

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-792TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
REGARDING NOTICE OF AMENDMENTS TO
PROPOSED RULE 4 CCR 723-6-6511**

Mailed Date: January 25, 2012

I. STATEMENT

1. On September 30, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) regarding proposed amendments to certain Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Among the rules proposed to be amended was Rule 6511.

2. Proposed Rule 6511 amended the rates and charges applicable to towing carriers. It eliminated the mileage charge and mountain area charges applicable to nonconsensual tows. In addition, it sets the maximum charge for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner at \$100.00.

3. The Commission requested input from interested persons regarding this proposed rule. Specifically, the Commission asked tow carriers to provide information on the cost associated with all aspects of nonconsensual tows including mountain tows, mileage charges and storage of vehicles and how any of these costs for nonconsensual tows differ from costs

associated with consensual tows. Transportation Staff represented at the public comment hearing that it received insufficient information on this issue.

4. At the public comment hearing on the proposed rules held on December 5, 2011, the Commission heard from various towing carriers regarding proposed Rule 6511. Towing carriers generally argued that the proposed Rule set rates that appeared to be too low to run a profitable towing operation. Towing carriers were advised to communicate with Commission Transportation Staff (Transportation Staff) in order to provide more comprehensive financial data for Transportation Staff to utilize in order to set a cost-based rate that generally considered a towing carrier's costs for consensual and nonconsensual tows.

5. Over the course of the following several weeks subsequent to the public comment hearing, Transportation Staff received seventy three responses to the Towing Carrier Cost Survey it sent out to towing carriers seeking financial data.¹ The surveys were distilled and analyzed by economists from the Commission's Economics Unit.²

6. Of the 73 towing companies that responded to the survey, the Economics Unit distilled those down, for various reasons explained in the report, to 39 towing companies as the analysis population from which the cost per tow was derived. As stated in the report, that analysis of the survey results was intended to examine tow costs and to attempt to distinguish whether significant cost differentials existed between companies conducting nonconsensual tows exclusively; companies that do not conduct any nonconsensual tows; and, companies that conduct both consensual and nonconsensual tows. In addition, a geographic identifier was included in the analysis to determine if significant cost differentials existed between towing

¹ See, Attachment A to this Interim Order.

² The economists' complete analysis is attached to this Interim Order as Attachment B.

companies operating on the Front Range;³ towing companies operating along the Interstate 25 Corridor; and non-Front Range⁴ towing companies.

7. As can be seen in the report, Commission economists calculated the cost of each tow in three categories: 1) driver cost + gas cost per tow; 2) driver cost + gas cost + average impound fee per tow; 3) driver cost + gas cost + average impound fee + any remaining overhead costs per tow = total cost per tow. The cost per tow for the analyzed sample of 39 companies is summarized in Tables 1 through 6 of the report. After testing for statistical differences in the average total cost per tow by region, it was determined that no statistical difference existed although the averages were not equal. Based on this conclusion, the economists determined that there is sufficient evidence that no statistical need exists for a fee differential for nonconsensual tows based on location.

8. The ultimate recommendation of the economists, based on their comprehensive analysis of data received from the towing companies, is that the current charge for nonconsensual tows of \$154.00 should be maintained. Additionally, a maximum mileage restriction should be adopted. Those mileage reimbursement restrictions are recommended to be set at the reported average distance for Front Range tows of 12 miles and non-Front Range tows of 16.5 miles. The combination of these two revenue components for nonconsensual tows results in a maximum total charge before impound charges of \$205.60 for Front Range towing carriers and a maximum total charge of \$224.95 for non-Front Range towing carriers.⁵

³ The “Front Range” is defined as its generally understood meaning to include communities which lie immediately adjacent to the Interstate 25 Corridor.

⁴ The “Non-Front Range” area is generally defined as the mountain areas, Western Slope areas, and Eastern Plains communities.

⁵ Based on a \$4.30 per mile rate.

9. The Commission will incorporate the proposed rates into proposed Rule 6511 as determined by its Economics Unit for nonconsensual tows as \$154.00 for a tow of a motor vehicle with a GVWR of less than 10,000 pounds. Further, a maximum mileage charge restriction will be incorporated into Rule 6511 and will be set at 12 miles for tows occurring within the Front Range, and a maximum mileage charge restriction of 16.5 miles for non-Front Range nonconsensual tows. This results in a maximum charge before impound fees of \$205.60 for Front Range nonconsensual tows and a maximum charge before impound fees of \$224.95 for non-Front Range nonconsensual tows.

