Decision No. R16-1136-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0095TO

IN THE MATTER OF THE PROPOSED RULES REGULATING TOWING COMPANIES, 4 CODE OF COLORADO REGULATIONS 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
IDENTIFYING ISSUES FOR COMMENT**

Mailed Date: December 9, 2016

I. STATEMENT

1. By Decision No. R16-1101-I issued December 1, 2016, the continued hearing is scheduled to focus upon the Towing Task Force's (Task Force) model and the assumptions upon which it is based.

2. In exceptions filed on August 31, 2016, the Task Force summarized the approach to recommending rates based upon the model adapted from the Utah study:

> The task force accepts the model is not perfect, but its results were intended to be applied in as reasonable a fashion as possible to all towing cases in each class. There are no two towers throughout the state with the exact business and cost structures. The applied costs in the model were intended to, and do, produce results based on what is believed to be average incurred costs throughout the industry. The intent of applying the model was to identify costs applicable to all towers while developing a consistent and reproducible approach toward setting reasonable maximum hourly rates to be charged that ensure consumers cannot be gouged by unscrupulous towers yet provides sufficient opportunity for a tower to earn a return on their investment.
>
> Task Force Exceptions at p. 3.

3. The undersigned appreciates the effort to provide increased transparency and consistency underlying the Task Force recommendation and that the estimation of reasonable costs informs the recommendation.

4. The undersigned would like to identify the following non-exhaustive list of anticipated topics to facilitate further comment and discussion. Such identification of topics that the model may or may not consider is not intended as criticism. Rather, the purpose of this effort is to better understand the Task Force's recommendations and the scope of the model and how it functions.

5. Additional comment is invited as to the basis of modeled assumptions and the following topics that are intended to be addressed:

a) All classes operate on a full-time basis, as opposed to part-time.

b) The average tow company has no other lines of business contributing to recovery of overhead (*e.g.*, a repair facility that also provides tow service). Similarly, all overhead costs (including vehicles) used for nonconsensual tows generate no other revenue.

c) Assuming 100 percent of tows are completed in one hour at nonconsensual tow rates, or an average cost of PPI and other nonconsensual tows as applicable:

  i. for Light duty, the total modeled costs plus profit per year are (90*3.5*191.35), or $723,303;

  ii. for Medium duty, the total modeled costs plus profit per year are (56*2*227.35), or $305,558;

  iii. for Medium-Heavy duty, the total modeled costs plus profit per year are (45*1*297.37), or $160,579; and

  iv. for Rotator, the total modeled costs plus profit per year are (10*1*585.58), or $70,269.

d) No tow companies operate tow trucks having more than one capacity (*e.g.*, a company having 3.5 trucks providing Light tows and one truck providing Heavy tows).

e) The model neither analyzes the cost incurred to result in a drop fee, as defined in Colorado rules, nor includes revenues associated with drop fees.

f) All tow trucks are purchased new and have a five-year useful life.

g) Useful life of vehicles was not independently studied for depreciation purposes, but is either included based upon the Utah study or that defined under federal income tax laws.

h) All tow trucks in all classes are assumed to be used 100 percent of time for non-consensual tows (*i.e.*, 0 percent for consensual tows or other lines of business).

i) The comment to Light!C37 includes: "To calculate vehicle depreciation per tow, the following calculations are required: ($667 depreciation cost per truck per month/120 maximum tows per truck per month)*37.5% utilization rate= a depreciation cost of $2.08 per tow." However, the formula in Light!E37 incorporates the 75 percent utilization referenced in Depreciation-Financing Costs!C15.

j) Administration expenses (*i.e.*, the Administration tab) of a towing carrier operating one rotator is assumed to be the same as a towing carrier operating 3.5 tow trucks providing Light tows.

k) Modeled office expenses for Light duty tows are not affected by how long it takes to complete a tow. The total of those office expenses are allocated based upon the number of modeled tows without regard to the length of time necessary to complete the tow.

l) Are any vehicle expenses other than those directly associated with a tow included for recovery in the model (*e.g.*, stationing tow trucks)?

m) The maximum allowed mileage charge for a PPI tow under current rules is 16.5 miles. Rule 6511(f). The Task Force model incorporates 45 miles per tow (see Light!D37 comment and Light!P6).

n) Current rules include mileage rates and a surcharge 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. Are modeled costs currently recovered through those charges?

o) The model does not consider revenues from storage after the first hour.

p) Modeled storage yard expenses for Light duty tows are not affected by how long it takes to complete a tow. The total of those storage yard expenses are allocated based upon the number of modeled tows without regard to the length of time any vehicle is stored (*i.e.*, upon the modeled number of vehicles being placed in storage, all storage yard expenses are immediately recovered).

q) The model assumes that storage facilities are not located at the same property as the business office.

r) For Light duty, the totals in Light!H53 and Light!H62 include the costs plus profit for the first day of storage.

