

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0709TO

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
TOWING CARRIERS, 4 CODE OF COLORADO REGULATIONS 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING IN PART AND DENYING
IN PART TRPC'S MOTION AND CLARIFYING
RECOMMENDED DECISION NO. R20-0688**

Mailed Date: November 6, 2020

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I. STATEMENT

1. On December 13, 2019, the Public Utilities Commission (Commission or PUC) issued the Notice of Proposed Rulemaking (NOPR) to amend Rules 6500 through 6514 of the

Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6 (Towing Carrier Rules). Decision No. C19-0994. The NOPR commenced this proceeding. Decision No. C19-0994 scheduled a hearing for February 24, 2020. The Commission referred the instant rulemaking proceeding to an Administrative Law Judge (ALJ).

2. Between January 17, 2020 and February 16, 2020, the Public Utilities Commission received 16 different initial comments in this Proceeding from various stakeholders to include tow companies, private property managers, and owners and attorneys.

3. The ALJ convened the hearing on February 24, 2020, and received oral comments from representatives of the towing industry, property managers, and Staff of the PUC.

4. Pursuant to § 24-4-103(4)(d), C.R.S., the agency conducting the rulemaking proceeding shall adopt the rules within "one hundred eighty days after the last public hearing on the proposed rule[s]." In the case of this rulemaking that deadline is August 24, 2020.

5. By Decision No. R20-0503-I (mailed July 13, 2020), the ALJ determined that holding an additional public rulemaking hearing is necessary to gather additional information from participants and to help clarify certain issues, so that the ALJ may fully evaluate and consider the arguments and revised rules proposed by the participants. The ALJ scheduled the additional hearing for August 17, 2020. Consistent with emergency declarations and public health advisories to prevent the spread of the novel coronavirus, COVID-19, the ALJ found that it is in the best interests of the parties and Commission personnel to hold the hearing remotely by video conference.

6. Decision No. R20-0503-I also established August 7, 2020, as the deadline to provide additional written comments in this matter.

7. On August 17, 2020, the ALJ convened the hearing remotely by video conference and received oral comments from those in attendance.

8. On October 1, 2020, the ALJ issued Recommended Decision No. R20-0688 adopting the amended Towing Carrier Rules (Recommended Decision).

9. On October 19, 2020, Towing and Recovery Professionals of Colorado (TRPC) filed its Motion for Clarification and Motion to Extend Exceptions Deadline (Motion). Specifically, TRPC requests: (a) clarification of certain aspects of the Recommended Decision; and (b) extension of the deadline to file exceptions to the Recommended Decision so that interested rulemaking participants can file exceptions reflective of the clarifications.

10. On October 21, 2020, by Decision No. C20-0744-I, the Commission construed TRPC's Motion as timely-filed exceptions to the Recommended Decision and remanded this proceeding to the ALJ for further disposition consistent with the discussion in Decision No. C20-0744-I.

II. TRPC'S MOTION

A. Motion for Clarification

1. Rule 6501(p)

11. In its Motion, TRPC states the phrase "in writing" should be removed from the definition of "property owner" in Rule 6501(p)(II), consistent with paragraph 27 of the Recommended Decision.

12. The ALJ agrees and finds the phrase "in writing" should be deleted in Rule 6501(p), in accordance with paragraph 27 of the Recommended Decision.

2. Rule 6508(a)(I)

13. TRPC's Motion states the second and third sentences of Rule 6508(a)(I) should be deleted, pursuant to paragraph 67 of the Recommended Decision, which permits carriers to subcontract when appropriate.

14. The ALJ agrees and finds the second and third sentences (*i.e.*, "Only . . . prohibited.") should be struck from Proposed Rule 6508(a)(I), consistent with paragraph 67 of the Recommended Decision.

3. Rule 6508(a)(I)(D)

15. TRPC states Rule 6508(a)(I)(D) is not consistent with the Recommended Decision, which adopts the position that tow contracts should not be required to include the name of each tow truck driver permitted to authorize tows under the agreement. To fully conform with the Recommended Decision, TRPC states subsection (D) should exclude drivers, as follows:

(D) the name of each individual person who is authorized to sign the tow authorization except tow carrier drivers where the carrier is authorized to act as the property owner agent under this rule.¹

16. The ALJ agrees and finds that Rule 6508(a)(I)(D) should be amended to reflect TRPC's proposed language, which is consistent with the Recommended Decision.

