

Decision No. R04-0087-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03G-428CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TONY DASSINGER,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
SETTING HEARING AND ORDERING
STAFF TO PROVIDE NOTICE OF HEARING**

Mailed Date: January 23, 2004

I. STATEMENT

1. This matter was originally scheduled for hearing on December 19, 2003. However, that hearing was continued, and the parties were ordered to submit available dates for a future hearing. On January 16, 2004, Staff of the Commission (Staff) submitted its available dates. Respondent Tony Dassinger has filed nothing.

2. The Administrative Law Judge is concerned that the service of the Notice of Hearing be constitutionally and statutorily sufficient. Section 24-4-105(2)(a), C.R.S., provides for notice in hearings such as these, the following:

... Any person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served personally or by mailing by first class mail to

the last address furnished to the agency by the person to be notified at least 30 days prior to the hearing. ...

The Commission conducts its proceedings under the provisions of Article 4 of Title 24, C.R.S., through § 40-6-101(1), C.R.S., which provides in pertinent part as follows:

The commission shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice. All of the provisions of Article 4 of Title 24, C.R.S., shall apply to the work, business, proceedings, and functions of the commission, or any individual commissioner or administrative law judge; but where there is a specific statutory provision in this title applying to the commission, such specific statutory provision shall control as to the commission. ...

3. The Commission's organic act does have a specific provision containing provisions related to notice. Section 40-6-108, C.R.S., provides as follows:

(3) Service in all applications, petitions, complaints, hearings, investigations, and other proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Colorado Rules of Civil Procedure, or may be made personally or by first class mail. In all cases wherein service is obtained by mail by the commission, the certificate of the director of the commission of such mailing shall be *prima facie* evidence that service has been obtained, and the time fixed in any order or notice shall commence to run from the date of mailing as shown in such certificate. ...

(4) The commission shall fix the time when and place where any hearing required by this title or by Article 4 Title 24, C.R.S., will be had upon any application, complaint, petition, investigation, or other proceeding, and shall serve notice thereof to the parties not less than ten days before the time set for such hearing, unless the commission finds that public interest or necessity requires that any hearing be held at an earlier date. ...

4. Thus it appears that the Commission has a specific statutory provision that allows it to give notice of hearing 10 days in advance, rather than the 30 days provided for in the Administrative Procedures Act (APA). However, while both the APA and the Public Utilities Law have a provision relating to service by first class mail, only the APA speaks to the actual address where the notice is to be sent. Thus under the terms of § 40-6-101(1), C.R.S., cited above, the Commission must follow the APA procedure. Specifically, if the Commission,

through Staff, seeks to have service effected by first class mail, it must be first class mail to the last address furnished to this agency by Mr. Dassinger. In the absence of any evidence that Mr. Dassinger has provided this agency with an address, Staff must serve the notice personally.

II. ORDER

A. It Is Ordered That:

1. The hearing in this matter is scheduled as follows:

DATE: February 19, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

2. Staff of the Commission shall serve this Order and Notice of Hearing on the Respondent Tony Dassinger. Staff may serve by first class mail, if Staff can establish that the address was provided by the Respondent Dassinger; otherwise, Staff shall effect personal service.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge