for Responses to First Set of Discovery from Complainant Colorado Jitney, LLC [Motion to Extend Response Time], to Extend Due Date for Complainant to Amend the Complaint [Motion to Extend Filing Date], and for Waiver of Response Time [Motion for Waiver].

10. As good cause to grant the *Motion for Waiver*, Horizon represents that no party opposes either the Motion to Extend Response Time or the Motion to Extend Filing Date. The Motion for Waiver states good cause. As granting the Motion for Waiver will not prejudice

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

any party, the ALJ will grant the Motion for Waiver and will waive response time to the Motion to Extend Response Time or the Motion to Extend Filing Date.

11. As good cause to grant the *Motion to Extend Response Time*, Horizon states: (a) it received the First Set of Discovery from Jitney on September 23, 2014; (b) its responses to that set of discovery are due on October 3, 2014; and (c) Jitney and Horizon have agreed to extend, to and including October 10, 2014, the time within which Horizon must respond to that set of discovery. Horizon represents that the Parties agree to this requested extension of time. Citing Rule 4 CCR 723-1-1405(e), Horizon requests an order approving this agreed-upon extension of time to respond to the First Set of Discovery.

12. The ALJ will deny as moot the Motion to Extend Response Time. Jitney, the party which served the discovery, and Horizon, the party on which the discovery was served, have agreed informally to extend the Rule-based discovery response time by one-week. Rule 4 CCR 723-1-1405(e) permits -- even encourages -- such informal agreements with respect to discovery deadlines. Given the agreement, there is no discovery dispute for the ALJ to resolve.

13. **The Parties are advised and are on notice that**, as a general matter, Parties should file discovery-related motions in this Proceeding *only* when there is a discovery-related dispute or issue that: (a) the Parties are unable to resolve informally; and (b) requires a ruling from the ALJ. In this regard, Rule 4 CCR 723-1-1405(g) provides: “The Commission discourages discovery disputes, and will sanction parties and attorneys that do not cooperate in good faith.”

14. As good cause to grant the *Motion to Extend Filing Date*, Horizon states: (a) Jitney would like the opportunity to review Horizon’s discovery responses before

Jitney decides whether to file an amended Complaint; (b) the date by which Jitney must file its motion to amend the Complaint is October 10, 2014, which is the date on which Horizon is to respond to the pending First Set of Discovery from Jitney; and (c) to allow Jitney the time to take the Horizon discovery responses into account, the Parties agree to extend, to and including October 13, 2014, the time within which Jitney must file its motion to amend the Complaint.

15. The ALJ will grant the Motion to Extend Filing Time as that motion states good cause and is unopposed. Because October 13, 2014 is a state holiday and the Commission offices are closed, the ALJ will change the filing date to the next business day.

16. The ALJ will modify the procedural schedule established in Decision No. R14-1104-I as follows: not later than **October 14, 2014**, Jitney will file a motion to amend the Complaint. Absent further order, this is the last date on which Jitney may file a motion to amend the Complaint.

17. Except as modified by this Interim Decision, Decision No. R14-1104-I remains in full effect and governs this Proceeding.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the Unopposed Motion to Extend Time for Responses to First Set of Discovery from Complainant Colorado Jitney, LLC, is denied as moot.

2. Consistent with the discussion above, the Unopposed Motion to Extend Due Date for Complainant to Amend the Complaint is granted.

3. The procedural schedule adopted in Decision No. R14-1104-I is modified as follows: not later than October 14, 2014, Colorado Jitney, LLC, shall file a motion to amend the

Complaint. Absent further order, this is the last date on which Colorado Jitney, LLC, may file a motion to amend the Complaint.

4. Except as modified by this Interim Decision, Decision No. R14-1104-I remains in full effect and governs this Proceeding.

5. The Unopposed Motion for Waiver of Response Time is granted.

6. Response time to the Unopposed Motion to Extend Time for Responses to First Set of Discovery from Complainant Colorado Jitney, LLC, and to the Unopposed Motion to Extend Due Date for Complainant to Amend the Complaint is waived.

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)



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