10. This second amendment to Rule 6511 is intended to respond to the concerns raised by towing carriers at the December 5, 2011 public comment hearing. If adopted, amended Rule 6511 will be incorporated into the NOPR issued September 30, 2011 and Recommended Decision to be issued regarding the adoption of the rules attached to the NOPR.

11. Written comments are solicited regarding the proposed amendment to proposed Rule 6511 and depicted in legislative format as Attachment C to this Order. Input requested from interested persons will be limited to the issue of maintaining the rate of \$154.00 rate for nonconsensual tows of motor vehicles with a GVWR of less than 10,000 pounds, as well as the proposal to set a maximum mileage charge restriction at 12 miles for tows occurring within the Front Range for a maximum charge of \$205.60, and a 16.5 mile maximum mileage charge restriction for non-Front Range nonconsensual tows for a maximum charge of \$224.95. Comments are to be filed no later than 2 weeks from the effective date of this Order, or by the close of business on February 8, 2012.

12. This Interim Order providing notice of amendments to proposed changes to Rule 6511 is issued pursuant to §24-4-103(2), C.R.S. The amendments to proposed Rule 6511 are made in response to comments received at the December 5, 2011 public hearing held pursuant to §24-4-103(3) regarding the NOPR issued on September 30, 2011.

13. While written comments are urged, it is determined at this time that no further public comment hearings are necessary as provided by §24-4-103(4). All written comments filed to the amendments to Rule 6511 will be considered. Commentors are requested to include alternate rule language, if necessary, with their written comments by the date and manner specified above.

II. ORDER

A. It is Ordered That:

1. This Interim Order shall serve as notice of amendments to proposed Rule 4 *Code of Colorado Regulations* 723-6-6511 as indicated in legislative format and attached as Attachment C to this Order.

2. Any written comments to the proposed amendments to proposed Rule 6511 shall be due no later than the close of business on February 6, 2012.

3. Written comments shall be limited to the issues described in Paragraph No. 11 above.

4. The Commission prefers and strongly encourages that interested persons submit comments to proposed Rule 6511 through the Commission's Electronic Filing System and in this docket number – 11R-792TR.

5. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

Towing Carrier Cost Survey

Carrier Name:

Date:

of Trucks in Fleet:

Annual miles Driven for Fleet

Ave. fuel mileage (fleet)

Year Purchased	Vehicle Price	Year Purchased	Vehicle Price

Annual Liability Insurance Cost

Annual Cargo Insurance Cost

Annual Garage Keepers Ins Cost

Annual Maintenance Cost - Tires, oil, brakes, etc...

Surety Bond Cost (Annual)

Annual Fuel Cost

Roaming(empty) Miles per month

Annual Truck Depreciation (Fleet)

Towing(loaded) Miles per month

Ave. Distance (in miles) to get to car

Average hourly wage paid to driver

Ave. Distance (in miles) from tow to impound

Ave. hrs worked by driver per week

Ave. Drive time to tow site (in minutes)

Number of Drivers

Ave. Load time (in minutes)

Consensual Tow Revenue (Annual)

Ave. Drive time (in minutes) from tow to impound

Nonconsensual Tow Revenue-Annual

Ave. Unload time (in minutes)

Law Enforcement Tow Revenue

Ave. time car is kept in impound (in days)

Monthly Lease/Rent - Office Space

Number of Consensual Tows (Annual)

Monthly Lease/Rent - Impound Lot

Number of Nonconsensual Tows (Annual)

Monthly Lease/Rent - Office Equipment

Number of Law Enforcement Tows (Annual)

Monthly wages and Salaries - non-drivers

Number of Tows-only drop charge was paid (Annual)

Number of non-driver staff people

Number of Tows - vehicle was abandon (Annual)

Ave. Hrs worked per week-non-drivers

Number of Charged Miles per year

Cost of Dispatch (Monthly)

Credit Card and Bank Fees (Monthly)

Insurance (if different from above)

Advertising (Monthly)

Telephone (Monthly)(include internet)

Building Depreciation (Annual)

Gas (Monthly)

Office Equipment Depreciation (Annual)

Electric (Monthly)

Attorney Fees (Annual)

Accountant Fees (Annual)

Monthly Lot Fees (Paid to Property Owners)

GPS Services (Monthly)

Tow Truck Cost Report

Survey

Seventy-Three tow truck companies responded to the survey sent out by the Colorado Public Utilities Commission. The respondents ranged from companies that towing represents a major portion of their business to those that do towing more as an ancillary service. These towing companies primarily fell into the category of companies that do both consensual and nonconsensual tows, but there were a few that did not do any nonconsensual tows and some that only did nonconsensual tows.

