

Decision No. R20-0728-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20G-0370CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

HERMOSA TOURS, LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
SETTING HEARING, PREHEARING CONFERENCE,
AND PROCEDURAL SCHEDULE; AND
ADDRESSING REPRESENTATION AND EXHIBITS**

Mailed Date: October 16, 2020

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I. STATEMENT**A. Procedural history**

1. On September 4, 2020, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 126663, which alleges that Hermosa Tours, LLC (Hermosa Tours) violated §§ 40-10.1-107 and 201, C.R.S., on August 11, 2020. CPAN No. 126663 states that the civil penalty assessed for the alleged violations is \$12,100, plus an additional 15 percent surcharge, for a total of \$13,915, but that if Hermosa Tours pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$6,957.50. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$13,915.¹ The CPAN also states that the Commission may order Hermosa Tours to cease and desist from violating statutes and Commission rules.²

2. The CPAN states that the Commission served the CPAN by U.S. Mail.

3. Hermosa Tours has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

4. On September 23, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

¹ CPAN No. 126663 at 2.

² *Id.*

B. Remote Hearing

5. The remote hearing in this matter shall be scheduled for **January 22, 2021 at 9:00 a.m.** Due to the COVID-19 pandemic, the hearing shall be a remote hearing at which the participants will appear from remote locations, as explained in Attachment A to this Decision. The ALJ finds that holding a remote hearing is consistent with current public health advisories to prevent the spread of COVID-19. The ALJ concludes that, in our current circumstances, it is in the parties' and the public interest to hold the hearing in this proceeding as a remote hearing. The parties, witnesses, attorneys, and members of the public must not appear in-person for the hearing.

6. The ALJ will send an email to the parties and/or their counsel containing the URL necessary to participate in the remote hearing by computer. Any party, counsel, or witness who wishes to participate in the remote hearing must use a computer that is connected to the internet and has a microphone, speaker, and camera/webcam. Attachment A provides more extensive instructions for participating in the remote hearing via the GoToMeeting platform.

C. Remote Prehearing Conference

7. A remote prehearing conference shall be scheduled for January 8, 2021 at 1:00 p.m. The prehearing conference shall be a remote prehearing conference for the same reasons as stated above regarding the remote hearing.

D. Procedural Schedule

8. To facilitate the fair, orderly, and efficient litigation of this proceeding, the ALJ finds and concludes that a procedural schedule should be adopted, so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the

other party will present at the hearing. Therefore, this Decision will order the parties to file, and to serve on each other, a list of witnesses, a summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

9. On or before **November 6, 2020**, Trial Staff of the Commission (Staff) will be ordered to file and serve on Hermosa Tours: (a) a list that identifies the witnesses Staff intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Staff will present at the hearing.

10. On or before **December 11, 2020**, Hermosa Tours will be ordered to file and serve on Staff: (a) a list that identifies the witnesses Hermosa Tours intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Hermosa Tours will present at the hearing.

11. 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 or parties to the proceeding. Service must be accomplished pursuant to Rule 1205 of the Commission's Rules of Practice and Procedure.³ The Commission's Rules (including Rule 1205) are available on the Commission's website and in hard copy from the Commission.

12. All parties must establish through a certificate of service that they have served a filed document on all other parties in the proceeding. A certificate of service is a statement

³ 4 *Code of Colorado Regulations* (CCR) 723-1.

indicating how and when a document was served on the other party (*e.g.*, the filing was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).⁴

13. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3). Each exhibit 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 shall work together to ensure that there are no gaps or overlaps in the numbering of the exhibits.

14. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

15. The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

E. Exhibits

16. The prehearing filing and service of witness and exhibits lists and exhibits addressed above is designed to eliminate any unfair surprises at the hearing. The presentation of those disclosed exhibits at a remote hearing is a different issue and will be addressed in detail at the remote prehearing conference. The Public Utilities Commission Administrative Hearings Section utilizes Box.com to manage exhibits in a remote hearing. Attachment B to this Decision

⁴ See Rule 1205(e), 4 CCR 723-1.

provides details concerning the preparation and presentation of exhibits at the hearing through Box.com.

17. In preparation for the remote prehearing conference, the parties must review Attachment B and ensure they can access and use Box.com. Toward that end, each party will receive an email containing an invitation to sign up for a free Box.com account. Once signed-up, each party will be invited to share a folder with (only) the Staff in the Administrative Hearings Section, Commission Advisors, and potentially Commissioners and Commission counsel. The party may share access to its Box.com account with others as they choose.

18. In advance of the remote prehearing conference, the parties must sign-up for Box.com via the email described above and upload one exhibit to their respective folders in Box.com. Any questions that arise from the process of signing-up for, and uploading an exhibit to, Box.com will be addressed at the remote prehearing conference.

F. Representation of Hermosa Tours

19. Hermosa Tours is a corporation, and thus must be represented by an attorney in this proceeding unless it satisfies the criteria of the Commission Rule of Practice and Procedure 1201(b)(II).⁵ Under that Rule, a non-attorney can represent Hermosa Tours if Hermosa Tours provides evidence in a sworn statement: (a) proving that Hermosa Tours is a closely-held entity, which means it has no more than three owners; (b) identifying the individual who will represent Hermosa Tours in this matter; (c) proving that the identified individual is an officer of Hermosa Tours; and (d) proving that the identified individual has the authority to represent Hermosa Tours

⁵ 4 CCR 723-1.

in this matter.⁶ If Hermosa Tours does not provide the evidence summarized above, then Commission Rule 1201(b)(II) requires Hermosa Tours to be represented by an attorney in this proceeding.

G. Additional Advisements

20. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

II. ORDER

A. It Is Ordered That:

1. An evidentiary hearing in this proceeding is scheduled as follows:

DATE: January 22, 2021

TIME: 9:00 a.m.

FOR WEBCASTS: Hearing Room B

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge

2. A remote prehearing conference is scheduled as follows:

DATE: January 8, 2021

TIME: 1:00 p.m.

FOR WEBCASTS: Hearing Room B

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge

⁶ See Rule 1201(b)(II), 4 CCR 723-1. See also § 13-1-127(2.3(c)), C.R.S. (stating that “[a] person in whom the management of a limited liability company is vested or reserved” “shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status[.]”).

3. The parties, witnesses, attorneys, and members of the public must not appear in-person for the remote hearing or the remote prehearing conference.

4. On or before **November 6, 2020**, Trial Staff of the Commission (Staff) will be ordered to file and serve on Hermosa Tours, LLC (Hermosa Tours): (a) a list that identifies the witnesses Staff intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Staff will present at the hearing.

5. On or before **December 11, 2020**, Hermosa Tours will be ordered to file and serve on Staff: (a) a list that identifies the witnesses Hermosa Tours intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of exhibits Hermosa Tours will present at the hearing.

6. 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

CONOR F. FARLEY

Administrative Law Judge