

Decision No. R23-0024-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22F-0381TO

KEVIN MCCLUSKY,

COMPLAINANT,

V.

TOWING DONE RIGHT LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
OPENING EVIDENTIARY RECORD AND
TAKING ADMINISTRATIVE NOTICE**

Mailed Date: January 10, 2023

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Procedural History

1. On September 1, 2022, Complainant Kevin McClusky (Complainant or Mr. McClusky) filed a Formal Complaint (Complaint) against Respondent Towing Done Right, LLC, formerly Towing Done Right, Inc. (Respondent or Towing Done Right) with the Colorado Public Utilities Commission (Commission). Mr. McClusky alleges that Towing Done Right wrongfully towed his vehicle and demands payment for inaccurate charges.¹

¹ Complaint at 1-2.

2. On September 6, 2022, the Commission issued an Order to Satisfy or Answer which was served on Towing Done Right along with a copy of the Complaint. The Order to Satisfy or Answer requires Towing Done Right to either satisfy the matters in the Complaint or answer the Complaint within writing within 20 days of the date the Order is served.² At the same time, the Commission issued an Order Setting Hearing and Notice of Hearing before an Administrative Law Judge (ALJ).³

3. On September 19, 2022, Respondent filed its Response to Complaint (Response). The Response denies the Complaint's allegations.⁴

4. On December 6, 2022 at 9:00 a.m., the ALJ called to order the evidentiary hearing in this matter.

B. Findings and Conclusions

5. According to Rule 1504(b), 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission, on its own motion, before a recommended decision has been issued, may reopen the evidentiary record in a proceeding.

6. Rule 1501(c), 4 CCR 723-1, provides that the Commission may take administrative notice of "documents in its files." In addition, the Commission has considerable latitude with respect to the admission of evidence. *See, e.g.*, § 40-6-101(4), C.R.S. (the Commission is not "bound by the technical rules of evidence").

7. The Commission records in its Integrated Filing Management System (IFMS) show that on October 9, 2020, Respondent filed with the Commission a booting permit

² Order to Satisfy or Answer at 1.

³ Order and Notice at 1.

⁴ Response at 1.

application. Respondent was issued a booting permit (PUC No. BT-0003) on January 21, 2020. On January 21, 2021, Respondent's booting permit became inactive due to non-payment.⁵

8. The Commission's IFMS records also show that Respondent filed a towing permit application with the Commission on October 6, 2021. Respondent was issued a towing permit (PUC No. T-40859) on October 29, 2021. On March 8, 2022, Respondent's towing permit was summarily suspended due to a pending Show Cause Insurance Proceeding related to Respondent's insurance coverage. On September 1, 2022, Respondent's towing permit was renewed by the Commission and remained in effect until September 26, 2022.⁶

9. The state of Respondent's Commission-issued booting and towing permits is necessary for purposes of rendering an appropriate recommended decision in this matter.

10. Based on the foregoing, the ALJ finds good cause to reopen the evidentiary record in this matter for the purpose of taking administrative notice of the documents in its files that reflect the events enumerated in paragraphs 7 and 8 of this Interim Decision.

11. Because the record will be reopened to allow the newly-admitted evidence administratively noticed herein, no later than January 20, 2023, the parties may make a filing in this matter addressing said evidence.⁷

⁵ See Attachment A.

⁶ See Attachment B.

⁷ See §§ 24-4-105(8) and 105(14)(a), C.R.S. Cf. *Colorado Energy Advocacy Office v. Public Service Company of Colorado*, 704 P.2d 298, 304-05 (Colo. 1985) (Commission must give parties notice of, and an opportunity to comment on, facts determined by the Commission as a result of its own investigation).

II. ORDER**A. It Is Ordered That:**

1. The evidentiary record in this Proceeding is reopened for the limited purpose of taking judicial notice by the Administrative Law Judge (ALJ).

2. The ALJ takes administrative notice of the Commission's records in its Integrated Filing Management System that reflect the events enumerated in paragraphs 7 and 8 of in section I.B. Interim Decision and are attached as Attachment A and Attachment B to this Interim Decision.

3. If either party wishes to address the newly-admitted evidence referenced in Ordering Paragraph No. 2, either party may, no later than January 20, 2023, make a filing addressing the evidence.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director