The analysis to the survey responses was done to examine tow costs and to attempt to distinguish if significant cost differences exist between towing companies that just do nonconsensual tows and companies that don't do any nonconsensual tows and companies to do both consensual and nonconsensual. In addition to distinguishing towing companies on types of tows a geographic identifier was included to see if significant cost differences existed from companies in the Front Range, or those along the I-25 corridor, and Non-Front Range companies.

Analysis

Four companies were eliminated from the initial sample of 73 tow truck companies due to a lack of responses in crucial metric categories. The remaining 69 companies were further reduced to only companies that averaged at least one tow per day for an entire year, therefore any company with 364 tows or less was removed from the sample. The determination of using companies with an average of one tow per day was to focus the analysis on companies that towing reflected a significant portion of their business. This eliminated an additional 22 companies. Another eight of these companies were removed for lack of revenue data leaving 39 companies as the analysis group in which the cost per tow was derived.

The cost of each tow was calculated for the following categories;

- 1) Driver Cost + Gas Cost Per Tow
- 2) Driver Cost + Gas Cost + Average Impound Fee Per Tow
- 3) Driver Cost + Gas Cost + Average Impound Fee + Any Remaining Overhead Costs Per Tow = Total Cost per Tow.

1) Driver Cost + Gas Cost Per Tow

Along with the data provided within the survey a proxy was used to impute a value for benefits. The proxy value used was \$356 per full time employee per month. This figure was obtained from the Bureau of Labor Statistics website, bls.gov, and reflects the national average of employee paid medical benefit premiums. This value was assumed to apply to all workers in the survey adjusted to reflect a 40 hour work week or less if applicable. For example if a worker worked only 30 hours per week the benefit was reduced to \$267 or 75% of the \$356.

The stated wages paid plus benefits were used to derive the driver cost per tow. This calculation reflects what the company must pay a driver for his/her time while getting to and transporting a tow. The hourly wage plus hourly benefits were multiplied by the time it takes to get to get to the vehicle to tow, load, transport, and unload . This was then divided by the number of tows to get driver cost per tow.

$$\text{Driver Cost Per Tow} = [(\text{Hourly Wage} + \text{Hourly Benefits Paid}) * (\text{Time to get to tow} + \text{load time} + \text{unload time} + \text{transport time})] / \text{Number of Tows}.$$

The gas cost per tow assumed a \$4 per gallon of diesel times the miles driven to get to and from tow divided by the miles per gallon.

$$\text{Gas Cost Per Tow} = (\$4/\text{gallon diesel}) * [(\text{Miles Driven to Tow} + \text{Distance Towed in Miles}) / \text{Miles Per Gallon}]$$

2) Driver Cost + Gas Cost + Average Impound Fee Per Tow

To further distinguish costs specific to nonconsensual towing, an impound fee per tow was added to the calculation in (1). To incorporate this fee the annual reported impound fee paid was divided by number of tows. The annual impound fee was calculated from the monthly impound rental fee reported in the survey and multiplied by 12 months

3) Total Cost Per Tow

The final cost analysis included any remaining overhead costs, which were added to the costs already calculated in (1) and (2). Within the calculation of remaining overhead costs were all other costs reported by the towing companies along with imputing again the national average for monthly medical benefits per full time employee at \$356 per month. There was one caveat to the calculation of overhead costs that was attributed to tows.

As explained above, the responding towing companies most likely have other business besides towing, therefore an approximation was used to determine percentage of towing business relative to the whole business. The proxy used was the percentage of towing revenues relative to total costs. This percentage was used to discount the costs related to towing in cases where the percentage was less than 100 percent. In cases where revenues exceed costs the percentage was capped at 100 percent. After the percentage of towing was determined the value was divided by the number of tows to come up with the Total Cost Per Tow.

$$\text{Total Cost Per Tow} = [\text{Driver Cost} + \text{Gas Cost} + \text{Impound Fee} + (\% \text{Towing} * \text{Total Remaining Overhead Costs})] / \# \text{ of Tows}$$

Below is a table summarizing the cost per tow for the analyzed sample of 39 companies.

