

Decision No. R22-0585-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22F-0381TO

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KEVIN MCCLUSKY,

COMPLAINANT,

V.

TOWING DONE RIGHT LLC,

RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
VACATING AND RESCHEDULING HEARING, AND  
REQUIRING CONFERRAL AND FILING**

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Mailed Date: September 29, 2022

**I. STATEMENT, SUMMARY, AND BACKGROUND**

**A. Summary**

1. This Decision vacates the November 15, 2022 evidentiary hearing scheduled in this matter; reschedules the evidentiary hearing for December 6, 2022; provides the parties information about free and confidential mediation services the Commission offers; requires the parties to confer on whether they wish to mediate, and the manner in which the evidentiary hearing will be held; and requires Towing Done Right LLC (Towing Done Right) to make a filing indicating the results of the parties' conferral on or by October 7, 2022.

**B. Procedural History**

2. On September 1, 2022, Complainant Kevin McClusky filed a Complaint against Respondent Towing Done Right with the Colorado Public Utilities Commission (Commission). Mr. McClusky alleges that Towing Done Right wrongfully towed his vehicle, and demands payment for inaccurate charges.<sup>1</sup>

3. On September 6, 2022, the Commission issued an Order to Satisfy or Answer which was served on Towing Done Right along with a copy of the Complaint. The Order to Satisfy or Answer requires Towing Done Right to either satisfy the matters in the Complaint or answer the Complaint within writing within 20 days of the date the Order is served.<sup>2</sup> At the same time, the Commission issued an Order Setting Hearing and Notice of Hearing (Order and Notice) for November 15, 2022 at 9:00 a.m. before an Administrative Law Judge (ALJ).<sup>3</sup> The Order and Notice states that the ALJ will establish the place and manner in which the hearing will be held by separate order, noting that the hearing may be held in person, fully remotely, or hybrid.<sup>4</sup>

4. On September 7, 2022, ALJ G. Harris Adams issued Decision No. R22-0519-I prohibiting Towing Done Right from attempting to collect amounts claimed to be owed while this Proceeding is pending.<sup>5</sup>

5. Also on September 7, 2022, Towing Done Right made a filing stating that it wishes to offer to release the vehicle to its owner for \$1,000 to ensure a quick resolution to the

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<sup>1</sup> Complaint at 1-2.

<sup>2</sup> Order to Satisfy or Answer at 1.

<sup>3</sup> Order and Notice at 1.

<sup>4</sup> *Id.*

<sup>5</sup> Decision No. R22-0519-I at 2 (mailed September 7, 2022).

matter for all parties.<sup>6</sup> At the same time, Towing Done Right commented on a footnote in Decision No. R22-0519-I, which referenced Xcel Energy Corporation as the Respondent.<sup>7</sup> That same day, ALJ G. Harris Adams issued an errata notice for Decision No. R22-0519-I, noting that the reference to Xcel Energy Corporation as the Respondent was an error, and deleting that reference from Decision No. R22-0519-I.<sup>8</sup>

6. On September 14, 2022, the Commission referred this Proceeding to an ALJ for disposition by minute entry.

7. On September 15, 2022, counsel entered an appearance on behalf of Towing Done Right.

8. On September 19, 2022, Towing Done Right filed its Response to Complaint (Response). The Response denies the Complaint's allegations.<sup>9</sup> The Response also states that Towing Done Right "filed responses to each complaint sent to the PUC previously and incorporates both those answers and attachments."<sup>10</sup>

## II. FINDINGS AND CONCLUSIONS

9. Towing Done Right's Response is timely, having been filed less than 20 days after it was served with the Order to Satisfy or Answer and the Complaint.<sup>11</sup>

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<sup>6</sup> Towing Done Right's 9/7/22 filing.

<sup>7</sup> *Id.*

<sup>8</sup> Decision No. R22-0519-I-E (mailed September 7, 2022).

<sup>9</sup> Response at 1.

<sup>10</sup> *Id.*

<sup>11</sup> Towing Done Right's attempt (in its Response) to incorporate other documents that it may have submitted to the Commission is not effective. Should it wish for the ALJ to consider any evidence or pleading, Towing Done Right must file it in this Proceeding.

10. Given that Towing Done Right has answered the Complaint in a timely manner, unless the parties resolve their dispute, this matter will proceed to an evidentiary hearing.

11. However, the record in this Proceeding does not establish that the parties have been given information concerning the Commission's mediation services. And, based on Towing Done Right's September 7, 2022 filing indicating a desire to resolve this dispute quickly, the ALJ finds that the parties' interests will be served by allowing them the opportunity to mediate or consider mediating their dispute. In addition, the Commission generally encourages settlement of contested proceedings.<sup>12</sup> For these reasons, this Decision provides the parties information on mediation, requires the parties to confer on whether they wish to mediate, and requires Towing Done Right to submit a filing by October 7, 2022 indicating the results of their conferral.

**A. Information on Mediating Disputes with the Commission**

12. The Commission offers free mediation to help parties resolve disputes before the Commission. Mediation is a process whereby a neutral third party assists the parties to reach a mutually acceptable resolution to their dispute. The mediator does not have authority to make a binding decision and cannot provide legal advice. Should they chose to mediate, during the mediation process, Mr. McClusky and Towing Done Right will be encouraged to work together to formulate their own agreement to resolve their dispute.

13. Advantages of mediation include that it: is informal; can be held relatively quickly after the parties agree to mediate; can result in time and resource savings if the parties resolve their dispute; and creates an opportunity for a wider range of solutions and possible

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<sup>12</sup> Rule 1408 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

options to resolve the parties' conflict than available resolutions should the matter proceed to a hearing.

14. Commission mediations are voluntary. Both parties must agree to mediate.

15. Mediation is not open to the public and the content of all mediation sessions is confidential. The information disclosed during the mediation may not be used as evidence in this Proceeding or any other proceeding; may not be disclosed beyond those participating in the mediation; and the results or content of the mediation are not precedent setting. Likewise, views or suggestions made in mediation cannot be introduced as evidence during any formal proceedings and there will not be any recorded or stenographic record of the mediation.

16. The mediator will be a Commission ALJ who is not assigned to this Proceeding; Commission ALJs are knowledgeable about the type of issues raised in complaints such as the one here and are trained in mediation. The mediator will not have any financial or personal interest in the result of the mediation. If *both parties agree* to mediate, Commission staff will contact the parties to schedule the mediation at a time, location, or manner acceptable to both parties. This may include holding the mediation via Zoom or conference call. At or before the mediation session, each party will be required to sign a "Mediation Conditions Agreement." At the mediator's discretion, the parties may be asked to provide all necessary information for the mediator to understand the issues.

17. During the mediation, the mediator may conduct joint and separate meetings with the parties, but the parties should avoid drawing conclusions based on the time the mediator spends with each party. The mediator may be trying to explain each parties' position to the other, or may be helping each party evaluate their position in a different light. The mediator will work

with the parties to assist them in creating their own settlement agreement to resolve the dispute, but a settlement agreement cannot be forced or required. The mediator does not have authority to impose a settlement agreement. The mediator may end the mediation when, in his or her judgment, further efforts will not resolve the dispute.

18. If the parties reach a settlement agreement during mediation, the agreement will be reduced to writing and signed by all parties. If the agreement is violated in the future, the parties will have to refer the issue to the appropriate court. The settlement agreement will be confidential and should not be filed in this Proceeding.

19. If the parties agree to mediate, the parties must confer with each other on dates, times, and the manner in which they wish to mediate (in person at the Commission's office, via Zoom, or via telephone conference); this information must be included in the October 7, 2022 filing that this Decision requires (as detailed in the ordering paragraphs below).

### **B. Evidentiary Hearing**

20. To allow the parties the opportunity to mediate their dispute, the ALJ will vacate the evidentiary hearing scheduled for November 15, 2022 and reschedule it for December 6, 2022. This new hearing date will allow the parties sufficient time to mediate their dispute, should they wish to do so, and to prepare for an evidentiary hearing, should they be unable to resolve their dispute.

21. As to the manner or location in which the hearing will be held, the ALJ will defer to the parties' preference. The parties may choose from the following options: fully in person, with all parties and witnesses appearing in person at a Commission hearing room located in downtown Denver; hybrid, with parties and witnesses appearing in person and remotely by

Zoom and the ALJ appearing in person; or fully remote, with all parties, witnesses, and the ALJ appearing remotely via Zoom. As part of the conferral required by this Decision, the parties must confer as to the manner in which the hearing should be held.

22. In Towing Done Right's October 7, 2022 filing, it must indicate the parties' preference as to manner in which the hearing should be held, that is, fully in person, hybrid, or fully remote. If Towing Done Right's filing does not include this information, the ALJ will decide, without further input from the parties, the manner in which the hearing will be held, and will not modify this unless a party makes a filing showing good cause.

23. During the hearing, the parties may present relevant evidence or arguments they wish to be considered. This includes documents and witness testimony. As the Complainant, Mr. McClusky has the burden to prove by a preponderance of the evidence that the relief sought in his Complaint should be granted.<sup>13</sup> The preponderance standard requires the fact finder (here, the ALJ) to determine whether the existence of a contested fact is more probable than its non-existence.<sup>14</sup> A party has met this burden of proof when the evidence, on the whole, and however slightly, tips in favor of that party.<sup>15</sup> But, the evidence must be substantial, defined as such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.<sup>16</sup>

24. By separate order, the ALJ will also establish procedures relating to the evidentiary hearing (*e.g.*, marking exhibits for identification).

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<sup>13</sup> §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500, 4 CCR 723-1.

<sup>14</sup> *Swain v. Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

<sup>15</sup> *Schocke v. Department of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

<sup>16</sup> *See City of Boulder v. Colorado Public Utilities Comm'n*, 996 P.3d 1270, 1278 (Colo. 2000).

25. *The parties are advised and on notice that they are expected to review and follow the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1. An electronic copy of those rules may be found on the Commission's website at: <https://puc.colorado.gov/pucrulespractice>. The parties may also wish to review the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, available at: <https://puc.colorado.gov/transportation-rules>.*

### **III. ORDER**

#### **A. It Is Ordered That:**

1. The hearing scheduled for November 15, 2022 at 9:00 a.m. is vacated.
2. An evidentiary hearing on the Complaint in this Proceeding is scheduled as follows:

DATE: December 6, 2022

TIME: 9:00 A.M.

PLACE: To be established by separate order.

3. Consistent with the above discussion, Mr. McClusky and Towing Done Right, LLC (Towing Done Right) (collectively, the parties) are ordered to confer on whether they wish to voluntarily participate in mediation, and the manner in which they prefer the evidentiary hearing to be held (fully in person, fully remote, or hybrid).

4. On or by October 7, 2022, Towing Done Right must make a filing reporting the results of the parties' conferral. If the parties wish to mediate, this filing must include information on the parties' preferred mediation dates and the manner in which the mediation should be held (in person or remote), and the telephone numbers and email addresses at which

staff may contact the parties to schedule a mediation. As discussed above, the October 7, 2022 filing must also include a statement indicating the parties' preference on the manner in which the hearing should be held (fully in person, fully remote, or hybrid).

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director