

Decision No. R23-0062-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0333TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ERIC HOUSTON DOING BUSINESS AS CODE 3 TOWING,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ESTABLISHING PROCEDURAL SCHEDULE AND
VACATING AND RESETTING HEARING**

Mailed Date: January 27, 2023

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 131017 filed by Commission Staff on July 22, 2022 against Eric Houston doing business as Code 3 Towing (Respondent). The CPAN assessed Code 3 Towing a total penalty of \$17,020.00 for violation of Rules 6005(b), 6007(e)(II), 6508(b)(I), 6512(c), 4 *Code of Colorado Regulations* (CCR) 723-6, and §§ 40-10.1-107 and 40-10.1-401, C.R.S. The nature of the violations is listed in the CPAN as:

- Failure to maintain accurate contact information with Commission.
- Motor Carrier failed within two days to provide any records related to a complaint or investigation. (None Provided)

- Failure to have proper authorization prior to the performance of a nonconsensual tow (Tow Invoice #NONE).
- Failure of the towing carrier holding a motor vehicle in storage to make notifications required by statute (§42-4-1804 and/or §42-4-2103, C.R.S.) - (No Record Provided)
- Failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission.
- Operating and/or offering to operate as a Towing Carrier in intrastate commerce without first having obtained a permit.

2. On November 9, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

3. On December 1, 2022, the ALJ issued Interim Decision No. R22-0774-I that established a procedural schedule and scheduled an evidentiary hearing for January 16, 2023.

4. On December 6, 2022, the ALJ issued Interim Decision No. R22-0788-I that vacated the evidentiary hearing scheduled for January 16, 2023 and scheduled a hearing¹ in this matter for February 1, 2023.

5. Due to a clerical error, Decision Nos. R22-0774-I and R22-0788-I may not have been serve on Respondent. Therefore, the evidentiary hearing in this matter will be vacated and rescheduled as ordered below.

6. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

¹ By Decision No. R22-0788-I, the ALJ inadvertently scheduled on February 1, 2023, a "prehearing conference," as opposed to an evidentiary hearing. This error is redressed by his Interim Decision which vacates the hearing scheduled for February 1, 2023.

7. Each party is specifically reminded that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

A. Procedures for a Remote Evidentiary Hearing.

8. An evidentiary hearing will be scheduled in this proceeding. Due to the COVID-19 pandemic, remote participation will be accommodated upon at least one party and/or witness request.

9. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

10. The evidentiary hearing will be conducted via video conference using the Zoom platform if at least one party or a party's witness chooses to participate remotely. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

11. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case. Given that the hearing will accommodate remote participation by video-conference, exhibits must be presented electronically.

12. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented at remote hearings.² As such, it is essential that the parties ensure they can access and use box.com before the hearing. The ALJ is entering orders to facilitate using box.com to manage exhibits during the hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload documents and exhibits for use during the hearing; and (b) download documents and exhibits once they are presented during the hearing.

13. Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page 1, regardless of content before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

14. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote

² Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

hearing. It is *very important* that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

15. Additional procedural requirements may be issued in future Interim Decisions.

B. Informal Video-Conference Practice Session.

16. The ALJ will hold an informal practice video-conference session if requested by either or both parties to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

17. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us to schedule an informal practice video-conference session.

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

II. ORDER

A. It Is Ordered That:

1. The hearing scheduled for February 1, 2023, at 10:00 a.m. is vacated.
2. An evidentiary hearing in this matter is scheduled as follows:

DATE: February 20, 2023
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

Optionally, any party may participate remotely by joining a video conference using Zoom at the link provided as to the established parties in an e-mail prior to the scheduled hearing, as addressed above and in Attachment A to this Interim Decision.

3. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing, if opted.

4. All participants in the hearing must comply with the requirements in Attachments A and B to this Decision, which are incorporated herein and, in the discussion, above.

5. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses may attend in person or participate in the evidentiary hearing by videoconference using the Zoom platform.

6. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing may 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.

7. The Administrative Law Judge will hold an informal Zoom practice session upon request.

8. The parties shall comply with the requirements established in this Interim Decision and shall make the filings as required by the adopted procedural schedule.

9. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director