

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21M-0102TO

IN THE MATTER OF THE EMERGENCY RATES AND EXPEDITED RULEMAKING TO
FIX THE RATES THAT RESULTED FROM PROCEEDING NO. 19R-0709TO.

**COMMISSION DECISION GRANTING
PETITION FOR RULEMAKING AND DENYING
REQUEST FOR EMERGENCY RULE**

Mailed Date: April 29, 2021

Adopted Date: April 28, 2021

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the request for a permanent rulemaking to consider revisions to Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6511 of the Rules of Practice and Procedure, contained in the Petition for Emergency Rates and Expedited Rulemaking filed on March 5, 2021, by Towing and Recovery Professionals of Colorado

(TRPC). Consistent with the discussion below, the Commission directs Commission Transportation Staff (Staff) to prepare a Notice of Proposed Rulemaking (NOPR) for consideration at a future Commissioners' Weekly Meeting.

2. Additionally, this Decision denies TRPC's request for an emergency rule to revise the tow rates established in Rule 4 CCR 723-6-6511 of the Rules Regulating Transportation by Motor Vehicle.

B. Background

3. On March 5, 2021, TRPC filed a petition requesting the Commission open a rulemaking to modify Rule 4 CCR 723-6-6511 of the Commission's Rules Regulating Transportation by Motor Vehicle. This rule establishes the rates and charges towing carriers may assess for their services including, among others, rates for "private property impound" tows authorized by the property owner, referred to as "PPI tows;" rates for tows and recovery operations requested by law enforcement, referred to as "law enforcement ordered tows;" and rates for storage of towed motor vehicles.

4. By Decision No. C21-0200-I, issued April 1, 2021, the Commission accepted the petition and established a 15-day notice and comment period, through April 16, 2021, for interested persons to submit comments on the petition.

C. Discussion

5. In the petition, TRPC requests the Commission adopt an across-the-board rate increase by applying the Consumer Price Index (CPI) adjustment to all tow rates, not just the rates for PPI tows. TRPC requests the Commission modify Rule 4 CCR 723-6-6511, adopted in recent rulemaking Proceeding No. 19R-0709TO, to allow for all tow rates to float with the CPI.

6. TRPC contends the language in Rule 4 CCR 723-6-6511, which increases rates only for PPI tows, does not accurately reflect the discussion in the Administrative Law Judge's written rulemaking orders. TRPC cites ¶ 136 of Decision No. R20-0688, issued October 1, 2021, in Proceeding No. 19R-0709TO, which states: "The proposal to tie rates to the CPI achieves these goals. Rule [4 CCR 723-6-6511(b)(II)] provides that the rates for tows shall be set to the CPI and annually adjusted for any changes. This rule is recommended for adoption." TRPC construes this discussion to indicate the rate increase should apply to all categories of tow rates. TRPC states there is no explanation in the rulemaking orders explaining why the adopted rules apply CPI increases only to PPI tows.

7. TRPC contends the record in rulemaking Proceeding No. 19R-0709TO supported an across-the-board rate increase. TRPC states the costs faced by the tow industry are not unique to PPI tows. TRPC states the price of vehicles, diesel, insurance, and employees, among others, are applicable to all tows and to yard operations. TRPC states the storage of towed motor vehicles requires land, insurance, and employees to be on call at all hours, among other costs. TRPC states all tow industry costs have increased since 2014, the year from which the data for current rates were gathered. TRPC states these increases were well documented in the rulemaking record. TRPC states the proposed across-the-board rate increase was not controversial and was supported by stakeholders including the Colorado State Patrol.

8. TRPC requests the Commission commence a rulemaking to modify Rule 4 CCR 723-6-6511. TRPC requests the Commission implement measures to expedite the rulemaking including finding informal stakeholder pre-rulemaking engagement is unnecessary since the Commission is already engaged with stakeholders in the prior rulemaking. TRPC suggests there is no need for multiple hearings, given the lengthy discussions in the prior rulemaking.

9. TRPC also requests the Commission find emergency rules are necessary to comply with Colorado law, specifically § 40-10.1-106(1), C.R.S. TRPC states this statute requires tow rates to be reasonable because the rules implementing the rates must be reasonable. TRPC asserts the current rates for storage and law enforcement ordered tows are neither just nor reasonable, and do not appear to be in concert with the Administrative Law Judge's written orders. TRPC states, as a matter of fundamental fairness to tow carriers that perform non-PPI tows, the Commission should issue an emergency rule modifying Rule 4 CCR 723-6-6511 so all tow carriers receive the appropriate rate increase.

10. Several interested persons timely filed comments supporting the requests in TRPC's petition.

11. TRPC filed comments stating the rates for law enforcement ordered tows and storage should be increased as a matter of logic and fairness. TRPC suggests it was an oversight that these rates were not increased in the prior rulemaking. TRPC cautions that current rates for law enforcement ordered tows deter carriers from performing these tows, which compromises public safety. TRPC states the current rates for law enforcement ordered tows and storage are based on outdated 2014 data that do not account for rising operating costs since that time.

