

Decision No. R21-0164-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20G-0533TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SKYLINE TOWING AND RECOVERY, LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
VACATING AND RESETTING HEARING, SETTING
PREHEARING CONFERENCE, AMENDING
PROCEDURAL SCHEDULE, AND ADDRESSING
REPRESENTATION AND EXHIBITS**

Mailed Date: March 19, 2021

TABLE OF CONTENTS

I.	STATEMENT.....	2
A.	Procedural history.....	2
B.	Remote PHC.....	4
C.	Procedural Schedule	5
D.	Exhibits.....	7
E.	Representation of Skyline Towing.....	8
F.	Additional Advisements	8
G.	Service of this Decision.....	8
II.	ORDER.....	9
A.	It Is Ordered That:	9

I. STATEMENT**A. Procedural history**

1. On December 3, 2020, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 125946, which alleges that Skyline Towing and Recovery, LLC (Skyline Towing) violated Rules 6107, 6507(d)(I), and 6508(b)(I) of the Commission's Towing Rules¹ on February 24, 2020. CPAN No. 125946 states that the civil penalty assessed for the alleged violations is \$2,788.75, but that if Skyline Towing pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$1,394.38. 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 \$2,788.75.² The CPAN also states that the Commission may order Skyline Towing to cease and desist from violating statutes and Commission rules.³

2. The CPAN further alleges that the Commission served the CPAN by U.S. Certified Mail at 60 Blue Heron Dr., Thornton, CO 80241-4102 (Blue Heron Drive Address). The Commission also allegedly sent the CPAN by U.S. Certified Mail to 10268 W. 52nd Pl., Unit 102, Wheat Ridge, CO 80033-6746 (West 52nd Place Address), but there is no evidence that the U.S. Postal Service delivered the CPAN at that address. These two addresses are different from the Respondent's addresses on file with the Commission, which are 2797 Wewatta Way, Apt. 1020,

¹ 4 *Code of Colorado Regulations* (CCR) 723-6.

² CPAN No. 125946 at 3.

³ *Id.*

Denver, CO 80216 (Wewatta Way Address) and 5305 Adams St., Yard #2, Denver, CO 80216 (Adams Street Address).

3. Skyline Towing has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

4. On December 23, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

5. On December 23, 2020, Trial Staff of the Commission (Staff) filed their notice of intervention and entry of appearance.

6. On January 29, 2021, the ALJ issued Decision No. R21-0052-I that adopted a procedural schedule and scheduled a remote prehearing conference (PHC) and remote evidentiary hearing for March 15, 2021 and March 19, 2021, respectively. Decision No. R21-0052-I required each party to file and serve: (a) its witness and exhibit list; and (b) copies of exhibits. The deadlines to do so were February 10, 2021 for Staff and March 3, 2021 for Skyline Towing.

7. On February 10, 2021, Staff filed and served its witness and exhibit list and copies of exhibits.

8. On February 19, 2021, the U.S. Postal Service returned the copy of Decision No. R21-0052-I that had been served by U.S. Mail at the Wewatta Way Address, which is the primary address supplied by Skyline Towing. Commission Staff resent Decision No. R21-0052-I by U.S. Mail to the Adams Street Address, which is an alternative address supplied by Skyline Towing.

9. To date, Skyline Towing has not filed its witness and exhibit list and copies of exhibits.

10. On March 15, 2021, the ALJ held the remote prehearing conference scheduled in Decision No. R21-0052-I. Skyline Towing failed to appear. The ALJ noted that the CPAN had been served at an address that is not on file with the Commission and at which Decision No. R21-0052-I had not been served.⁴

B. Remote PHC

11. At the remote PHC, the ALJ noted that Staff alleges that it served the CPAN by U.S. Certified Mail at the Blue Heron Drive Address, which is not on file with the Commission and thus is not the address to which the Commission sent Decision No. R21-0052-I. Instead, the Commission initially sent Decision No. R21-0052-I by U.S. Mail to the Wewatta Way Address. When the USPS returned the Decision as undeliverable at that address, the Commission resent it to the West 52nd Place Address.

12. Given that the CPAN and Decision No. R21-0052-I have been sent to different addresses, the ALJ decided out of an abundance of caution to: (a) vacate the remote hearing scheduled for March 19, 2021 and reset it to **May 25, 2021 at 9:00 a.m.**; (b) schedule a remote prehearing conference for **May 19, 2021 at 9:00 a.m.**; and (c) amend the procedural schedule, as specified below.

13. Due to the COVID-19 pandemic, the prehearing conference and hearing will be held remotely at which the participants will appear from remote locations, as explained in Attachment A. The ALJ finds that holding a remote prehearing conference and remote hearing is consistent with current public health advisories to prevent the spread of COVID-19. The ALJ concludes that, in our current circumstances, it is in the parties' and the public interest to hold the

⁴ The ALJ also noted that, under Commission Rules, Skyline Towing is required to provide contact information to the Commission and to notify the Commission in writing of any change to that contact information – a requirement that Skyline Towing appears not to have fulfilled. *See* Commission Rule 6005(b), 4 CCR 723-6.

prehearing conference and hearing in this proceeding remotely. The parties, witnesses, attorneys, and members of the public must not appear in-person for the prehearing conference or the hearing.

14. The ALJ or a member of the Commission's staff will send an email to the parties and/or their counsel containing the URL and log-in information to participate in the remote prehearing conference and the remote hearing by computer. Any party, counsel, or witness who wishes to participate in the remote hearing must use a computer that is connected to the internet and has a microphone, speaker, and camera/webcam. Under limited circumstances, a party, counsel, or witness will be permitted to participate in the remote prehearing conference or the remote hearing by telephone or by smart phone. Attachment A provides more extensive instructions for participating in the remote hearing via the Zoom platform and the parties are encouraged to review Attachment A to ensure they are able to access and use the Zoom platform.

C. Procedural Schedule

15. To facilitate the fair, orderly, and efficient litigation of this proceeding, the ALJ finds and concludes that a procedural schedule should be adopted, so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at the hearing. Therefore, this Decision will order the parties to file, and to serve on each other, a list of witnesses, a summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

16. On or before **April 9, 2021**, Staff will be ordered to file and serve on Skyline Towing: (a) a list that identifies the witnesses Staff intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Staff will present at the hearing.

17. On or before **May 7, 2021**, Skyline Towing will be ordered to file and serve on Staff: (a) a list that identifies the witnesses Skyline Towing intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Skyline Towing will present at the hearing.

18. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party or parties to the proceeding. Service must be accomplished pursuant to Rule 1205 of the Commission's Rules of Practice and Procedure.⁵ The Commission's Rules (including Rule 1205) are available on the Commission's website and in hard copy from the Commission.

19. All parties must establish through a certificate of service that they have served a filed document on all other parties in the proceeding. A certificate of service is a statement indicating how and when a document was served on the other party (*e.g.*, the filing was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).⁶

20. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3). Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties shall work together to ensure that there are no gaps or overlaps in the numbering of the exhibits.

21. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

⁵ 4 CCR 723-1.

⁶ See Rule 1205(e), 4 CCR 723-1.

22. The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

D. Exhibits

23. The prehearing filing and service of witness and exhibits lists, and exhibits addressed above is designed to eliminate unfair surprise at the hearing. The presentation of those disclosed exhibits at a remote hearing is a different issue and will be addressed in detail at the remote prehearing conference. The Public Utilities Commission Administrative Hearings Section utilizes Box.com to manage exhibits in a remote hearing. Attachment B to this Decision provides details concerning the preparation and presentation of exhibits at the hearing through Box.com.

24. In preparation for the remote prehearing conference, the parties must review Attachment B and ensure they can access and use Box.com. Toward that end, each party has already received an email containing an invitation to sign up for a free Box.com account. Once signed-up, each party will be invited to share a folder with (only) the staff in the Administrative Hearings Section, Commission advisors, and potentially Commissioners and Commission counsel. The party may share access to its Box.com account with others as they choose.

25. In advance of the remote prehearing conference, the parties must sign-up for Box.com via the email described above and upload one exhibit to their respective folders in Box.com. Any questions that arise from the process of signing-up for, and uploading an exhibit to, Box.com will be addressed at the remote prehearing conference.

E. Representation of Skyline Towing

26. Skyline Towing is a corporation, and thus must be represented by an attorney in this proceeding unless it satisfies the criteria of the Commission Rule of Practice and Procedure 1201(b)(II).⁷ Under that Rule, a non-attorney can represent Skyline Towing if Skyline Towing provides evidence in a sworn statement: (a) proving that Skyline Towing is a closely-held entity, which means it has no more than three owners; (b) identifying the individual who will represent Skyline Towing in this matter; (c) proving that the identified individual is an officer of Skyline Towing; and (d) proving that the identified individual has the authority to represent Skyline Towing in this matter.⁸ If Skyline Towing does not provide the evidence summarized above, then Commission Rule 1201(b)(II) requires Skyline Towing to be represented by an attorney in this proceeding.

F. Additional Advisements

27. The Parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

G. Service of this Decision

28. The ALJ directs Commission Staff to serve this Decision on Respondent at the Blue Heron Drive Address, the West 52nd Place Address, the Wewatta Way Address, and the Adams Street Address, all of which are specified above in paragraph 2. In addition, Staff is directed to send this Decision to the email discussed at the prehearing conference.

⁷ 4 CCR 723-1.

⁸ See Rule 1201(b)(II), 4 CCR 723-1. See also § 13-1-127(2.3(c)), C.R.S. (stating that “[a] person in whom management of a limited liability company is vested or reserved” “shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person’s holding the specified office or status[.]”).

II. ORDER

A. It Is Ordered That:

1. The remote evidentiary hearing in this proceeding currently scheduled for March 19, 2021 at 9:00 a.m. is vacated and reset to:

DATE: May 25, 2021

TIME: 9:00 a.m.

FOR WEBCASTS: Hearing Room A

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge

2. A remote prehearing conference is scheduled as follows:

DATE: May 19, 2021

TIME: 9:00 a.m.

FOR WEBCASTS: Hearing Room A

METHOD: Join by video conference at the link to be provided by the email from the Administrative Law Judge

3. The parties, witnesses, attorneys, and members of the public must not appear in-person for the remote hearing or the remote prehearing conference.

4. On or before **April 9, 2021**, Trial Staff of the Commission (Staff) will be ordered to file and serve on Skyline Towing and Recovery, LLC (Skyline Towing): (a) a list that identifies the witnesses Staff intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Staff will present at the hearing.

5. On or before **May 7, 2021**, Skyline Towing will be ordered to file and serve on Staff: (a) a list that identifies the witnesses Skyline Towing intends to call at the hearing, the last

known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits Skyline Towing will present at the hearing.

6. This Decision is effective immediately.

(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 "Doug Dean".

Doug Dean,
Director