Table 1: Summary of 39 Analyzed Companies

	Driver Wages/Tow	Driver Wages + Gas/Tow	Driver Wages + Gas + Impound/Tow	Total Cost Per Tow
Average	\$47.46	\$62.56	\$67.88	\$161.77
Minimum	\$23.75	\$27.70	\$31.31	\$47.69
Maximum	\$124.06	\$132.06	\$135.34	\$348.55
Median	\$41.98	\$56.17	\$62.44	\$144.62

Number of Companies = 39

Table 2: Summary of Front Range Companies

	Driver Wages/Tow	Driver Wages + Gas/Tow	Driver Wages + Gas + Impound/Tow	Total Cost Per Tow
Average	\$46.87	\$60.60	\$66.87	\$159.19
Minimum	\$23.75	\$27.70	\$31.31	\$47.69
Maximum	\$124.06	\$132.06	\$135.34	\$348.55
Median	\$39.95	\$56.06	\$61.65	\$142.06

Number of Companies = 32

Table 3: Summary of Non-Front Range Companies

	Driver Wages/Tow	Driver Wages + Gas/Tow	Driver Wages + Gas + Impound/Tow	Total Cost Per Tow
Average	\$50.14	\$71.50	\$72.47	\$173.60
Minimum	\$30.53	\$40.20	\$40.20	\$48.64
Maximum	\$79.85	\$103.49	\$104.20	\$313.19
Median	\$46.74	\$70.28	\$70.28	\$217.71

Number of Companies = 7

Table 4: Summary of Solely Non-Consensual Tows

	Driver Wages/Tow	Driver Wages + Gas/Tow	Driver Wages + Gas + Impound/Tow	Total Cost Per Tow
Average	\$112.15	\$123.48	\$133.05	\$201.64
Minimum	\$100.25	\$114.91	\$130.77	\$122.37
Maximum	\$124.06	\$132.06	\$135.34	\$274.08
Median	\$112.15	\$123.48	\$133.05	\$208.47

Number of Companies = 2 [not a large enough sample to draw statistical interpretations from]

Table 5: Summary of Consensual Tows Only

	Driver Wages/Tow	Driver Wages + Gas/Tow	Driver Wages + Gas + Impound/Tow	Total Cost Per Tow
Average	\$48.07	\$60.97	\$61.47	\$63.13
Minimum	\$23.75	\$34.72	\$34.72	\$47.69
Maximum	\$76.64	\$94.82	\$94.82	\$144.62
Median	\$42.88	\$57.00	\$58.00	\$60.13

Number of Companies = 4 [not a large enough sample to draw statistical interpretations from]

Table 6: Comparison of Averages for All Companies, Front Range, Non-Front Range, Consensual Only, and NonConsensual Only

	# of Companies	Driver Cost Per Tow	Driver + Gas Cost Per Tow	cost per tow impound included	Total Costs Per Tow
All Companies	39	\$47.46	\$62.56	\$67.88	\$161.77
Front Range	32	\$46.87	\$60.60	\$66.87	\$159.19
Non-Front Range	7	\$50.14	\$71.50	\$72.47	\$173.60
Consensual Only	4	\$48.07	\$60.97	\$61.47	\$63.13
NonConsensual Only	2	\$112.15	\$123.48	\$133.05	\$201.64

Statistical Analysis

To test if any statistical difference existed for average total cost per tow by region, Front Range versus Non-Front Range, an F-Test was conducted. The test indicated no statistical difference existed despite the averages not being equal. Given this conclusion there is evidence that there is no statistical need for a fee differential for nonconsensual tows based on location.

The F-Test at a level of significance of 5% is summarized below;

H_0 : Average Total Cost Front Range = Average Total Cost Non-Front Range

H_A : Average Total Cost Front Range < Average Total Cost Non-Front Range

$F_{CALC} = 1.68$

$F_{CRITICAL} = 2.41$

Decision:

If $F_{CALC} < F_{CRITICAL}$ then Fail to Reject H_0

If $F_{CALC} > F_{CRITICAL}$ then Reject H_0

As the calculated F statistic is less than the critical F value the null hypothesis cannot be rejected and therefore the costs in the two geographic regions are not statistically different.

