

Decision No. R24-0324

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0091TO

IN THE MATTER OF THE PETITION OF ANSON ENTERPRISES, A LIMITED LIABILITY PARTNERSHIP, DOING BUSINESS AS RYDER TOWING & RECOVERY TO REVERSE AN INITIAL TOWING PERMIT DENIAL PURSUANT TO 40-10.1-401(2)(B), C.R.S., AND RULE 6504(D).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
AMENDING CAPTION AND
DISMISSING PETITION WITHOUT PREJUDICE**

Mailed Date: May 10, 2024

I. STATEMENT AND SUMMARY

1. For the reasons discussed, this Decision amends the caption as reflected above; dismisses the above-captioned Petition without prejudice for failure to prosecute; and closes this Proceeding.

II. PROCEDURAL HISTORY,¹ FINDINGS, DISCUSSION AND CONCLUSIONS

2. Ms. Renata Anson initiated this matter on February 26, 2024 by filing a Petition with the Public Utilities Commission (Commission). The Petition asks the Commission to reverse a Commission decision initially denying a towing permit Application (Application).

3. On March 13, 2024, the Commission referred this Proceeding by minute entry to an Administrative Law Judge (ALJ) for disposition.

¹ Only the procedural history necessary to understand this Decision is included.

4. The Colorado Public Utilities Commission Staff (Staff) is a party to this proceeding, having properly intervened.²

5. Because Ms. Anson filed the Petition as a “Partner equity owner” of an unnamed entity, and the Petition does not otherwise identify the person or entity whose permit Application is the subject of the Petition, the ALJ ordered Ms. Anson to make a filing clarifying the nature of the Petition, including specifically identifying the entity or individual whose permit Application is the subject of the Petition.³ At the same time, because the Petition implies that a formally organized company filed the permit Application at issue, the same Decision requires that if the Petition is filed on behalf of a formally organized company, that the company must either have counsel enter an appearance or must establish its eligibility to be represented by a non-attorney.⁴ The Decision outlines the legal requirements to establish eligibility to be represented by a non-attorney.⁵ The Decision put Ms. Anson on notice that if the Petition is filed on behalf of a formally organized company, that failure to have counsel enter an appearance or make a filing establishing that the company is eligible to be represented by an identified non-attorney by the established deadline may result in dismissing the Petition without prejudice.⁶ The same Decision also ordered the parties to confer on a procedural schedule, and required Staff to file a proposed procedural schedule.

6. On April 22, 2024, Ms. Anson filed her “Response to Administrative Law Judge Mirbaba” (Response).

² Decision No. R24-0224-I (mailed April 10, 2024).

³ *Id.* at 7-8.

⁴ *Id.* at 3.

⁵ *Id.* at 3-4, 7-8

⁶ *Id.* at 3, 5-6,

7. On April 22, 2024, by Decision No. R24-0262-I, the ALJ found that based on the Response, the permit Application at issue appears to be have been filed on behalf of Anson Enterprises, a limited liability partnership (Anson Enterprises), doing business as Ryder Towing & Recovery.⁷ The Response does not address the legal representation issues raised by Decision No. R24-224-I. But the Response did raise other questions meriting a prehearing conference, which would better enable the ALJ to determine how best to move the Proceeding forward; as such, the ALJ scheduled a remote prehearing conference for May 7, 2024 at 1:00.⁸ Because a procedural schedule and the legal representation issues would be addressed during the prehearing conference, the ALJ vacated the deadline for Staff to file a proposed schedule, and for Ms. Anson to make a filing addressing the legal representation issues discussed above.⁹ However, the parties were still obligated to confer on a procedural schedule.

8. The same Decision advised that during the prehearing conference, Ms. Anson will be required to address the issues surrounding legal representation, including Anson Enterprises' representation, if counsel has not entered an appearance by the time of the prehearing conference.¹⁰ The Decision informs Ms. Anson that if Anson Enterprises wishes to be represented by a non-attorney, the company must establish that it meets the requirements to be represented by a non-attorney during the prehearing conference.¹¹

9. Notably, Decision No. R24-0262-I warns Ms. Anson and Anson Enterprises that failure to have counsel enter an appearance by the time of the prehearing conference, appear at the

⁷ Decision No. R24-0262-I at 2-3. That Decision refers to Anson Enterprises LLC, which is an inadvertent error, and should be Anson Enterprises, a limited liability partnership.

⁸ *Id.* at 3 and 5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3 and 5.

prehearing conference, or establish that Anson Enterprises is eligible to be represented by a non-attorney may result in the Petition being dismissed.¹²

10. The Commission's Certificate of Service for Decision No. R24-0262-I indicates that Ms. Anson is registered with the Commission's E-Filing System (E-Filings), and that the Decision No. R24-0262-I (scheduling the prehearing conference) was served on Ms. Anson via E-Filings on April 22, 2024.

11. The ALJ held the remote prehearing conference as noticed. Staff appeared through counsel and participated in the prehearing conference. Ms. Anson did not appear at the time noticed for the hearing (1:00 p.m.), nor did anyone else appear on behalf of Anson Enterprises. The ALJ waited approximately 15 minutes after the hearing commenced for Ms. Anson to appear. Despite this, neither Ms. Anson nor anyone else on behalf of Anson Enterprises appeared. As such, the prehearing conference moved forward without Ms. Anson or anyone from Anson Enterprises.