4. Rule 6511

17. TRPC's Motion states that while the Recommended Decision includes an annual automatic adjustment of rates, it does not indicate what the specific rates will be under the new

¹ Motion at p. 2.

system proposed in Rule 6511(b). Specifically, TRPC states that amended Rule 6511(b) deletes the rate, but does not include a rate that will be adjusted by the Consumer Price Index (CPI).

18. TRPC further states the Recommended Decision inadvertently omits adjustments to rates for law enforcement tows and the storage of vehicles, and those rates should be subject to the CPI adjustment. TRPC asserts there is no logical reason to increase rates for Private Property Impound (PPI) tows, but not rates for law enforcement tows. TRPC makes similar assertions with respect to storage fees and drop charges.

19. Put simply, TRPC requests clarification that the rates proposed by Wyatt's Towing on August 17, 2020, be adopted not just for base rates, but also for drop fees, storage, and law enforcement tows.

20. With respect to PPI tows, Rule 6511(b)(I), as amended, expressly provides that the base rates will be published on the Commission's website. This will occur if and when the adopted Towing Carrier Rules become effective.

21. Rule 6511(b)(II) provides that the base rates will be adjusted annually based upon the CPI, and those rates will be effective on January 31 of each year. It further provides those rates will be published on the Commission's website no later than January 31 of each year. Once again, this will occur if and when the adopted Towing Carrier Rules become effective.

22. The ALJ clarifies that the initial base rates will be published on the Commission's website, rather than included in the amended Towing Carrier Rules, otherwise it would be necessary to open a rulemaking each year to reflect the annually-adjusted base rates.

23. To provide further clarification unless and until the adopted Towing Carrier Rules become effective, the ALJ provides below the base rates for PPI tows that will be published on the Commission's website:

- (I) The maximum base rates are as follows:
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$200.00;
 - (B) motor vehicles with a GVWR greater than 10,001 pounds and less than or equal to 19,000 pounds is \$230.00;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$310.00; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$350.00.

24. With respect to the rates for law enforcement tows, as well as storage and drop charges, the ALJ finds that the Recommended Decision and adopted Towing Carrier Rules – including, Rule 6511 – are clear and understandable. Thus, clarification is not warranted.

25. For the foregoing reasons, the ALJ declines to modify Rule 6511. It will stand as amended and adopted in Attachments A and B to the Recommended Decision.

B. Conclusion

26. The modifications to Rules 6501(p)(II), 6508(a)(I), and 6508(a)(I)(D), discussed above, are reasonable and should be adopted.

27. Rule 6511 is clear as adopted and need not be modified.

28. TRPC's Motion will be granted in part and denied in part, consistent with the discussion above.

29. Attachment A of this Recommended Decision represents rule amendments adopted by this Decision, and Recommended Decision No. R20-0688, with modifications to the prior rules being indicated in redline and strikeout format.

30. Attachment B of this Recommended Decision represents the rule amendments adopted by this Decision, and Recommended Decision No. R20-0688, in a clean/final format.

31. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision

III. ORDER

A. The Commission Orders That:

1. The Motion for Clarification and Motion to Extend Exceptions Deadline filed by Towing and Recovery Professionals of Colorado on October 19, 2020, is granted in part and denied in part, consistent with the above discussion.

2. The Towing Carrier Rules, 4 *Code of Colorado Regulations* 723-6, attached to this Recommended Decision in legislative/strikeout format as Attachment A, and in final format attached as Attachment B, are adopted. The adopted rules are also available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0709TO.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. If this Recommended Decision becomes a Commission Decision, the relevant rules are adopted on the date the Recommended Decision becomes a final Commission Decision.

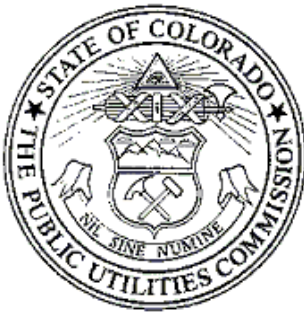
5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the participants and the representative group of participants, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge