

Decision No. C22-0842-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0560TO

IN THE MATTER OF TRANSPORTATION STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION'S PETITION FOR DECLARATORY ORDER AS A MATTER OF LAW REGARDING TOWING AUTHORIZATION AGREEMENTS.

**INTERIM COMMISSION DECISION
ACCEPTING PETITION, ISSUING NOTICE
THROUGH JANUARY 20, 2023,
AND REQUESTING COMMENTS**

Mailed Date: December 28, 2022

Adopted Date: December 28, 2022

TO ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a request seeking a declaratory order (Petition) filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on December 16, 2022. Through the Petition, Staff requests that the Commission find that the Rule previously governing nonconsensual private property tows void, as a matter of law, given updates enacted in House Bill (HB) 22-1314.

2. By this Decision, the Commission accepts the Petition, provides notice of the Petition to interested persons, and requests initial comments through January 20, 2023.

B. Petition

3. Rule 6508(a), 4 *Code of Colorado Regulations* (CCR) 723-6, addresses nonconsensual private property tows and currently includes permission for towing carriers to enter into authorization agreements with property owners, through which the rule includes that the towing carriers may act as authorized agents. Staff represents that those agreements permit a towing carrier to remove vehicles from the property without notifying the property owner.

4. The Petition states that HB 22-1314, effective in August 2022, codified changes in § 40-10.1-405, C.R.S., regarding requirements for towing carriers initiating tows from private property, particularly in rental and common-interest ownership communities. The new statute requires that towing carriers notify a vehicle owner at least 24 hours before towing the vehicle unless it can satisfy an exception in statute. Staff claims that the statute does not include an exception for authorization agreements, as currently described in Rule 6508, 4 CCR 723-6, and that the statute further provides that “the towing carrier does not qualify as an agent with authority to grant permission,” thereby removing the agency exception currently created in this rule.

5. In Footnote 5, Staff recognizes that through Proceeding No. 22M-0412TO, the Commission granted, in part, a request to initiate rulemaking regarding HB 22-1314. In its filings seeking rule revisions, Wyatt’s Towing noted that HB 22-1314 “can be interpreted in different ways” and requested that the Commission promulgate rules to address numerous statutory changes. The list of requested changes in statute that Wyatt’s Towing raised included, but was not limited to, changes in § 40-10.1-405(3)(a) and (b), C.R.S., that address when and whether a towing carrier may act as the agent for a property owner. The Commission agreed in its November 9, 2022, order that revised rules were necessary, and instructed that stakeholder efforts continue such that the Commission could bring forward a Notice of Proposed Rulemaking (NOPR) to better align its

rules with changes enacted in HB 22-1314.¹ The Commission declined, however, to grant any request for “forbearance” from enforcement of action, as also requested by Wyatt’s Towing, noting that the Commission cannot waive a requirement of state statute. A NOPR has yet to issue regarding proposed rule revisions to implement HB 22-1314.

6. Staff provides in its Petition filings that its Criminal Investigation Unit has received a significant increase in case assignments regarding towing carriers since the enactment of HB 22-1314, including 139 involving claims of improper authorization by written agreement. Citing Wyatt’s Towing’s Petition in Proceeding No. 22M-0412TO and communications with towing carriers, Staff represents that towing carriers believe that Rule 6508(a), 4 CCR 723-6, still allows them to initiate a nonconsensual tow as the property owner’s agent, without notifying the vehicle owner.

7. Staff argues that nothing in the revised statute permits a towing authorization agreement, as defined by Rule 6508, 4 CCR 723-6, and that the new law expressly prohibits a towing carrier from acting as an agent with authority to grant permission for a nonconsensual tow from private property.² Staff notes that the Administrative Procedure Act provides that “[a]ny rule or amendment to an existing rule issued by an agency ... which conflicts with a statute shall be void.”³ Staff therefore requests that the Commission issue an order finding: (1) that § 40-10.1-405(3)(a), C.R.S., only permits nonconsensual towing of vehicles from private property under the circumstances enumerated in statute; (2) that § 40-10.1-405, C.R.S., prohibits towing carriers from acting as authorized agents for property owners for the purposes of nonconsensual

¹ Decision No. C22-0705, issued November 9, 2022, Proceeding No. 22M-0412TO.

