

Decision No. R23-0503-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0227TO

CIVIL PENALTY ASSESSMENT NOTICE: 134998-CPAN

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

v.

MELVIN TOLIVER/RAPID RESPONSE TOWING AND TRANSPORT, INC., DOING
BUSINESS AS FINAL NOTICE TOWING AND RECOVERY,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
SETTING EVIDENTIARY HEARING**

Mailed Date: August 2, 2023

I. STATEMENT

A. Summary

1. This decision sets a remote evidentiary hearing addressing the issues raised in this Proceeding before the undersigned Administrative Law Judge (ALJ) for October 5, 2023.

B. Procedural Background

2. On April 13, 2023, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear No. 134998 (CPAN), which alleges that Melvin Toliver/Rapid Response Towing and Transport, Inc., doing business as Final Notice

Towing and Recovery (Rapid Response Towing) violated § 40-10.1-407(1) (failure to maintain file evidence of financial responsibility) and § 40-10.1-401(1)(a) (operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit) on February 24, March 6, March 15, and March 20, 2023. Violation Nos. 1 through 4 each state that the civil penalty assessed for the alleged violation is \$11,000 plus a 15 percent surcharge of \$1,650, while the penalty assessed for each of the remaining violations (Violation Nos. 5 through 9) is \$1,100 plus a 15 percent surcharge of \$165, for a total penalty of \$56,925. However, the CPAN explains that if Rapid Response Towing pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced by half to \$28,462.50. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear, and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$56,925.¹ The CPAN also states that the Commission may order Rapid Response Towing to cease and desist from violating statutes and Commission rules.²

3. The CPAN states that it was personally served on Respondent Rapid Response Towing on May 4, 2023. A representative of Respondent Rapid Response signed the CPAN acknowledging receipt of it on May 12, 2023.

4. On May 30, 2023, Trial Staff of the Commission filed its Notice of Intervention as of Right and Entry of Appearance in this proceeding.

5. Rapid Response Towing has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

¹ Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 134998, pp. 3-4.

² *Id.*

6. On June 7, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

7. By Decision R23-0436-I, issued July 10, 2023, the ALJ provided opportunity for the parties to file a statement addressing their preference for a remote, hybrid or in-person hearing until 5:00 p.m. on July 24, 2023.

8. On July 17, 2023, Trial Staff of the Commission filed its Statement Regarding Hearing and has requested a remote evidentiary hearing.

9. Rapid Response Towing has not filed a statement regarding its hearing preference by the July 24, 2023 deadline.

II. HEARING SCHEDULE

A. Hearing Setting

10. To facilitate the efficient litigation of this Proceeding, the undersigned will schedule a fully remote hearing commencing on October 5, 2023, at 9:00 a.m.

11. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

12. If the Parties (Respondent and Staff) prefer a hybrid hearing or a fully in-person hearing, a motion to amend the hearing location and format may be filed.

13. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

14. The Parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including the assessment of penalties against Respondent.

B. Informal Video-Conference Practice Session

15. The ALJ will hold an informal practice video-conference session if requested by any Party to give the Parties an additional opportunity to practice using Zoom and box.com before the hearing.

16. The Parties may contact the Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us to schedule an informal practice video-conference session.

17. The Parties will receive information and a link to participate in the informal practice session by email.

C. Unified Numbering System for Hearing Exhibits

18. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Trial Staff of the Commission is assigned hearing exhibit numbers 100 to 199;
and
- Rapid Response Towing is assigned hearing exhibit numbers 200 to 299.

D. Additional Procedural Notices

19. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

20. Additional procedural requirements may be addressed in future Interim Decisions.

III. ORDER

A. It Is Ordered That:

1. A **fully remote** hearing is scheduled as follows:

DATE: October 5, 2023

TIME: 9:00 a.m.

LOCATION: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado 80202

METHOD: By videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

2. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

3. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses will participate in the evidentiary hearing by videoconference using the Zoom platform.

4. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

5. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.³

6. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

7. **The ALJ will hold an informal Zoom practice session upon request.**

³ Instructions for using Box.com platform are provided in Attachment B to this Decision.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director