s) The rates recommended for adoption for a one-hour tow include recovery for one day's storage yard expenses, plus a 12.5 percent profit.

t) For Light duty, the model assumes no storage yard revenues other than the first hour after two cars are placed in storage.

u) The comment to cell Administration!B45 states: "Utah Study assumes 2 cars per day to storage. For consistency with other calculations - assume all nonconsensual tows go to storage. i.e. assume clerical work related to storage on all tows not just 2 per day." The comment at Light!J45 states: "Calc: Monthly cost * 12 = Annual cost ($1000*12 = $12,000) Daily cost: Annual Cost/365 = $32.88 per day cost of leasing property. Assume store 2 cars per day = Daily cost / 2." Thus, ½ of the daily estimated cost is applied to every nonconsensual tow (Light!H53).

v) Hourly rates recommended for adoption by the Task Force for Medium duty and less include one half of the daily cost estimated daily storage yard expenses. Hourly rates recommended for adoption by the Task Force for Medium-Heavy duty and above include the daily cost estimated for daily storage yard expenses.

w) Medical cards and DOT Drug and Alcohol programs are not required for drivers of vehicles weighing less than 26,000 lbs. Associated costs are included for Light and medium tows.

x) In exceptions, the Towing Operators state that Utah "has an 'administrative fee' of up to $30 that is charged on each PPI that is towed. This fee is to cover the costs associated with calling the vehicle into the police and placing it in the impound facility." Is there a comparable fee in Colorado? Does the Task Force model reflect revenues and expenses associated with such a fee (*e.g.*, Administration!B23 and B24)?

y) Does the Task Force model reflect all sources for recovery of expenses associated with nonconsensual tows (*i.e.*, does Colorado have comparable revenue streams or costs)? Specifically, does the study reflect costs and revenues associated with drop fees as defined in current rules?

z) Each tab of the model corresponding to each class is modeled to recover 100 percent of the Administration tab costs:

   i. If a company has other lines of business, it appears that 100 percent of the overhead costs would still be allocated to nonconsensual tows.

ii. If a tow company also provides consensual towing service, it appears that 100 percent of the overhead costs would still be allocated to nonconsensual tows.

iii. If a tow company provides Light tows using 3.5 vehicles and provides Heavy tows using one vehicle (*i.e.*, an average fleet size of one), one year of modeled operations would yield recovery of 200 percent of costs in the Administration tab of the model (or at least those identified as "per year" or "per month").

aa) What assumptions were made regarding credit card fees? Administrative Costs for credit card fees are estimated at 2 percent of the respective nonconsensual towing rate. This would appear to mean that a 2 percent fee is applied to 100 percent of all tows or some higher percentage of a higher fee is applied to some other portion of tows.

bb) The fee to search Colorado databases is included at $2.20 per tow (Administration!B23). The model does not include towing carrier revenues from owners authorized by statute? *See e.g.*, §§ 42-4-1804 and 42-4-2103, C.R.S.?

cc) How do vehicles performing Medium duty tows differ from vehicles performing Light duty tows?

dd) Vehicles used for Light and Medium Duty tows are assumed to operate at 75 percent utilization (90 or 56 tows per month, respectively); vehicles used for Medium-Heavy Duty tows are assumed to operate at 45 percent utilization (or 60 tows per month); vehicles used for Heavy Duty tows are assumed to operate at 37.5 percent utilization (or 75 tows per month); and vehicles used for Rotator tows are assumed to operate at 33 percent utilization (or 10 tows per month). What assumptions were made regarding utilization percentages.

ee) Is the total modeled cost in each category (*e.g.*, Rotator>60Ton!H54) a reasonable hourly cost?

ff) Additional comment is sought regarding analysis of the Task Force study, or comment otherwise, identifying marginal costs of a tow lasting more than one hour and less than two hours (*i.e.*, without regard to billing increments addressed in the prior Recommended Decision).

gg) Several of the "per tow costs" in column H (rows 3-27) of Light! are calculated based on annual costs divided by 2080 hours per year. On the one hand, the model assumes the total cost of the item is recovered in 2080 hours, or 2080 tows assuming they last only one hour. On the other hand, the model also assumes that 3.5 trucks perform 90 tows each month, or 3780 tows per year. Can these assumptions be reconciled?

hh) Labor costs in the model are 35 percent of the costs of a non-consensual tow, as assumed in the Utah study (page 11 of the Utah Study), even though the non-consensual towing rate is higher in Colorado than in Utah ($160 vs $145). Did the Task Force review any information about whether towing companies tend to compensate tow operators in Colorado with commissions or hourly wages?

II. <u>ORDER</u>

A. It Is Ordered That:

1. The topics identified above are anticipated to be addressed during the continued hearing in this matter. Any person interested may provide additional comment.

2. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

____
Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director