

Decision No. R20-0188-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0485TR

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ADDRESSING PUBLIC COMMENT
HEARING AND MOTION TO CONTINUE HEARING**

Mailed Date: March 24, 2020

I. STATEMENT

A. Background

1. On September 12, 2019, the Public Utilities Commission (Commission) issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding.¹ In the NOPR, the Commission proposed to adopt rules that permanently implement the requirement in Senate Bill 19-236 for the Commission to regulate Vehicle Booting Companies. The purpose of Rules 6806 through 6819 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is to preserve the health, safety, welfare, and property of the public. As stated in the NOPR, the Commission made the proposed rules provided with the NOPR in legislative (*i.e.*, ~~strikeout/~~ underline) format and in final format, available to the public through the Commission's Electronic Filings system. Finally, the Commission established October 11, 2019 as the deadline for written comments filed by members of the public, scheduled a hearing for October 28, 2019, and referred this proceeding to

¹ See Decision No. C19-0748 issued in Proceeding No. 19R-0485TR on September 12, 2019.

an administrative law judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. The following members of the public filed comments before the October 11, 2019 deadline established in the NOPR: Owner-Operator Independent Drivers Association, Inc., Wyatt's Towing, Towing Done Right, LLC (Towing Done Right), Colorado Booting LLC (Colorado Booting), Colorado Security Services, doing business as Colorado Parking Services, and Dark Sky LLC (Dark Sky).

3. The ALJ held the public comment hearing on October 28, 2018 starting at 9:00 a.m. On that day, state government offices in the Denver Metro Area, including the Commission, delayed their opening until 10:00 a.m. due to inclement weather. As a result, the ALJ convened the hearing at 9:00 a.m., but then took a recess until 10:00 a.m. At that time, representatives of Towing Done Right, Colorado Booting, Dark Sky, and Wyatt's Towing attended the hearing. No other person or entity presented written or oral comments at the hearing.

4. On December 3, 2019, the ALJ issued Recommended Decision No. R19-0961 and attached the rules in redline legislative format and in final format.

5. Colorado Booting and Towing Done Right filed exceptions to Recommended Decision No. R19-0961. Towing Done Right attached seven exhibits to its exceptions. According to the Commission, “[b]oth the exceptions and attachments offer some information that is new to this proceeding.”²

² Decision No. C20-0083 issued in Proceeding No. 19R-0485TR on February 7, 2020 at 2 (¶ 3).

6. On February 7, 2020, the Commission issued Decision No. C19-0083 that granted the exceptions and remanded the proceeding “so that the ALJ can consider the information and arguments presented in the exceptions.”³ Citing the inclement weather on the day of the public comment hearing held on October 28, 2019, Decision No. C19-0083 “direct[ed] the ALJ to hold an additional public comment hearing to discuss the issues and information presented in these exceptions.”⁴

7. On February 13, 2020, in Decision No. R20-0098-I, the ALJ: (a) established a deadline of March 16, 2020 for additional written comments on the proposed rules; and (b) scheduled an additional hearing to take public comments regarding the proposed rules for April 2, 2020 at 9:00 a.m. Notice of the April 2, 2020 public comment hearing was published in the February 25, 2020 issue of *The Colorado Register* pursuant to the Administrative Procedure Act.⁵

8. On March 13, 2020, Parking Done Right LLC and Towing Done Right LLC (Parking Done Right) filed a Motion to Continue the Hearing (Motion) because counsel for both companies is scheduled to appear at a hearing in Adams County District Court on April 2, 2020 “on a case that cannot in all likelihood be continued.”⁶ Counsel for Parking Done Right further states that no other counsel for Parking Done Right is available to appear at the April 2, 2020 hearing in this proceeding.⁷ As a result, counsel for Parking Done Right requests in the Motion that the April 2, 2020 public comment hearing be continued to a future date.

³ *Id.* at 2 (¶ 5).

⁴ *Id.* at 2-3 (¶ 5).

⁵ § 24-4-103, C.R.S.

⁶ Motion at 1 (¶ 2).

⁷ *Id.* at 1 (¶¶ 2-3).

9. By minute entry during the Commission's weekly meeting held on March 18, 2020, the Commission referred the Motion to the ALJ.

B. Analysis

10. As noted above, notice of the April 2, 2020 public comment hearing was published in the February 25, 2020 issue of *The Colorado Register* pursuant to the Administrative Procedure Act.⁸

11. Subsequently, on March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over the novel coronavirus pandemic (COVID-19). Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has announced that, beginning on March 18, 2020, the Commission's Weekly Meetings will be conducted remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast.

12. The responses of State and local governments in Colorado for dealing with the impacts of the expanding COVID-19 crisis on our jobs, our lives, and our society are being continually updated as we learn more about the COVID-19 crisis and how to appropriately react to it. For example, public access to the building containing the Commission's offices and hearing rooms was recently restricted and it is unclear when the restriction will be lifted. For this reason, at this point, continuances of, or other actions regarding administrative hearings and prehearing conferences are being addressed on a case-by-case basis.

⁸ § 24-4-103, C.R.S.

13. Under these circumstances, the ALJ will convene the April 2, 2020 hearing for the sole purpose of continuing the hearing to a later date. Any interested persons (including corporate entities) desiring to provide further comment in this proceeding should **not** attend the hearing scheduled for April 2, 2020. Instead, those interested persons may provide comments at a future continued public comment hearing that will be scheduled in an interim decision that will issue on or after April 2, 2020. That interim decision will also specify the mode by which the continued public comment hearing will be held.⁹ As the Commission has stated on its website, “[f]or proceedings pending before an administrative law judge, please carefully read decisions issued and file a motion to request any additional modifications or needed accommodation.”¹⁰

14. The pending Motion to Continue will be addressed in the interim decision that will issue on or after the April 2, 2020 public comment hearing.

15. As noted previously, the Commission prefers written comments over oral comments. As a result, interested persons are encouraged to submit written comments through the Commission’s Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding. Both oral and written comments will be given the same weight in determining what changes, if any, should be made to the proposed rules. A new deadline to file written comments shall be established in the future interim decision that will also schedule the continued public comment hearing.

16. The steps described above are consistent with public health advisories to avoid group gatherings at this time.

⁹ For example, like the Commission's weekly meetings, the continued public comment hearing may be held remotely.

¹⁰ https://puc.colorado.gov/puc_covid19.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the April 2, 2020 public comment hearing will convene for the sole purpose of continuing the hearing to a later date. Interested persons who desire to provide comments at a public comment hearing should **not** attend the April 2, 2020 public comment hearing. Instead, those interested persons will be given the opportunity to provide comments at the future continued public comment hearing that will be scheduled as noted above.

2. The Motion to Continue Hearing filed by Parking Done Right LLC and Towing Done Right LLC on March 13, 2020 will be addressed by a separate decision on or after April 2, 2020, as described above.

3. The Commission prefers written comments over oral comments. As a result, the Commission encourages interested persons to submit comments through the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding.

4. This Decision shall be 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