

Decision No. C21-0200-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21M-0102TO

IN THE MATTER OF THE EMERGENCY RATES AND EXPEDITED RULEMAKING TO
FIX THE RATES THAT RESULTED FROM PROCEEDING NO. 19R-0709TO.

**INTERIM DECISION ACCEPTING
PETITION FOR RULEMAKING,
ISSUING NOTICE, AND REQUESTING COMMENTS**

Mailed Date: April 1, 2021
Adopted Date: March 31, 2021

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Petition for Emergency Rates and Expedited Rulemaking (Petition) filed by Towing and Recovery Professionals of Colorado (TRPC) on March 5, 2021, requesting the Commission set emergency rates and commence a rulemaking proceeding narrowly focused on adjusting the towing rates adopted in Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6511 of the Rules Regulating Transportation by Motor Vehicle. By this Decision, the Commission accepts the Petition, provides notice of the Petition to interested persons, and establishes a 15-day comment period through April 16, 2021, for interested persons to submit comments regarding whether to grant or deny the Petition or take other appropriate action.

B. Petition

2. In the Petition, TRPC requests the Commission “fix, in the most efficient fashion, the rates that resulted from”¹ recently concluded rulemaking Proceeding No. 19R-0709TO. Specifically, TRPC requests the Commission adopt an across-the-board rate increase for all tow carriers by applying the Consumer Price Index (CPI) adjustment to all rates, not just rates for private property tows. TRPC therefore requests the Commission modify Rule 4 CCR 723-6-6511 to allow for all tow rates to float with the CPI.

3. TRPC contends the language in the rules adopted in Proceeding No. 19R-0709TO, which increases rates for private property tows, but not rates for other tows including law-enforcement ordered tows and storage fees, does not accurately reflect the findings and determinations in the Administrative Law Judge’s written decisions in the rulemaking. TRPC specifically cites ¶ 136 of Decision No. R20-0688, issued October 1, 2020, in Proceeding No. 19R-0709TO, which states: “The proposal to tie rates to the CPI achieves these goals. Rule 6511(b)(II) provides that the rates for tows shall be set to the CPI and annually adjusted for any changes. This rule is recommended for adoption.” TRPC construes this discussion to indicate that the increase should be for all tow rates. TRPC states there is no explanation in the written decisions in Proceeding No. 19A-0709TO explaining why the rules adopt CPI based rate increases only for private property tows.

4. TRPC contends the record in Proceeding No. 19R-0709TO supported an across-the-board rate increase for all tows. TRPC states the costs faced by the tow industry are not unique to private property tows. TRPC states the price of vehicles, diesel, insurance, and employees, among others, are applicable to all tows and to yard operations. TRPC states the

¹ See Petition at p. 1.

storage of towed vehicles requires land, insurance, and employees to be on call at all hours, among other costs. TRPC states all tow industry costs have increased since 2014, the year from which the data for current rates (other than private property tow rates) were gathered. TRPC states these cost increases are well documented in the record of Proceeding No. 19R-0709TO. TRPC states the proposed across-the-board rate increase was not controversial and was supported by stakeholders including the Colorado State Patrol. TRPC states the Colorado State Patrol reports a significant reduction in tow carriers willing to assist due to low rates.²

5. TRPC requests the Commission find emergency rules are necessary to comply with Colorado law set forth in § 40-10.1-106(1), C.R.S. TRPC states this statute requires rates to be reasonable because the rules implementing the rates must be reasonable. TRPC asserts the current rates for storage and law enforcement tows are demonstrably not just or reasonable, and do not appear to be in concert with the written decisions issued in the rulemaking. TRPC states, as a matter of fundamental fairness to tow companies that perform non-private property tows, the Commission should issue emergency rules so that all tow carriers can receive the appropriate rate increase. TRPC's proposed emergency rates are set forth in Attachment A to the Petition.

6. TRPC also requests the Commission commence a rulemaking to adopt permanent changes to Rule 4 CCR 723-6-6511. TRPC requests the Commission implement measures to expedite this rulemaking including finding that informal stakeholder pre-rulemaking engagement is unnecessary since the Commission already engaged in lengthy stakeholder discussions in the prior rulemaking. TRPC also suggests there is no need for multiple hearings, given the lengthy discussions in the prior rulemaking.

² TRPC refers to Colorado State Patrol comments attached to the Petition as Attachment B; provided, however, no such attachment was filed with the Commission in this Proceeding.

C. Findings and Conclusions

7. The Commission accepts the Petition for purposes of noticing it and establishing a comment period. We invite comment from interested persons on whether the Commission should open a rulemaking to address the issues raised in the Petition, in whole or in part, or whether the Commission should take such other action as may be appropriate regarding the Petition and the issues raised therein. We establish a 15-day comment period through **April 16, 2021**, for comment on whether to grant or deny the Petition or take other appropriate action.

8. After the comment period, the Commission will deliberate at a Commissioners' Weekly Meeting and determine whether good cause exists to proceed to grant the Petition, in whole or in part, and proceed to issue a notice of proposed rulemaking, or whether to take such other action as may be appropriate. The Commission will also determine at that time whether to adopt emergency rules as requested by TRPC in the Petition.

II. ORDER

A. It Is Ordered That:

1. The Petition for Emergency Rates and Expedited Rulemaking filed by Towing and Recovery Professionals of Colorado on March 5, 2021 (Petition), is accepted for purposes of establishing a notice and comment period.

2. This Decision shall serve as notice of the Petition to interested persons.

3. Any person desiring to file comments on the Petition may send written comments **on or before April 16, 2021**, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or through the Commission's E-filing System using Proceeding No. 21M-0102TO at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 31, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners