

Decision No. R23-0604

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23G-0183TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

TOWING OPERATIONS, LLC/DBA WYATT'S TOWING

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
WAIVING RESPONSE TIME TO MOTION TO DISMISS,
GRANTING MOTION TO DISMISS, DISMISSING CPAN,
AND CLOSING PROCEEDING**

Mailed Date: September 12, 2023

I. STATEMENT

A. Procedural history

1. On April 1, 2023, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear No. 134173 (CPAN), which alleges that Towing Operations, LLC, doing business as Wyatt's Towing (Wyatt's Towing) violated Rules 6511(i)(I) and (III) on December 26, 2022. The CPAN states that the civil penalty assessed for the alleged violation is \$2,530, but that if Wyatt's Towing pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$1,265. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the

CPAN will convert into a Notice of Complaint to Appear, and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$2,530.¹ The CPAN also states that the Commission may order Wyatt’s Towing to cease and desist from violating statutes and Commission rules.²

2. The CPAN states that the Commission served the CPANs by U.S. certified mail on April 1, 2023.

3. On April 27, 2023, Trial Staff of the Commission entered its appearance in this proceeding.

4. Wyatt’s Towing has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

5. On May 10, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

6. On May 26, 2023, the ALJ issued Decision No. R23-0356-I that provided an opportunity for each party to file a statement addressing the party’s preference for a remote, hybrid, or in-person hearing.

7. On June 5, 2023, Trial Staff of the Commission (Staff) filed a Statement Regarding Hearing in which it stated that it “does not have a specific preference about the hearing format and will agree to either a remote or hybrid hearing so that witnesses and counsel can appear virtually.”³ Staff also requested that “the Administrative Law Judge avoid scheduling

¹ CPAN Nos. 135021 and 135131 at 3.

² *Id.*

³ Staff’s Statement Regarding Hearing at 1 (¶ 4).

the hearing before July 29, 2023 and during the weeks of August 7, August 14, September 25, 2023 the days between October 11 and 17, 2023 and the week of November 20, 2023 because undersigned counsel and/or certain witnesses are unavailable.”⁴

8. On June 6, 2023, Wyatt’s Towing filed an Entry of Appearance and Request for an In-Person Hearing (Request). Wyatt’s Towing also requested that the hearing be scheduled “in late August or September.”⁵

9. On July 12, 2023, the ALJ issued Decision No. R23-0448-I that scheduled a hybrid hearing for September 7, 2023, at 9:00 a.m.

10. On September 1, 2023, Staff filed a Motion to Dismiss the CPAN.

B. Motion to Dismiss

11. Staff have stated good cause to grant the Motion to Dismiss. In addition, no party will be prejudiced by the granting of the Motion to Dismiss. Accordingly, response time to the Motion will be waived and the Motion will be granted.⁶

II. ORDER

A. The Commission Orders That:

1. Response time to the Motion to Dismiss filed by Trial Staff of the Commission (Staff) on September 1, 2023, is waived.

2. The Motion to Dismiss is granted.

3. The hybrid hearing scheduled for September 7, 2023 is vacated.

⁴ *Id.* at 2 (¶ 5).

⁵ Request at 1.

⁶ The ALJ informed the parties of this outcome on September 6, 2023 by email.

4. Proceeding No. 23G-0183TO is closed.
5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.
 - a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion within 20 days after service, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director