12. During the prehearing conference, Staff advised that it confirmed through the Colorado Secretary of State's records that the towing permit Application at issue was filed by Anson Enterprises, a limited liability partnership, doing business as Ryder Towing & Recovery. Based on this, and the record, the ALJ ordered the caption to be amended to reflect the correct name of Petitioner. Staff also stated that counsel attempted to confer with Ms. Anson via email on a procedural schedule, but Ms. Anson did not respond to its attempt to confer on a procedural schedule or indicate one way or another that Ms. Anson would appear at the prehearing conference. During the hearing, the ALJ ordered that the Petition would be dismissed by written decision based on Ms. Anson's failure to appear at the prehearing conference.

13. This Decision memorializes the rulings made during the prehearing conference.

¹² *Id.*

14. Ms. Anson has made no filings since filing the Response on April 22, 2024.

15. Anson Enterprises has made no filings at all.

16. No counsel has entered an appearance on behalf of Ms. Anson or Anson Enterprises. And, as already noted, the Response does not address the legal representation issues discussed above. Since neither Ms. Anson nor Anson Enterprises appeared at the prehearing conference, those issues were also not resolved during the prehearing conference.

17. To start, the ALJ finds that the record establishes that the Petition seeks to appeal the denial of a towing permit Application filed on behalf of Anson Enterprises, and that Ms. Anson is a registered agent of the same company.¹³ Therefore, consistent with the ALJ's ruling during the prehearing conference, the caption is amended to reflect this. As such, the Petitioner in this Proceeding is Anson Enterprises, and Ms. Anson is authorized to receive notices on its behalf, as Anson Enterprises' registered agent. The above caption is the corrected caption that should be used moving forward.

18. As the party asking the Commission to grant the Petition, Anson Enterprises carries the burden to prove that the Petition should be granted.¹⁴ This also means that Anson Enterprises has the duty to prosecute (or pursue) its Petition without unnecessary or unreasonable delay.¹⁵

19. When determining whether to dismiss for failure to prosecute, the tribunal should "consider several factors when balancing the policies against unreasonable delay and favoring resolution of disputes on the merits," including the length of delay, the reason for the delay, any prejudice that may result to other parties based on the delay, and the extent to which the applicant has renewed efforts to prosecute the application.¹⁶

¹³ See Response at 1 and 10.

¹⁴ Rule 1500, 4 CCR 723-1.

¹⁵ See *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

¹⁶ *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010).

20. When an individual or entity registers as a filer with the E-Filings, the party “expressly” agrees to accept service in all Commission proceedings through E-Filings.¹⁷ Filing through E-Filings constitutes service on registered users who are parties in a proceeding.¹⁸

21. Because Decision No. R24-0262-I was served on Anson Enterprises through its registered agent, Ms. Anson, through E-Filings, the ALJ concludes that the Decision was properly served on both Anson Enterprises and Ms. Anson, and that both received notice of that Decision. For the same reasons, the ALJ finds that Ms. Anson and Anson Enterprises received notice of the May 7, 2024, 1:00 p.m. prehearing conference and that failure to have counsel enter an appearance, appear at the prehearing conference, or establish that Anson Enterprises is eligible to be represented by a non-attorney may result in dismissal of the Petition without prejudice. Given these warnings, the ALJ concludes that Ms. Anson and Anson Enterprises assumed the risk that the Petition would be dismissed when it failed to appear at the prehearing conference and otherwise failed to meet other requirements discussed above.¹⁹

22. As noted, neither Ms. Anson nor Anson Enterprises appeared at the prehearing conference, neither had counsel enter an appearance, and neither have established Anson Enterprises’ eligibility to be represented by a non-attorney. Neither Ms. Anson nor Anson Enterprises have made a filing establishing good cause for any of these failures. Ms. Anson’s and Anson Enterprises’ failure to act means that this Proceeding cannot move forward. Based on all of this, the ALJ finds that Ms. Anson’s and Anson Enterprises’ delay in pursuing or prosecuting the Petition is unreasonable.

¹⁷ Rule 1205(b), 4 CCR 723-1.

¹⁸ *Id.*

¹⁹ Decision No. R24-0262-I at 3.

23. The ALJ has considered all factors relevant to determining whether the Petition should be dismissed, including policies favoring resolution of disputes on the merits and disfavoring unreasonable delay.²⁰ The ALJ finds that Ms. Anson's and Anson Enterprises' lack of action in this Proceeding, including failing to appear at the prehearing conference, have counsel enter an appearance, or establish that Anson Enterprises may be represented by a non-attorney, amounts to abandoning and failing to prosecute or pursue the Petition. This is particularly the case given that Ms. Anson and Anson Enterprises were directly warned that failing to appear at the prehearing conference, have counsel enter an appearance or establish (at the prehearing conference) Anson Enterprises' eligibility to be represented by a non-attorney may result in the Petition being dismissed. For the foregoing reasons and authorities, the Petition is dismissed without prejudice.

24. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the caption is amended as set forth in the caption in this Decision.
2. The above-captioned Petition filed on February 26, 2024 is dismissed without prejudice, consistent with the above discussion.
3. Proceeding No. 24M-0091TO is closed.
4. 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.

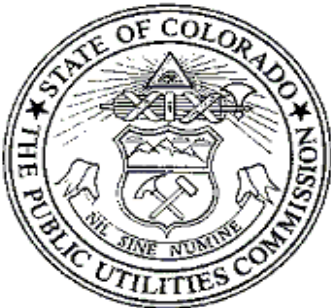
²⁰ See *Edmond*, 226 P.3d at 1253.

5. 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.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director