

Decision No. C03-0096

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02G-235TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

EDDIE'S LEAF SPRING SHOP AND TOWING, LLC,

RESPONDENT.

**ORDER DENYING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: January 28, 2003
Adopted Date: January 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) of Decision No. C02-1432 filed by Eddie's Leaf Spring Shop & Towing LLC (Eddie's) on January 10, 2003. In that decision, we denied Eddie's exceptions to the Administrative Law Judge's (ALJ) Decision No. R02-798 (Recommended Decision).

2. Now, being duly advised in the matter, we deny Eddie's application for RRR consistent with the discussion below.

II. DISCUSSION

A. Background

3. This matter involved a Civil Penalty Assessment Notice (CPAN) issued by Staff of the Commission (Staff) charging Eddie's with two counts of collecting charges for storage exceeding the prescribed rates found in 4 *Code of Colorado Regulations* (CCR) 723-9-17.7.1. Count 1 alleged that Eddie's collected charges for storage exceeding the prescribed rates on March 24, 2002. Count 2 alleged that Eddie's collected charges for storage exceeding the prescribed rates on March 25, 2002.

4. Eddie's towed a vehicle to its storage lot at approximately 10:45 p.m. on Saturday, March 23, 2002. It was a non-consensual tow. The vehicle's owner attempted to retrieve it from Eddie's lot on Sunday morning March 24, 2002, but was informed by Eddie's manager that a \$70.00 fee was required to open the lot because it was a non-business day. The vehicle's owner returned to Eddie's lot on Monday morning, March 25, 2002 to obtain his vehicle. Eddie's charged him \$22.50 for mileage, \$130.00 for towing, and \$40.00 for storage. The vehicle's owner paid the charge and recovered his vehicle. Staff subsequently issued the CPAN.

5. In the Recommended Decision, the ALJ addressed whether Eddie's violated Rule 17.7.1, as alleged by Staff. Staff argued that under this rule, no storage charges should have been imposed. Eddie's interpreted the rule to allow a storage fee of \$40.00

6. Rule 17.7.1, in relevant part, states:

After the first twenty-four (24) hour period of storage is exceeded, the maximum storage charge for each day shall be no greater than twenty dollars (\$20) for private property tows of motor vehicles having a GVWR [Gross Vehicle Weight Rating] of less than 10,000.

7. Also relevant here is 4 CCR 723-9-17.1 which states:

The maximum rate that may be charged for a private property tow of a vehicle with a GVWR of less than 10,000 pounds shall be no more than one hundred and thirty dollars (\$130), which shall include charges for all towing and storage services rendered including, but not limited to, hook-up fees, use of dollies or go-jacks, gate fees, commissions paid, storage for the first 24 hours and for all other services rendered in performing such private property tows, except as provided in this rule.

8. The difference of opinion between Staff and Eddie's centered on the meaning of the word "day" in Rule 17.7.1. Eddie's argued that the Commission should utilize calendar days as measured from midnight to midnight. Staff, on the other hand, urged that the term "day" should be interpreted as any 24-hour period beginning upon the expiration of the 24-hour "free" period provided for in Rule 17.1. The ALJ found for Staff and determined that Staff sustained its burden of proof that Eddie's violated Rule 17.7.1 on two occasions, as charged in Counts 1 and 2 of CPAN No. 27701.

9. In its exceptions to the Recommended Decision, Eddie's argued that the ALJ committed error by misconstruing the term "day" in Rule 17.7.1. Eddie's maintained that the term, as used in the rule, referred to a specific period beginning and ending at midnight, rather than a 24-hour period beginning at any time.

10. We agreed with the ALJ and consequently denied Eddie's exceptions. We determined that the term "day" in Rule 17.7.1 logically referred to a 24-hour period that begins upon the expiration of the initial 24-hour "free" period provided for in Rule 17.1.

11. However, we declined to adopt the ALJ's reasoning that a towing carrier may collect a maximum of \$20.00 only upon the expiration of each 24-hour period, subsequent to the termination of the free period. We determined that although the Towing Rules did not

contemplate whether a towing carrier may charge a maximum of \$20.00 for only a portion of a day, neither did the rules prohibit such practice. Based on that analysis, we held that Eddie's could properly charge a maximum of \$20.00 for a portion of a day¹ beyond the first 24-hour "free" period.

B. Eddie's Arguments on RRR

12. Eddie's again finds fault with our definition of the term "day." According to Eddie's, the term day, because it has numerous definitions available with different applications and uses, is therefore an ambiguous term. However, Eddie's then points out (without specific reference) that the term "day" is identified in the Colorado Revised Statutes as a calendar day. Although not explicit in the pleading, we determine that Eddie's means to imply that although the term "day" is ambiguous, we should nonetheless construe it to be a calendar day beginning and ending at midnight, as Eddie's requests.

13. Eddie's offers no new substantive argument in its RRR pleading. Its assertion that "day" should be construed as a calendar day beginning and ending at midnight was previously addressed by the ALJ in the Recommended Decision, and in our Decision No. C02-1432, denying Eddie's exceptions. There is nothing here to persuade us to hold otherwise.

III. CONCLUSION

14. Therefore, we deny the application for RRR filed by Eddie's consistent with the discussion above, and uphold our Decision No. C02-1432 in its entirety.

¹ As we defined "day" as any 24-hour period following the expiration of the "free" period.

IV. ORDER**A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C02-1432 filed by Eddie's Leaf Spring Shop and Towing, LLC is denied.
2. Commission Decision No. C02-1432 assessing a civil penalty against Eddie's Leaf Spring Shop and Towing, LLC in the amount of \$400.00 in connection with Count 1 of Civil Penalty Assessment Notice No. 27701 for violating 4 *Code of Colorado Regulations* 723-9-17.7.1 by collecting charges for storage exceeding the prescribed rates on March 24, 2002 is upheld in its entirety. This penalty shall be reduced to \$200.00, however, in the event Eddie's Leaf Spring Shop & Towing, LLC submits, within ten days of the effective date of this Order, adequate proof to the Colorado Public Utilities Commission that it has refunded \$20.00 in previously paid vehicle storage charges to the owner of the subject vehicle, Mr. Scott Treadwell.
3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners