

Decision No. R14-0891-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0552TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

WILLIAM WEIHTROUCH, DOING BUSINESS AS DENVERPARKING.COM,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DENYING REQUEST FOR WAIVER
OF RESPONSE TIME, ENLARGING TIME FOR
RESPONSE TO THE MOTION TO CONSOLIDATE,
VACATING EVIDENTIARY HEARING, AND
VACATING PROCEDURAL SCHEDULE**

Mailed Date: July 25, 2014

I. STATEMENT

1. On May 27, 2014, the Commission appears to have served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 108765 (the CPAN) on William Weihrouch. The CPAN commenced this Proceeding.

2. The CPAN states that Mr. Weihrouch, doing business as denverparking.com, holds PUC Authority No. T-03312. The CPAN names Mr. Weihrouch, doing business as denverparking.com (Respondent), as the Respondent.

3. On June 18, 2014, counsel for Trial Staff of the Commission (Staff) entered their 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.

4. Staff and Respondent, collectively, are the Parties. Staff appears through legal counsel. Respondent appears *pro se*.²

5. On June 18, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

6. On July 9, 2014, by Decision No. R14-0790-I, the ALJ scheduled a September 10, 2014 evidentiary hearing and established the procedural schedule in this Proceeding.

7. On July 17, 2014, by Decision No. R14-0843-I, the ALJ granted Staff's Motion to Stay Deadlines Pending Filing of Motion to Consolidate Proceeding No. 14G-0552TO with Proceeding Nos. 14G-0739TO and 14G-0744TO and to Waive Response Time. In that Interim Decision, the ALJ stayed the procedural schedule pending further order and ordered Staff to make a filing not later than July 31, 2014.

8. On July 24, 2014, Staff filed (in one document) a Motion to Consolidate Proceeding No. 14G-0552TO with Proceeding Nos. 14G-0739TO and 14G-0744TO and to Waive Response Time (July 24 Filing). Staff made this filing in Proceedings No. 14G-0552TO, No. 14G-0739TO, and No. 14G-0744TO.

9. This Interim Decision addresses: (a) the Motion to Waive Response Time; (b) the response time to the Motion to Consolidate; and (c) the procedural schedule and evidentiary hearing date in Proceeding No. 14G-0552TO.

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

² In Decision No. R14-0678-I at ¶ 11, the ALJ advised Mr. Weihrouch of the standards to which he will be held. This Interim Decision was issued on June 23, 2014.

10. *Addressing the Motion to Waive Response Time*, the ALJ will deny the Motion to Waive Response Time.

11. First, unless and until the Commission refers a proceeding to an ALJ for resolution, an ALJ cannot consider a motion filed in that proceeding. As of the date of this Interim Decision, the Commission has referred neither Proceeding No. 14G-0739TO nor Proceeding No. 14G-0744TO to an ALJ. The agenda for the July 30, 2014 Commission Weekly Meeting shows that, at that Commission Weekly Meeting, the Commission will take up the issue of whether to refer Proceeding No. 14G-0739TO or Proceeding No. 14G-0744TO (or both) to an ALJ. Until a referral occurs, the ALJ cannot rule on the Motion to Consolidate.

12. Second, the Motion to Waive Response Time contains no representation that Respondent joins in, or does not object to the granting of, the Motion to Consolidate. Indeed, the Motion to Waive Response Time contains no indication that counsel for Staff discussed, or attempted to discuss, with Respondent the Motion to Consolidate prior to filing the motion with the Commission. Thus, the ALJ does not know Respondent's position with respect to consolidation.

13. Third, if granted, consolidation will have a direct and immediate impact on Respondent. Respondent is entitled to have adequate time: (a) to consider the ramifications of consolidating the three Proceedings; and (b) to present, in writing, his response to the Motion to Consolidate. This is a matter of simple fairness and due process.

14. Fourth and finally, Staff asserts: “[b]ecause of the emergent nature of this motion, Staff requests that response time be waived.” July 24 Filing at ¶ 9. Staff fails to state the facts that underpin this request. Based on the record in this Proceeding, the ALJ can discern nothing that requires immediate action on the Motion to Consolidate. In fact, on July 17, 2014,

by Decision No. R14-0843-I, the ALJ stayed the procedural schedule in this matter; this stayed the filing dates established in Decision No. R14-0790-I. When a party seeks a waiver of response time, more is required than the bald statement that immediate action is necessary; the party must state the facts that support that assertion.

15. *Addressing the response time to the Motion to Consolidate*, the ALJ will enlarge the response time. Given that the Commission has not yet referred either Proceeding No. 14G-0739TO or Proceeding No. 14G-0744TO to an ALJ, the ALJ will enlarge -- to and including **August 15, 2014** -- the time for Respondent to file his response to the Motion to Consolidate. Assuming the Commission refers these proceedings on July 30, 2014, the enlargement of time will give Respondent a little over two weeks to respond -- in all three Proceedings -- to the Motion to Consolidate.

16. **Respondent is advised, and is on notice, that** if he does not file, on or before August 15, 2014, a response to the Motion to Consolidate, the ALJ will deem the motion to be confessed (*i.e.*, the ALJ will find that Respondent does not oppose consolidation of the three Proceedings). *See* Rule 4 CCR 723-1-1400(d) (failure to respond to a motion may be deemed to be confession of the motion).

17. *Addressing the established procedural schedule and scheduled hearing date in Proceeding No. 14G-0552TO*, the ALJ will vacate both the procedural schedule and the September 10, 2014 hearing date. Whether the Motion to Consolidate is granted or denied, a new procedural schedule and hearing date will be necessary as there is insufficient time remaining before the September 10, 2014 hearing date for the required filings to be made and for the Parties to prepare for hearing.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the Motion to Waive Response Time is denied.
2. Not later than August 15, 2014, Respondent William Weihrouch, doing business as denverparking.com, shall file a written response to the Motion to Consolidate Proceeding No. 14G-0552TO with Proceeding Nos. 14G-0739TO and 14G-0744TO.
3. The procedural schedule established in Decision No. R14-0790-I is vacated.
4. The September 10, 2014 evidentiary hearing in this Proceeding is vacated.
5. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.
6. 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