² Petition at p. 7 (citing §§ 40-10.1-405 and 405(3)(a)(IV)(C), C.R.S.)

³ § 24-4-103(8)(a), C.R.S.

tows; and (3) that Rule 6508(a), 4 CCR 723-6, directly conflicts with the provision of § 40-10.1-405(3), C.R.S., and is void as a matter of law pursuant to § 24-4-103(8)(a), C.R.S.

C. Findings and Conclusions

8. Pursuant to Rule 1304(f)(II), the Commission, may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty affecting a petitioner with regard to any tariff, statutory provision, or Commission rule, regulation, or order.

9. The Commission has already recognized that there are numerous provisions in the new statutes that would benefit from official Commission review, analysis, and subsequent adoption of rules, regarding the implementation of these new standards. Through Decision Nos. C22-0605-I and C22-0705, in Proceeding No. 22M-0412TO, the Commission further noted that there are also many provisions in the statutes that can be read, and followed, based on a plain reading of the language. The Commission stressed that these new statutory standards became effective on August 10, 2022 and the incorporation of these provisions into current towing operations is not optional. In the event that certain provisions of HB 22-1314 are unclear, the Commission encouraged interested persons to work with Commission Staff to resolve such issues.⁴

10. As addressed in Decision Nos. C22-0605-I and C22-0705, a NOPR to address the rules is anticipated. We therefore find good cause to accept the Petition on the narrow issues raised by Staff on specific, potential conflicts of statute with Rule 6508(a), 4 CCR 723-6. However, we also note that a NOPR is eminent on more wholistically revising the Commission's rules, given HB 22-1314. To that end, we establish a period for notice, interventions, and responses to Staff's

⁴ The Commission's orders further identify that, in addition to pursuing stakeholder input on rules, the Commission had made substantial updates to its website, capturing some of the more prominent features of the bill, such as the 24-hour notice requirement and accompanying exceptions.

petition. Pleadings seeking intervention must be filed by January 20, 2023. Prospective intervenors should respond to Staff's Petition concurrent with their respective pleadings for intervention by January 20, 2023.

11. The Petition is available for inspection through the Commission's E-filing System, using Proceeding No. 22D-0560TO at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. **This Decision is the notice that Staff's Petition has been filed seeking a declaratory order that Rule 6508(a), 4 CCR 723-6, is void as a matter of law.**

12. The Commission's notice period for the Petition shall extend through and including **5:00 p.m. on January 20, 2023**. The intervention period will run concurrent with the notice period. Interventions shall be due by **5:00 p.m., on January 20, 2023**. Responses to Staff's Petition shall also be due by **5:00 p.m. January 20, 2023**.

13. Consideration of intervention and responsive pleadings, including whether additional pleadings or processes are necessary, shall be addressed through a separate decision.

II. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order (Petition) filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on December 16, 2022, is accepted.

2. This Decision shall serve as notice of the Petition to interested persons.

3. The notice period for the Petition shall extend through and include **5:00 p.m. on January 20, 2023**.

4. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on January 20, 2023**.

5. Briefs in response to the Petition shall be due from all prospective parties concurrent with intervention pleadings by **5:00 p.m. on January 20, 2023**.

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may file written comments with the Commission through the Commission's E-filing System, using Proceeding No. 22D-0560TO at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. Written comments may also be sent to the Public Utilities Commission at the following address: 1560 Broadway, Suite 250, Denver, Colorado 80202. Comments provided on or before January 20, 2023 will best ensure that they can be reviewed as the Commission considers further actions in this proceeding.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 28, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners