

Decision No. R14-0649

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0362EG

JOHN ALLAN FERGUSON,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINT**

Mailed Date: June 13, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On April 21, 2014, John Allan Ferguson filed a formal Complaint against Public Service Company of Colorado (Respondent). That filing commenced this proceeding.

2. On April 22, 2014, the Commission provided Respondent notice of the Complaint, ordered Respondent to satisfy or answer it, and set the Complaint for an evidentiary hearing for July 9, 2014.

3. During the Commission's weekly meeting held April 23, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

4. Respondent filed an answer to the Complaint on May 12, 2014.

5. On June 12, 2014, Respondent submitted a "Joint Motion to Withdraw Formal Complaint with Prejudice and Vacate Hearing" (Joint Motion). The Joint Motion indicates that

during a mediation before ALJ Paul C. Gomez, the parties were able to resolve all the issues in this proceeding. The Joint Motion requests that the Complaint be dismissed. The Joint Motion is electronically signed by Mr. Ferguson and Respondent's counsel.

6. Since all parties executed the Joint Motion, the ALJ will *sua sponte* waive the response time to it, pursuant to the authority provided by Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

7. The ALJ finds that the parties have shown good cause for dismissal of the Complaint. Indeed, there are no issues remaining to be resolved.

8. However, the ALJ is hard-pressed to find any precedent permitting a Complaint to be "withdrawn with prejudice." Indeed, it is difficult to ascertain the meaning or consequences of a withdrawal with prejudice. The ALJ will dismiss the Complaint with prejudice instead. This achieves the same result as sought by the Joint Motion.

9. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The response time to the "Joint Motion to Withdraw Formal Complaint with Prejudice and Vacate Hearing" is waived.

2. John Allan Ferguson's formal Complaint in this proceeding is dismissed with prejudice.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be

(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