

Decision No. R20-0559-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20G-0098TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

BIG DADDY TOWING AND RECOVERY LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
CONVERTING IN-PERSON HEARING
TO REMOTE VIDEO-CONFERENCE HEARING
AND ESTABLISHING PROCEDURES**

Mailed Date: July 31, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Procedural History.

1. Only the procedural history necessary to understand this Decision is included. On March 6, 2020, the Colorado Public Utilities Commission Trial Staff (Trial Staff) issued Big Daddy Towing and Recovery LLC (Big Daddy) Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 123824 (CPAN) alleging four counts of violating Rule 6508, two counts of violating Rule 6509, and one count of violating Rule 6511 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

2. On April 10, 2020, the Administrative Law Judge (ALJ) assigned to this matter scheduled an in-person hearing to take place at the Commission's Office on August 31, 2020. Decision No. R20-0237-I. The ALJ set the hearing for August to allow enough time to pass to increase the likelihood that public health orders and related executive orders related to the COVID-19 pandemic may not be in place, and that in-person gatherings may not present public health risks. *Id.* at ¶ 6. The ALJ noted that it is uncertain whether conditions will improve enough to allow for an in-person hearing as planned, and that depending on how conditions develop, the ALJ may issue orders at a later date as necessary to manage the hearing and the forward movement of this proceeding.

B. Impact of COVID-19 on Hearing.

3. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over COVID-19, the novel coronavirus pandemic. 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 been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted.

4. Since the hearing was scheduled on April 10, 2020, conditions relating to COVID-19 have not progressed to allow for in-person hearings at the Commission's office. As such, the hearing scheduled for August 31, 2020, at the Commission's office cannot be held in-person. Given that in-person hearings at the Commission's offices are currently not authorized, the ALJ finds that

at this time, it is in the parties' and public interests to convert the August 31, 2020 in-person hearing to a remote video-conference hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19, and allows this proceeding to move forward.

C. Procedures for Video-Conference Hearing.

5. This Decision and Attachment A explains the procedures, requirements, and instructions to participate in the video-conference hearing using GoToMeeting, and are intended to ensure that the video-conference hearing proceeds efficiently without technical problems. As such, the parties must carefully review and follow all requirements in this Decision and Attachment A.

6. The procedures developed for the video-conference evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, when party presents an exhibit, it will be displayed on the video-conference screen live so that parties and witnesses may view them together while the exhibits are being testified to and offered into evidence.

7. The video-conference hearing will be held using the web-hosted video conferencing service, GoToMeeting. The ALJ strongly encourages the parties to test their ability to use GoToMeeting *before* the remote video-conference hearing.

8. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the GoToMeeting link and access code to participate in the hearing will be provided to the parties by email before the hearing. For the same reason, the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

9. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and

other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case. Given that the hearing is held by video-conference, exhibits must be presented electronically. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented at remote hearings.¹ As such, it is essential that the parties ensure they can access and use box.com *before* the hearing. The ALJ is entering orders to facilitate using box.com to manage exhibits during the hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload documents and exhibits for use during the hearing, and (b) download documents and exhibits once they are presented during the hearing.

D. Informal Video-Conference Practice Session.

10. The ALJ will hold an informal practice video-conference session to give the parties an additional opportunity to practice using GoToMeeting and box.com before the hearing. The parties will receive information and a link to participate in the informal practice session by email.

E. Advisements.

11. Given that the parties will be provided information and links discussed above via email, it is vitally important for the parties ensure to they have provided the Commission their correct email address. *See* Rule 6006(b), 4 CCR 723-6; *see also*, Rule 1205(a), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure.²

12. ***Big Daddy is on notice*** that the Commission will provide the information referenced in this Decision to its designated agent using the information on file with the

¹ Box.com is a web-based document sharing service. When exhibits will be first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

² Rule 6006(b), 4 CCR 723-6, already requires Big Daddy to notify the Commission of changes to its email address within two days of the effective date of the changes.

Commission, which is: Joshua Moore, bigdaddystowingandrecoveryllc@gmail.com. If this information is outdated or incorrect, Big Daddy must notify the Commission of the correct information immediately. *See* Rule 6006(b), 4 CCR 723-6. Big Daddy may do so by making a filing in this proceeding with the updated information. If Big Daddy fails to do so, it assumes the risk that it will not receive information necessary for it to appear and participate at the video-conference hearing.

13. ***The parties are on notice*** that failing to appear at the hearing may result in a decision adverse to their interests, including granting the relief requested in the CPAN (if Big Daddy fails to appear), and dismissing the CPAN (if Trial Staff fails to appear).

14. ***Big Daddy is on notice*** that because it is a limited liability company, Commission Rules generally require that Big Daddy be represented by an attorney, and that if it wishes to be represented by a non-attorney, it must be prepared to establish that it is entitled to do so by the time of the hearing in this matter. *See* Rule 1201, 4 CCR 723-1, Rules of Practice and Procedure. Big Daddy may be represented by a non-attorney if it establishes: (a) that it has no more than three owners; (b) the amount at issue in the proceeding is less than \$15,000; and (c) that the person designated to represent Big Daddy has authority to do so. § 13-1-127, C.R.S., and Rule 1201(b), 4 CCR 723-1.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the in-person hearing on the merits of the Civil Penalty Assessment Notice in this proceeding scheduled for August 31, 2020, at 9:00 a.m., is converted to a remote video-conference hearing, which the parties and witnesses may join using the GoToMeeting link to be provided to the parties by email.

2. The parties and witnesses may not distribute the GoToMeeting link and access code to anyone not participating in the hearing. Unless otherwise ordered, the parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations, consistent with the requirements of this Decision.

3. All participants in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated herein.

4. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties are responsible for providing their witnesses with the link to join the GoToMeeting hearing. The parties must ensure that they and their respective witnesses are ready and able to participate in the evidentiary hearing by video-conference using GoToMeeting.

5. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by video-conference, all evidence must be presented electronically. All parties are responsible for ensuring they and their respective witnesses have access to all exhibits via a box.com link the Commission will provide, and are able to download and view documents from box.com *during the hearing*. At minimum, this requires parties and witnesses to have internet access during the hearing.

6. **Exhibit Requirements.** Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block *before* uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page one, regardless of content *before* uploading the

exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

7. **Exhibit Number Assignments.** As stated in Decision No. R20-0237-I, Trial Staff is assigned Hearing Exhibit numbers 1 through 99, and Big Daddy Towing & Recovery LLC is assigned Hearing Exhibit numbers 100 through 199. For example, Trial Staff should mark its first hearing exhibit as "Hearing Exhibit 1" and Big Daddy should mark for identification its first hearing exhibit as "Hearing Exhibit 100."

8. **Informal Video-Conference Practice Session.** The ALJ will hold an informal Go-To-Meeting practice session on August 25, 2020 at 2:00 p.m.; the parties will receive a link to join the practice session by email.

9. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director