

Decision No. R14-0619-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0205TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

MICHAEL LEACH, DOING BUSINESS AS, ACE TOWING,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
CONTINUING HEARING**

Mailed Date: July 9, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On March 5, 2014, Commission trial Staff (Staff) with the Public Utilities Commission (Commission) filed Civil Penalty Assessment Notice (CPAN) No. 108810 against Michael Leach, doing business as Ace Towing (Respondent) seeking to assess civil penalties against Respondent in the amount of \$36,300.00, which includes a 10 percent surcharge for violation of Colorado statutes and Commission Rules.

2. On March 19, 2014, Staff filed an “Entry of Appearance and Notice Pursuant to Rule 1007(a).”

3. On March 26, 2014, the Commission referred the CPAN to an administrative law judge (ALJ) for disposition.

4. On March 2, 2014, by Decision No. R14-0340-I, the ALJ scheduled this matter for a hearing on the CPAN, and established deadlines for the parties to disclose and file the evidence the parties will present at the hearing. On April 2, 2014, Staff filed a Motion to Continue Hearing Date (Motion). The Motion sought a continuance of the first hearing date because Staff's primary witness was not available for the hearing. The Motion was unopposed. The ALJ vacated the hearing and rescheduled it for June 12, 2014. Decision No. R14-0350-I. The same Decision also set new deadlines for the parties to file and serve witness and exhibit lists.

5. On May 15, 2014, Staff timely filed its exhibits and witness list. Respondent did not file a witness list or exhibits.

6. On June 3, 2014, Staff filed a "Motion to Supplement Exhibits for Hearing" (Motion to Supplement). The Motion to Supplement sought to add exhibits which had not been filed by the deadlines set forth in Decision No. R14-0350-I.

7. On June 9, 2014, Respondent objected to the Motion to Supplement on the grounds that Respondent would not have enough time to review the documents and prepare for the June 12, 2014 hearing.

8. By Decision No. R14-0625-I, the ALJ granted the Motion to Supplement, continued the June 12, 2014 hearing to July 17, 2014, and allowed all parties to file supplemental exhibits and witness lists.

9. The deadline for Respondent to file his exhibit and witness lists and exhibits was on July 2, 2014. Decision No. R14-0625-I. Respondent again did not make any filing.

10. On July 7, 2014, Respondent's counsel filed an "Entry of Appearance" and "Unopposed Motion to Continue" (Motion). The Motion requests that the July 17, 2014 hearing

be continued to allow counsel time to review evidence just provided to him by Respondent and to prepare for hearing. The Motion also seeks an additional opportunity for Respondent to make disclosures of exhibits and witnesses to be presented at hearing.

11. According to the Motion, Staff does not object to the continuance sought, but does object to Respondent's request that a new deadline to file exhibit and witness lists and exhibits be set. Thus, the relief sought by the Motion is not entirely unopposed.

12. This Decision addresses only the portion of the Motion that is unopposed.

13. Because the request is unopposed and for good cause shown, the ALJ will continue the July 17, 2014 hearing.

14. However, the ALJ does not rule upon Respondent's request that a new deadline be set for him to file and serve exhibit and witness lists and exhibits. Because that portion of the Motion is opposed, the ALJ will allow Staff the full 14 days permitted by Rule 1400(b), 4 CCR 723-1, to file a response to that request.

15. However, if Staff fails to file a response within the time-frame set by Rule 1400(b), 4 CCR 723-1, the ALJ will deem the entire Motion confessed.

I. ORDER

A. It Is Ordered That:

1. The July 17, 2014 9:30 a.m. hearing in this proceeding is continued. A new hearing will be scheduled by a separate Decision.

2. 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