

Decision No. R14-0362-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-1372CP

COLORADO JITNEY LLC,

COMPLAINANT,

V.

EVERGREEN TRAILS INC., DOING BUSINESS AS HORIZON COACH LINES,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DENYING COMPLAINANT'S MOTION
TO MODIFY DECISION NO. R14-0200-I**

Mailed Date: April 4, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 23, 2013, Colorado Jitney LLC (Jitney) filed a formal Complaint against Evergreen Trails, Inc., doing business as Horizon Coach Lines (Respondent). That Complaint instituted this proceeding.

2. On January 8, 2014, the Commission referred the Complaint to an administrative law judge (ALJ) for disposition.

3. By Decision No. R14-0081-I issued January 21, 2014, the ALJ scheduled a hearing on the Complaint for March 25 and 26, 2014, and established procedural deadlines, including, among other items, that each party file and serve a copy of the exhibits they intend to offer at the evidentiary hearing.

4. On February 21, 2014, Jitney filed an “Unopposed Motion to Vacate and Reschedule Hearing” (Unopposed Motion). The Unopposed Motion sought to vacate the March 25 and 26, 2014 hearing dates and the corresponding pre-filing deadlines for all parties.

5. By Decision No. R14-0200-I issued February 26, 2014, the ALJ granted the Unopposed Motion. The same Decision rescheduled the hearing for April 28, 2014 and established new deadlines for the parties to file and serve witness and exhibit lists and exhibits.

6. Jitney was ordered to “file and serve exhibit and witness lists and exhibits on **or by 5:00 p.m. on March 27, 2014.**” (Bolding in Original) Decision No. R14-0200-I, ordering paragraph 6. Respondent’s deadline to file and serve exhibit and witness lists and exhibits is April 7, 2014.

7. On March 27, 2014, Jitney made a filing listing the exhibits it intends to use at hearing. Jitney did not file the exhibits, nor did it serve the exhibits upon Respondent.

8. Also on March 27, 2014, Jitney filed a “Motion to Modify Decision No. R14-0200-I” (Motion). The Motion seeks to modify Decision No. R14-00200-I, “by deleting the words ‘*and exhibits*’ therefrom.” Motion at ¶ 3. The result would be to eliminate the Decision’s requirement that Jitney file the exhibits with the Commission and serve the exhibits upon Respondent by March 27, 2014.

9. Respondent filed a Response to Jitney’s Motion on April 3, 2014. The Response objects to Jitney’s request, and argues that granting the Motion would prejudice Respondent’s ability to defend itself at reasonable cost from a trial by ambush. The Response requests that Jitney’s exhibits not be admitted at hearing for failure to file and serve the exhibits as required by Decision No. R14-0200-I.

10. The ALJ has reviewed Jitney's Motion and the Response thereto. The ALJ finds the Motion lacks merit. In particular, Jitney argues that it would be a waste of resources to make copies of its exhibits. Jitney complains that the number of copies it must make under the Decision and the filing requirements of Rule 1204(a)(II) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 is burdensome. This argument fails for several reasons. First, Jitney does not request that the requirements of Rule 1204(a)(I) be waived. Moreover, the choice of exhibits is entirely up to Jitney. Jitney has created its own problem by its choice of exhibits.

11. Jitney argues the Decision is confusing because paragraph 14 of the "Statement, Findings, and Conclusions" requires disclosure of its exhibits, but ordering paragraph 6 requires it to file and serve all of its exhibits. Motion, ¶1. This is a perplexing argument. First, paragraph 14 under the "Statement, Findings, and Conclusions" of Decision No. R14-0200-I actually says that "that no exhibit shall be admitted into evidence, except in rebuttal, unless the exhibit is disclosed as required by this Decision." This was an important warning given to all parties to ensure that they filed and served their exhibits as required.

12. Secondly, the requirement that Jitney disclose its exhibits is entirely consistent with the requirement that Jitney file and serve its exhibits. Indeed, exhibits are disclosed when they are served on Respondent.¹

13. As the Motion as no merit, the ALJ will deny it.

14. Jitney has been aware of its obligation to file and serve exhibits since the first procedural decision was issued on January 21, 2014. Jitney could have filed a request to modify

¹ It appears that Jitney believes disclosure is accomplished by identifying the exhibits by name on a list of exhibits. This is a novel interpretation of the word "disclosure" that is unsupported by the plain language of Decision No. R14-0200-I.

the disclosure and filing requirements well in advanced of the March 27th deadline. And, the Motion does not seek an extension of time to comply with the Decision pending ruling on the Motion. Jitney's neglect to act is inexcusable and will not be implicitly approved by permitting Jitney to avoid the consequences of its actions.

15. The deadline to file and serve exhibits expired on March 27, 2014. Decision No. R14-0200-I specifically warned that "no exhibit shall be admitted into evidence, except in rebuttal, unless the exhibit is disclosed as required by this Decision." Decision No. R14-0200-I, ¶ 14. Jitney willfully chose to violate this provision of the Decision, knowing the potential consequences for doing so. Because it has failed to file and serve exhibits as required by Decision No. R14-0200-I and no extension of that deadline has been sought or granted, no exhibit offered by Jitney, unless in rebuttal, will be admitted into evidence at the evidentiary hearing currently scheduled for April 28, 2014.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, Colorado Jitney LLC's (Jitney) Motion to Modify Decision No. R14-00200-I is denied.

2. Because Jitney has failed to file and serve exhibits as required by Decision No. R14-0200-I and no extension of that deadline has been sought or granted, no exhibit offered by Jitney, unless in rebuttal, will be admitted into evidence at the evidentiary hearing currently scheduled for April 28, 2014.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director