

Decision No. R23-0393-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0085TO

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING TOWING CARRIERS, 4 CODE OF COLORADO REGULATIONS 723-6, TO IMPLEMENT HB 22-1314.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
CONTINUING PUBLIC COMMENT HEARING,
SCHEDULING CONTINUED PUBLIC COMMENT
HEARING, AND REQUESTING AND
SETTING DEADLINES FOR ADDITIONAL WRITTEN
COMMENTS**

Mailed Date: June 12, 2023

I. STATEMENT

A. Background

1. On February 22, 2023, the Colorado Public Utilities Commission (PUC or Commission) initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Commission's Rules Regulating Towing Carriers, 4 *Code of Colorado Regulations* (CCR) 723-6 (Towing Rules).¹ The NOPR proposed changes to the aforementioned Towing Rules, described those changes in detail and the justification therefor, attached the proposed

¹ Decision No. C23-0118, issued Feb. 22, 2023.

amended Towing Rules in legislative (*i.e.*, ~~strikeout~~/underline) format and in a clean version, and scheduled a remote public comment hearing for April 20, 2023, at 11:30 a.m. for oral comments regarding the proposed Towing Rules. The NOPR also referred this proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. The ALJ held the April 20, 2023 remote public comment hearing, as scheduled. At the conclusion of the April 20, 2023 public comment hearing, the undersigned ALJ determined that because the issues merited further discussion, the public comment hearing would be continued to May 30, 2023, at 11:30 a.m. Subsequently, on May 2, 2023, the ALJ issued Interim Decision No. R23-0287-I, setting the continued public comment hearing for May 30, 2023, and establishing additional deadlines for the submission of written comments.

3. Following the April 20, 2023, remote public comment hearing, numerous individuals, legislators serving the State of Colorado, towing carriers including Wyatt's Towing, and a trade organization, the Towing and Recovery Professionals of Colorado, offered their written comments and suggestions for additional changes to the proposed Towing Rules.

4. In advance of the second public comment hearing, the undersigned ALJ issued Interim Decision No. R23-0354-I, issued May 25, 2023, which introduced into the record Hearing Exhibit 3, a red-lined version of the Towing Rules incorporating some of written suggestions received from interested persons and revising the Towing Rules to minimize cross-referencing to state statutes. The further amended Towing Rules attached to Decision No. R23-0354-I were not considered final and were intended solely for the purpose of facilitating discussion at the May 30, 2023, public comment hearing.

5. The ALJ held the remote public comment hearing, as scheduled, on May 30, 2023, at 11:30 a.m. Participants in the hearing, including industry representatives, Colorado State legislators, consumer advocates, and individual members of the public, offered their comments concerning the scope of terms defined in the proposed Towing Rules. In particular, the discussion focused on the proposed definitions of “vehicle owner”, “authorized operator”, “Commercial PPI” (private property impound) and “Residential PPI”; the legislative intent to eliminate barriers to consumers’ retrieval of towed vehicles; the towing industry’s ability and opportunity to collect outstanding balances related to towing services; the imposition of storage fees for towed vehicles; and the inclusion of a deadline by which towing balances should be paid. Nathan Riley (Riley), Chief of the Commission’s Transportation Section, addressed numerous concerns raised by participants and offered explanations for the form and content of certain proposed Towing Rules. Riley also explained amendments made to the Towing Rules since the April 20, 2023, public comment hearing.

6. Based on the extensive nature of the proposed changes to the Towing Rules and the desire expressed by participants at the May 30, 2023, public comment hearing to further discuss the issues and make additional amendments to the Towing Rules, the ALJ proposed holding an additional public comment hearing. Several of the participants at the hearing agreed that an additional hearing is warranted.

7. Participants at the public comment hearing also requested the opportunity to submit additional written comments addressing the proposed further amendments to the Towing Rules. No one objected to either proposal.

B. Continued Public Comment Hearing

8. Based on the robust conversation held at the May 30, 2023, public comment hearing, and participants' desire to continue the discussion, the ALJ finds that a third public comment hearing in this Proceeding is warranted and appropriate.

9. During the May 30, 2023, public comment hearing, the ALJ announced that the public comment hearing will be continued to July 25, 2023, at 11:30 a.m. This Interim Decision memorializes the continuance of this Proceeding and schedules the continuation of the remote public comment hearing for July 25, 2023, at 11:30 a.m. The ALJ notes that holding public comment hearings over the lunch hour provides those in the public who are unable to participate or attend a public comment hearing held otherwise during regular business hours an opportunity to attend and/or participate in the hearing.

C. Additional Written Comments

10. At the May 30, 2023, public comment hearing, participants expressed the desire to weigh in on additional changes to the Towing Rules by submitting additional written comments addressing the suggested changes. No participants objected to this request.

11. The undersigned ALJ finds additional written comments are warranted and appropriate and, therefore, will permit interested persons or entities to file additional responsive comments on or before June 16, 2023. Any replies to the additional responsive comments must be filed no later than June 30, 2023.

D. Request for Comment and Proposed Additional Changes to the Towing Rules

12. To facilitate further discussion concerning the proposed Towing Rules, the undersigned ALJ submits these additional proposed amendments, based on written comments

received prior to the May 30, 2023, public comment hearing, as well as verbal comments made during the public comment hearing. These further proposed changes to the Towing Rules are intended to facilitate further discussion in this Proceeding and should not be considered final. Interested persons and parties are encouraged to submit additional written comments discussing and commenting on the proposed additional changes to the Towing Rules.

13. Below are the specific Towing Rules with proposed further amendments incorporated since the May 30, 2023, public comment hearing:

1. Rule 6501:

- (e) “Authorized operator of a motor vehicle” or “authorized operator” means a person who has been given written or oral permission to drive a motor vehicle by the owner or lessee of said motor vehicle. A person may demonstrate that they are an authorized operator, as set forth in rule 6512(f).
- (f) “Private Property Impound” or “PPI” means a nonconsensual tow from private property upon authorization of the property owner. A PPI can be a “Commercial PPI” or a “Residential PPI”, as follows:
 - (I) “Commercial PPI” is a nonconsensual tow from commercial private property that is not in a common parking area.
 - (II) “Residential PPI” is a nonconsensual tow from residential private property, including from a common parking area.

2. Rule 6504:

- (a) This rule applies to principals, as defined in rule 6001(iii), of a towing carrier.

3. Rule 6512:

- (I) For a Residential PPI, a towing carrier shall immediately retrieve the motor vehicle that has been nonconsensually towed or allow the vehicle owner or authorized operator to retrieve the motor vehicle if the following conditions have been met:
 - (I) the vehicle owner or authorized operator pays 15 percent of the fees, not to exceed \$60.00, owed to the towing carrier for the nonconsensual tow; and
 - (II) the vehicle owner or authorized operator completes and signs the “Towed Vehicle Release Notice: Retrieval with Payment Owed” form available on the

Commission's website, which the towing carrier shall provide to the vehicle owner, upon request.

- (III) The remaining balance owed to the towing carrier shall be due no less than 30 days, but no more than 60 days, after the motor vehicle has been released to the vehicle owner or authorized operator.

14. In addition, at the May 30, 2023, public comment hearing, the issue of loans offered to consumers by towing carriers as a condition of vehicle release was raised. The undersigned ALJ expressly requests interested parties, and in particular the Office of the Colorado Attorney General Consumer Protection Section, to provide comments and suggestions regarding the propriety, frequency, and efficacy of such conditional loans; the necessity of including a provision regulating this practice into the Towing Rules; and proposed language that could be incorporated into the Towing Rules addressing this practice, should its inclusion be warranted.

E. Instructions for Remote Public Comment Hearing

15. The public comment hearing will be held using the web-hosted video-conferencing service, Zoom. This means that members of the public who wish to participate in the public comment hearing should not appear in person at the Commission's offices, but should instead appear remotely via Zoom. Participants in the hearing should prepare in advance to use this platform. Attachment A to this Decision provides step-by-step technical instructions and requirements to participate by video-conference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that video-conference participants carefully review and follow all requirements in this Decision and Attachment A.

16. For those who wish to provide oral comments during the hearing, video-conference participation is preferred and encouraged because it allows for the hearing to

be held in a manner most similar to in-person hearings. Nevertheless, interested persons have the option to participate by telephone. The link, access code, and call-in information to participate in the hearing will be available on the Commission's calendar of events for the date and time of the hearing at <https://puc.colorado.gov/puccalendar>.

17. Any member of the public participating in the public comment hearing by video-conference must use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera. Participants are required to input their full name and any affiliation when prompted to do so. This will allow the ALJ to call on participants to provide oral comments in an orderly fashion.

18. During the public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; and (c) not connect to the hearing using multiple devices located in the same room (which will cause audio feedback). Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak.

19. The Commission will publicize the public comment hearing by press release, announce it on its public calendar, and make it known by other avenues to the extent resources are available.

20. The Commission strives to accommodate all members of the public at its hearings by providing services for foreign language users and persons with disabilities upon receipt of a reasonable accommodation request. Requests for such accommodations should be made at least

one week prior to the event by completing the Language Access Form. Requests can also be made directly by contacting Holly Bise at (303) 894-2024 or by emailing holly.bise@state.co.us.

F. Observing the Public Comment Hearing

21. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing and need not join the hearing by telephone or video-conference. To observe the hearing by webcast, enter this link in the web browser <https://puc.colorado.gov/webcasts> and select the audio or video option for the assigned hearing room. The assigned hearing room will be identified on the Commission's public calendar for the date and time of the hearing, at the following link: <https://puc.colorado.gov/puccalendar>.

22. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing and may assist in the orderly progression of the hearing.

G. Methods to Submit Public Comment

23. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

24. Interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Anyone using the latter option should ensure that their comments include this Proceeding number (Proceeding No. 23R-0085TO).

25. Oral comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at (303) 869-3490. Voice mail public comments will be placed in the record of this Proceeding and should likewise include a reference to this Proceeding number (Proceeding No. 23R-0085TO).

26. The Commission will equally consider public comments, regardless of the format in which they are submitted (verbal or in writing).

II. ORDER

A. It Is Ordered That:

1. The public comment hearing in Proceeding No. 23R-0085TO is continued.
2. The continued remote public comment hearing on the proposed revisions to the

Towing Rules is scheduled as follows:

DATE: **July 25, 2023**

TIME: **11:30 a.m.**

PLACE: By video conference: using the Zoom web conferencing platform at a link in the calendar of events on the Commission's website, available at <https://puc.colorado.gov/>.

3. Interested persons may file additional or supplemental written comments in this matter. Additional responsive comments should be submitted no later than **June 16, 2023**. Any comments replying to the additional responsive comments should be submitted no later than **June 30, 2023**.

4. All participants in the public comment hearing must follow the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

5. Those wishing to observe, but not participate in, the above public comment hearing may do so by observing the Commission’s webcast for the assigned hearing room at:

<https://puc.colorado.gov/webcasts>.

6. Members of the public who wish to provide written or oral comments outside of the public comment hearing may do so by following the instructions in this Decision.

7. The Administrative Law Judge may schedule additional hearings if necessary.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director