12. On April 15, 2021, Connolly's Towing filed comments supporting the petition. They caution that adjusting rates for PPI tows, but not other tow rates, will negatively affect the tow industry and the State of Colorado. They caution, if law enforcement tow providers cannot cover their costs, the state will suffer in terms of public safety. They add that towing costs have increased over 100 percent since 2015, justifying an across-the-board adjustment.

13. On April 16, 2021, Wyatts Towing, Klaus Towing, Lone Star Towing, and Aaliyah's Towing and Recovery (collectively, Wyatts) filed comments supporting the petition.

Wyatts agrees with TRPC's assertion that the Administrative Law Judge conducting the rulemaking seemed to accept that all categories of rates should be adjusted, yet the final adopted rules did not make this change. Wyatts also agrees that increasing rates for law enforcement ordered tows is essential to public safety. Wyatts agrees the rates for storage and after-hours service also need to be adjusted to be compensatory for towing carriers' operating costs.

14. On April 16, 2021, the Colorado State Patrol filed comments supporting the request to apply the CPI adjustment to law enforcement ordered tows. Colorado State Patrol notes current rates have been in place for years. Colorado State Patrol explains, although it supports protecting consumers who do not have the option to shop around for their tow provider, Colorado State Patrol cannot continue to meet its mission of public safety without partnership with tow carriers. Colorado State Patrol cautions, if the rates for law enforcement ordered tows put carriers in a position to lose money when compared to their operating costs, the situation will not sustain itself. Colorado State Patrol supports reviewing the rates for law enforcement ordered tows and considering the higher cost of living in different areas of the state. Colorado State Patrol supports, at a minimum, applying a similar rate increase and future adjustments to correlate to the CPI, as was adopted for PPI tows.

D. Findings and Conclusions

15. We find TRPC makes a persuasive case that the Commission should consider in rulemaking whether to adopt an across-the-board CPI adjustment for other categories of tow rates in addition to the rates for PPI tows. We agree the written order could have provided a more thorough explanation for why the CPI adjustments in the final rules were limited to PPI tows. More compelling, we find significant the consensus concern expressed in the petition and supporting comments that the current rates for the remaining categories of tow rates, particularly

law enforcement ordered tows, may not reflect today's operating costs for towing carriers and could eventually deter tow carriers from providing law enforcement ordered tows. We therefore grant TRPC's request and will open a rulemaking to consider whether the CPI adjustment should be applied to other categories of tow rates in addition to the rates for PPI tows.

16. We direct Staff to prepare a NOPR to commence a narrow rulemaking to consider these revisions to Rule 4 CCR 723-6-6511. Staff will present that NOPR at a future Commissioners' Weekly Meeting, at which time we will open the rulemaking. We encourage TRPC, other members of the tow industry, Colorado State Patrol, and other interested persons to participate in the rulemaking. We will not incorporate the record from the prior rulemaking; however, participants can re-submit comments from that rulemaking by filing them into the new rulemaking proceeding, once it is opened.

17. As to an emergency rule modifying Rule 4 CCR 723-6-6511, we find this circumstance does not satisfy the high standard set forth in § 24-4-103(6), C.R.S., which allows the Commission to adopt temporary or emergency rules only where it finds such rules are imperatively necessary to preserve the public health, welfare, and safety, or to comply with a state or federal law. We find unpersuasive TRPC's reasoning that the existing tow rates are unlawful because TRPC alleges the rates are not reasonable, do not appear to be in concert with the written rulemaking decisions, and are not appropriate. TRPC's concerns are appropriate for consideration in a rulemaking proceeding, with the full stakeholder process afforded there and the rulemaking record on which to base the Commission's decision. We therefore find no emergency at this time that would justify adoption of an emergency rule. We recognize there is a concern that prohibitively low rates for law enforcement ordered tows could deter tow carriers

from performing requested tows, but we find no evidence that this is currently occurring so as to warrant the extraordinary adoption of an emergency rule.

II. ORDER

A. The Commission Orders That:

1. The request for a rulemaking to consider modifications to Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6511 of the Commission's Rules Regulating Transportation by Motor Vehicle, contained in the Petition for Emergency Rates and Expedited Rulemaking filed on March 5, 2021, by Towing and Recovery Professionals of Colorado (TRPC), is granted, consistent with the discussion above.

2. Commission Transportation Staff shall prepare a Notice of Proposed Rulemaking to consider modifications to Rule 4 CCR 723-6-6511 for consideration at a future Commissioners' Weekly Meeting, consistent with the discussion above.

3. TRPC's request for an emergency rule modifying Rule 4 CCR 723-6-6511 is denied.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 28, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners