

Decision No. R24-0333-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0053TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

v.

REGINALD BERRY IN THEIR CAPACITY AS OWNER AND/OR OPERATOR OF
PRECISION TOWING AND RECOVERY LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING PARTIES TO CONFER AND
STAFF TO SUBMIT A
PROPOSED PROCEDURAL SCHEDULE**

Mailed Date: May 16, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision requires the parties to confer on a procedural schedule, including the specific items identified herein, and requires Colorado Public Utilities Trial Staff (Staff) to file a proposed consensus procedural schedule on or by May 24, 2024.

B. Procedural History

2. On February 1, 2024, Staff initiated this matter by filing Civil Penalty Assessment Notice (CPAN) No. 138933 alleging that Reginald Berry, as owner and operator of Precision

Towing and Recovery LLC (Respondent), violated §§ 40-1-10.1-401(1)(a) and 40-10.1-107(1), C.R.S. on November 21, 2023. The CPAN alleges that based on these two violations, Respondent should be assessed a civil penalty of up to \$13,915.00 (total).

3. On April 12, 2024, Staff filed a “Notice of Intervention as of Right [...] Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Intervention).

4. On April 24, 2024 the Commission referred this matter by minute entry to an administrative law judge (ALJ) for disposition.

II. FINDINGS AND CONCLUSIONS

A. Staff’s Intervention

5. Per Rule 1401(e), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission’s Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. As such, based on this and its Intervention, Staff is acknowledged as a party to this Proceeding.

B. Need to Establish a Procedural Schedule

6. To move this matter forward, this Decision requires the parties to confer on a procedural schedule, and Staff to file a proposed consensus procedural schedule on or by May 24, 2024. This conferral and resulting proposed schedule must address the following items, at minimum: the manner in which the hearing will be held (fully in-person, fully remote, or a combination of the two, that is, hybrid); a deadline to file and serve hearing exhibits, hearing exhibit lists, and witness lists; hearing dates; and statements of position (should the parties wish to submit these). When a hearing is fully in-person, all parties and witnesses must appear for the hearing in-person at a hearing room at the Commission’s office in downtown Denver. When a

hearing is fully remote, all parties and witnesses must appear from remote locations using the web-based platform, Zoom. And when a hearing is hybrid, parties and witnesses may appear in person or remotely, but at least one party must appear in person (or the hearing will be converted to a fully remote hearing). If the parties select the hybrid option, the ALJ will establish a deadline to report if the parties have determined that none of them will appear in person, in which case, the hearing will be converted to a fully remote hearing. This deadline must be at least 14 days prior to the hearing date. As such, if the parties suggest a hybrid hearing, they should also include a proposed deadline for this filing.

7. If the parties select a hybrid or fully remote hearing option, they must be prepared to present all documentary evidence in an electronic format. In such a case, the ALJ will establish procedures to facilitate this.

8. When identifying hearing dates, the parties should review the Commission's public calendar for available dates. In addition, the ALJ is unavailable for a hearing on the following dates: July 1 to 5, and July 25 and 26, 2024.

9. ***The parties are on notice*** that if a proposed procedural schedule is not filed by the established deadline, the ALJ will set a hearing and establish procedures and deadlines without further input from the parties.

C. Clarification as to Named Respondent

10. The ALJ construes the CPAN as being against Reginald Berry as an individual, and not against Precision Towing and Recovery, LLC (Precision Towing). In the proposed procedural schedule, Staff must also either confirm that this is correct, or provide additional clarification on this issue.

11. If Precision Towing is a respondent, the ALJ will enter additional orders, including potentially amending the caption to clarify this, and requiring Precision Towing to make filings addressing its legal representation. Specifically, per Rule 1201(b), 4 CCR 723-1, and relevant statutes, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado, except that an individual may represent their own interests (without an attorney), and an individual may represent the interests of a formally organized company without an attorney after establishing the company is eligible to be represented by a non-attorney, consistent with the below requirement.¹ To be eligible to be represented by a non-attorney, the company must not have more than three owners; the amount in controversy must not exceed \$15,000; and the non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating his or her authority to represent the company in the proceeding.²

12. Thus, if Precision Towing is a respondent, it will be required to either have counsel enter an appearance on its behalf or make a filing establishing that it meets the above requirements to be represented by a non-attorney. As such, if this is the case, the parties must also confer on a deadline for these filings and submit proposed deadlines in the proposed consensus procedural schedule that Staff must file.

13. As implied, if Reginald Berry is the only Respondent, there is no need to set deadlines relating to legal representation, as individuals may represent their own interests in Commission proceedings.³

¹ § 13-1-127, C.R.S.; Rule 1201(a) and (b)(I) and (II), 4 CCR 723-1.

² § 13-1-127(2) and (2.3)(c), C.R.S.; Rule 1201(b)(II), 4 CCR

³ Rule 1201(a) and (b)(I) and (II), 4 CCR 723-1

III. ORDER**A. It is Ordered That:**

1. Consistent with the above discussion, Colorado Public Utilities Commission Trial Staff (Staff) is acknowledged as a party to this Proceeding.
2. The parties must confer on a proposed procedural schedule. This conferral must address the items discussed above.
3. On or by May 24, 2024, Staff must file a proposed consensus procedural schedule that addresses the items discussed above.
4. This Decision is effective on its mailed date.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law JudgeRebecca E. White,
Director