

Decision No. R14-0429-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0195EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ALL ACCESS TRANSPORTATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADVISING RESPONDENT THAT,
ABSENT FURTHER ORDER, IT
CANNOT PARTICIPATE IN THIS PROCEEDING**

Mailed Date: April 24, 2014

I. STATEMENT

1. On March 1, 2014, the Commission sent, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 108832 (the CPAN) to All Access Transportation, Inc. (All Access or Respondent). The CPAN commenced this Proceeding.

2. On March 18, 2014, Respondent requested an evidentiary hearing. By doing so, Respondent acknowledged receipt of the CPAN and entered a general appearance in this Proceeding.

3. On March 21, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding. On March 25, 2014, co-counsel for Staff entered her appearance in this Proceeding.

4. Staff and Respondent, collectively, are the Parties.

5. On March 26, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

6. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity *provided* the requirements of § 13-1-127, C.R.S., are met and the Commission grants permission. The Commission has held that, unless an exception applies, a party must be represented by counsel in an adjudicatory proceeding. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by a non-attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in the proceeding (*e.g.*, in a hearing, a prehearing conference, or an oral argument).

7. This is an adjudication before the Commission. Respondent is a corporation, is a party in this matter, and is not represented by legal counsel in this Proceeding.

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

8. On April 4, 2014, by Decision No. R14-0361-I at ¶ 10 and Ordering Paragraph No. 1, the ALJ ordered All Access either to retain legal counsel for this Proceeding or to show cause why it should be permitted to proceed in this matter without legal counsel. If Respondent chose to retain counsel, its counsel was to enter an appearance on or before April 11, 2014. If Respondent chose to show cause, it was to make its show cause filing on or before April 11, 2014.

9. Decision No. R14-0361-I contained the following advisements:

All Access is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires All Access to retain counsel to represent it in this Proceeding.

All Access is advised, and is on notice, that if the ALJ issues a subsequent Decision that requires All Access to retain legal counsel, then All Access will not be permitted to participate in this matter without an attorney. This means, among other things, that All Access will not be able to participate in the evidentiary hearing in this matter.

Id. at ¶¶ 13-14 (bolding in original).

10. On April 4, 2014, by first-class mail, the Commission mailed Decision No. R14-0361-I to Respondent at the Fairplay, Colorado mailing address known to the Commission and shown on the CPAN. As of the date of this Interim Decision, Decision No. R14-0361-I has not been returned to the Commission as undeliverable. Respondent is presumed to have received, and thus to have notice of the requirements in, Decision No. R14-0361-I.

11. No attorney entered an appearance on behalf of Respondent. Respondent did not request additional time within which to retain legal counsel.

12. Respondent did not make a filing in response to the order to show cause (*i.e.*, Decision No. R14-0361-I). Respondent did not request additional time within which to respond to the order to show cause.

13. Without explanation, Respondent failed to comply with the Decision No. R14-0361-I requirement that Respondent either retain legal representation in this Proceeding or make a show cause filing. In clear language, the ALJ advised Respondent of the consequences if it failed to comply with Decision No. R14-0361-I.

14. On April 15, 2014, by Decision No. R14-0400-I, the ALJ found that, although given reasonable opportunity to do so, Respondent had not established that it comes within the Rule 4 CCR 723-1-1201(b)(II) exception. Therefore, in accordance with Rule 4 CCR 723-1-1201(a), the ALJ found that Respondent must be represented by an attorney in this Proceeding.

15. By Decision No. R14-0400-I, the ALJ ordered Respondent to retain an attorney to represent it in this matter and ordered the attorney for Respondent to enter an appearance on or before April 22, 2014.

16. Decision No. R14-0400-I contained the following relevant advisements:

Respondent is advised, and is on notice, that it cannot proceed in this case without an attorney who is admitted to practice law in, and who is in good standing in, Colorado.

Respondent is advised, and is on notice, that if its legal counsel does not enter an appearance in this Proceeding as required by this Interim Decision, Respondent will not be able to participate in, or to make filings in, this Proceeding. This means, among other things, that Respondent will not be able to participate in the evidentiary hearing in this case.

Decision No. R14-0400-I at ¶¶ 18-19 (bolding in original); *see also* Ordering Paragraph Nos. 1-3 (same).

17. On April 15, 2014, by first-class mail, the Commission mailed Decision No. R14-0400-I to Respondent at the Fairplay, Colorado mailing address known to the Commission and shown on the CPAN. As of the date of this Interim Decision, Decision No. R14-0400-I has not been returned to the Commission as undeliverable. Respondent is presumed to have received, and thus to have notice of the requirements in, Decision No. R14-0400-I.

18. As of the date of this Interim Decision, no attorney has entered an appearance on behalf of Respondent.

19. As of the date of this Interim Decision, Respondent has not requested additional time within which to retain legal counsel.

20. Without explanation, Respondent has failed to comply with the Decision No. R14-0400-I requirement that Respondent retain legal representation in this Proceeding. In clear language, the ALJ advised Respondent of the consequences if it failed to comply with Decision No. R14-0400-I.

21. For the foregoing reasons and in accordance with the advisements in the Interim Decisions previously issued in this Proceeding, by this Interim Decision the ALJ will prohibit Respondent from participating in this Proceeding, including the May 7, 2014 evidentiary hearing. If legal counsel for Respondent enters an appearance in this Proceeding and if that legal counsel makes an appropriate motion, then the ALJ will reconsider this ruling.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above and absent further order, Respondent All Access Transportation, Inc., is prohibited from participating in, or making filings in, this Proceeding.

2. If legal counsel for Respondent All Access Transportation, Inc., enters an appearance in this Proceeding and if that legal counsel makes an appropriate motion, then the Administrative Law Judge will reconsider this ruling.

3. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

4. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director