

Decision No. R23-0803-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0480TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SERGIO CORNEJO DOING BUSINESS AS MNS TOWING LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ESTABLISHING PROCEDURES, PROVIDING
INSTRUCTIONS CONCERNING EXHIBITS AND
PARTICIPATING IN HEARING, AND SCHEDULING
HEARING**

Mailed Date: December 5, 2023

I. STATEMENT

A. Procedural Background

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 135384 issued by Commission Staff on September 26, 2023, against Respondent Sergio Cornejo, doing business as MNS Towing, LLC (Respondent or MNS Towing). The CPAN assessed MNS Towing a total penalty of \$4,111.25 for one violation of Rule 6007(b), 4 *Code of Colorado Regulations* (CCR) 723-6; one violation of Rule 6509(a), 4 *Code of Colorado Regulations* (CCR) 723-6; one

violation of Rule 6512(c), 4 *Code of Colorado Regulations* (CCR) 723-6; one violation of § 40-10.1-401(1)(a) C.R.S.; one violation of § 40-10.1-405(2)(a)(I) C.R.S.; one violation of § 40-10.1-405(2)(a)(II) C.R.S.; and one violation of § 40-10.1-405(3)(a) C.R.S., as more specifically listed in CPAN No. 135384.

2. The CPAN states that it was personally served on MNS Towing on September 26, 2023. A representative of MNS Towing signed the CPAN acknowledging receipt of it on September 26, 2023.

3. On November 3, 2023, Trial Staff of the Commission (Staff) filed its Notice of Intervention as of Right and Entry of Appearance in this proceeding.

4. On November 15, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry.

II. FINDINGS AND CONCLUSIONS

A. Hybrid Evidentiary Hearing and Unified Numbering System for Hearing Exhibits

5. A hybrid hearing is one in which at least one party chooses to appear in person, while others choose to appear remotely. A webcast of proceedings will be available to the public through the Commission's website.

6. The evidentiary hearing scheduled below will be held as a hybrid hearing. This Decision, Attachment A, and Attachment B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

7. The procedures developed for the hybrid 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 video conference 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.

8. The hybrid evidentiary hearing will be conducted via video conference using the Zoom platform. 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.

9. 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 proceeding. Given that the hearing will accommodate remote participation by video conference, exhibits must be presented electronically.

10. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of remote evidentiary hearing.¹ As such, it is essential that the parties ensure they are able to access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

11. 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

¹ 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.

folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number 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.

12. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

13. 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:

- Staff is assigned hearing exhibit numbers 100 to 199; and
- Respondent is assigned hearing exhibit numbers 200 to 299.

B. Additional Procedural Notices and Advisements

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

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

16. The 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 comply with these rules. The rules are available on the Commission's website (<http://puc.colorado.gov/pucrules>), and in hard copy from the Commission.

17. Each party is specifically advised 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.

18. 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.

C. Informational Video Conference Practice Session

19. 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.

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

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

III. **ORDER**

A. **It is Ordered That:**

1. A hearing in this matter shall be conducted at the following ate, time and place:

DATE: January 17, 2024

TIME: 10:00 a.m.

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

WEBCAST: Commission Hearing Room B

METHOD: In-person and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

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.²

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

3. 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.

4. **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.

5. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing may accommodate remote participation by video conference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses:

² Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

(a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

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

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

8. This Decision shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

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

Rebecca E. White,
Director