

Jennings-Fader, Mana

From: Gus Michaels [gusm@grmpc.com]
Sent: Friday, December 07, 2007 4:31 PM
To: Jennings-Fader, Mana; 'Cowger, Larry M'
Subject: RE: Rulings on pending motion to quash subpoenas

Judge Jennings-Fader,

It goes without saying, but I am deeply troubled given the apparent close knit relationship between PSC and the ALJ whereby, PSC can simply force a snap ruling via emails and telephone calls, not the proper channels that other litigants must follow. This is not the first time, Jim Albirght was able to get an earlier telephonic continuance on a moment's notice. These specialized channels are not available to anyone except PSC's attorneys who practice before the ALJ on a regular basis.

Also, I am troubled that this ruling is made without any basis or opinion on which to question, seek reconsideration, or appeal. Limiting my discovery solely to those readings at 1404 Wonderview, effectively prevents me from challenging (cross-examining) the reliability of any of their readings, invoices or lack thereof, even with the meter reader that was identified. It appears that the ALJ and Public Utilities Commission is not interested in getting to the truth, just continuing the cover-up and making this a case an exercise in futility. It is a sad day for the consumers of this state, when PSC can thwart the discovery process and cover-up their failings. It renders Mr. Albirght's initial comments about consumers litigating these case true. As consumers, we deserve more, that includes the thousands of consumers in Boulder plagued by this meter reading debacle, including myself.

Best regards, gus

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From: Jennings-Fader, Mana [mailto:Mana.Jennings-Fader@dora.state.co.us]
Sent: Friday, December 07, 2007 4:08 PM
To: Gus Michaels; Cowger, Larry M
Subject: Rulings on pending motion to quash subpoenas

Counsel:

First, I attempted to reach each of you by telephone at approximately 3:27 p.m. this afternoon. Mr. Cowger's number (303.294.2225) went to voicemail, and the telephone number I have for Mr. Michaels (720.259.3412) went to the voicemail of someone at his office, but not to the voicemail of Mr. Michaels. Consequently, I must contact each of you by this e-mail.

12/15/2007

Second, my thanks to the parties for bringing to my attention the fact that the depositions are scheduled for 10 and 11 December 2007.

My decision with respect to the pending motion to quash and/or modify subpoenas is as follows:

1. The subpoena addressed to **Public Service Company of Colorado** is not quashed. The subpoena (both as to testimony and as to production of documents) is limited as follows: (a) **solely** to the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (b) **solely** to the billings made for the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004 and to any meter readings which underpin such billings; (c) to the written notification made to Complainant with respect to billings and rebillings for electric and natural gas service provided to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (d) to bullet item three (true-up letter) on the subpoena duces tecum; (e) to bullet item four (position concerning dispute) on the subpoena duces tecum; (f) to bullet item five (dispute resolution) on the subpoena duces tecum; (g) to bullet item eight (spoliation of records) on the subpoena duces tecum; and (h) to bullet item nine (paragraph 13(b) of affidavit) on the subpoena duces tecum, limited to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004.

In addition, Public Service Company shall not be required to provide copies of documents previously provided to Complainant.

2. The subpoena addressed to Andy Borchers is not quashed. The subpoena (both as to testimony and as to production of documents) is limited (a) **solely** to the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; (b) **solely** to the billings made for the electric and natural gas service provided to Complainant at 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004 and to any meter readings which underpin such billings; (c) to the written notification made to Complainant with respect to billings and rebillings for electric and natural gas service provided to 1404 Wonderview Court, Boulder, Colorado during the period August, 2003 to March, 2004; and (d) to the true-up letter and the development (including any investigation) of that letter.

The subpoena duces tecum is modified to **eliminate** the following (both as to testimony and as to production of documents): (a) bullet item three (dispute of bill); (b) bullet item four (items *consulted* as incident to the testimony sought at the deposition); (c) "explanation of how XCEL reconciled company records that were deliberately falsified, including the daily mileage/meters read log[.]"

I will be in Grand Junction, Colorado in the period 10-14 December 2007 as I will be presiding at a hearing. Consequently, I will not be available to respond to questions, to make rulings on disputes during the course of the depositions, or to issue a written ruling on this motion or on any other pending motion. When I return, I will reduce my rulings (as set out above) to writing when I have time to do so.

Mana L. Jennings-Fader
Administrative Law Judge
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