Recommendation

Given the cost analysis of the survey respondents for categories that provided enough observations, the average total cost per tow ranges around \$160. To relate this cost to the the fee for nonconsensual tows of \$154 plus \$4.30 per mile at the calculated average distance for a tow of 11.67 rounded to 12 miles for Front Range companies and 16.2 round to 16.5 for Non-Front Range companies yield revenue collections of \$201.60 and \$220.95 respectively. Table 7 below reveals the dollar amount of profit before taxes and an estimate of profit after taxes per tow with the corresponding profit percentage for Front Range and Non-Front Range Companies.

Table 7: Profit From a Nonconsensual Tow of \$154 Fee Plus Mileage Reimbursement for 12 Miles For Front Range Companies and 16.5 Miles for Non-Front Range Companies

	Average Total Costs	Revenue at 12 miles and 16.5 miles	Profit Before Taxes	Profit Assuming 35% Tax Rate	After Tax Profit Percentage
Front Range	\$159.19	\$205.60	\$46.41	\$30.17	18.95%
Non-Front Range	\$173.60	\$224.95	\$51.35	\$33.38	19.23%

As the table reveals a nonconsensual tow with a mileage reimbursement fee for 12 and 16.5 miles for Front Range and Non-Front Range Companies respectively leads to a healthy after tax profit. This illustration combined with the statistical analysis that costs are not significantly different from Front Range to Non-Front Range companies indicates that the current nonconsensual fee of \$154 seems reasonable. The \$4.30/mile charge per mile though provides an opportunity for towing companies to collect additional revenue not technically based on cost as the gas costs would range around \$6 to \$8 for a tow of 12 to 16.5 miles divided by 8.5 miles per gallon multiplied by \$4 per gallon of diesel. Given this fact, there may be a tendency for drivers to drive unnecessarily longer distances to increase the mileage fee collected. This possibility should not be incentivized, therefore, along with maintaining the fee at its current level of \$154 per nonconsensual tow, a maximum mileage restriction should be adopted. As the gas cost per tow was the largest contributor to the cost difference from Front Range to Non-Front Range, these mileage restrictions should be set at the reported averages for the Front Range average of 12 miles and Non-Front Range average of 16.5 miles. The combination of these two facets of revenues for a nonconsensual tow leads to a maximum total fee before impound charges of \$205.60 in the Front Range and \$224.95 for Non-Front Range.

6511. Rates and Charges.

- (d) Rates and charges for ~~non-consensual~~nonconsensual tows. Subject to the provisions of this paragraph, the maximum rate that a towing carrier may charge for a ~~non-consensual~~nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner is \$~~100~~154.00. Except as provided in paragraphs (b), (c), (e), (f), (g), ~~and (h) and (i), (i), and (j)~~ of this rule, this maximum rate shall include, but not be limited to, charges for the following:
- (I) all towing services rendered;
 - (II) hookup;
 - (III) use of dollies or go-jacks;
 - (IV) access to or release of the motor vehicle from storage;
 - (V) except for an abandoned motor vehicle, removal of personal property that is not attached to or a part of the equipment of the motor vehicle;
 - (VI) all commissions paid; and
 - (VII) all other services rendered in performing such ~~non-consensual~~nonconsensual tow.
- (e) The maximum rates for a ~~non-consensual~~nonconsensual tow from storage ~~(i.e., directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation)~~ are as follows:
- (I) \$91.00 for one additional hookup; and
 - (II) \$91.00 per hour waiting time; and
 - (III) mileage charges as provided in paragraph

(f) Mileage.

- (I) The maximum mileage charge that may be assessed for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds is \$3.80 per laden mile up to the maximum set forth below. (For purposes of this paragraph, laden mile means a mile when the towed motor vehicle is being transported.) A towing carrier may not apply mileage charges in excess of:
- (A) 12 miles for all tows originating within 20-miles of Interstate 25; or
 - (B) 16.5 miles for all other tows.
- (II) Fuel surcharge. The maximum per mile charge shall be adjusted monthly by the Public Utilities Commission by setting a fuel surcharge. The surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate. The adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in fuel cost, or a one-percent decrease in the mileage rate for every ten-cent decrease in fuel cost, but in no event decreasing below the base rate.