

Decision No. C22-0605-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22M-0412TO

IN THE MATTER OF THE PETITION OF TOWING OPERATIONS LLC DOING BUSINESS AS WYATT'S TOWING FOR RULEMAKING AND FORBEARANCE RELATED TO HOUSE BILL 22-1314.

**INTERIM COMMISSION DECISION
ACCEPTING PETITION, ISSUING NOTICE,
AND REQUESTING COMMENTS**

Mailed Date: October 6, 2022
Adopted Date: October 5, 2022

TO ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Petition for Rulemaking and Request for Forbearance (Petition) filed by Wyatt's Towing (Wyatt's) on September 26, 2022. Through the Petition, Wyatt's requests the Commission commence a rulemaking proceeding to promulgate rules that address recent House Bill (HB) 22-1314, enacted June 7, 2022, and effective August 10, 2022. The rules would revise, or add to, the Commission's existing towing carrier rules, comprising Rules 6500 through 6599 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Wyatt's also requests that the Commission order a forbearance from enforcement actions, until the requested rulemaking is complete.

2. By this Decision, the Commission accepts the Petition, provides notice of the Petition to interested persons, and establishes a comment period through October 20, 2022, for

interested persons to submit comments regarding whether to grant or deny the Petition and provide comment on issues for consideration in the requested rulemaking and any specific proposed redline rule language.

B. Petition

1. Request for Rulemaking

3. Through the Petition, Wyatt's requests the Commission promulgate rules that address the entirety of recently enacted HB 22-1314. Wyatt's states several portions of the bill can be interpreted in different ways and, depending on the Commission's interpretation of the bill, the operations of towing carriers can be significantly impacted. Wyatt's further states that, although many of the statutory changes mirror provisions already contained within Commission rules, the bill also implements new statutory requirements that conflict or vary from the Commission's existing rules. Wyatt's also maintains the bill contains ambiguous provisions that will need to be fleshed out by the Commission through the rulemaking process, prior to enforcement by Commission Staff.

4. Wyatt's offers the following examples of statutory changes that will need to be addressed through rule: 1) accepted forms of payment; 2) prorated fees for storage; 3) criteria for required photographs; 4) clarification on when a nonconsensual tow may occur; 5) restrictions on towing carriers acting as the "authorizing agent" for private property owners; 6) clarification of the exemptions to, and applicability of, the new 24-hour notice standard; 7) law enforcement ordered tows versus nonconsensual tows from private property; 8) disclosure of authorization information; 9) 24-hour notice placement; and 10) structure of the requirements regarding release of a towed motor vehicle without full payment.

2. Request for Forbearance

5. Through the Petition, Wyatt's requests the Commission order a forbearance from enforcement actions, until the requested rulemaking is complete. To support this request, Wyatt's states the Commission has yet to rule or formally interpret the new statutory changes in HB 22-1314 and has not adopted any emergency rules to address conflicts between the requirements in HB 22-1314 and the Commission's existing rules. Wyatt's asserts that it would be unfair to penalize carriers for adhering to either the rules or the new legislation. Wyatt's concludes that, given discrepancies between the Commission's rules and the new legislation, the historic reliance of industry on Commission promulgated rules, as well as the regulatory compact between towing carriers and the Commission, a forbearance from enforcement actions is appropriate, until the requested rulemaking is complete and the industry and the public understand what is expected from the Commission.

C. Findings and Conclusions

6. Upon the filing of a petition for rulemaking, the Commission, at its discretion, may accept the petition and issue notice and set a schedule to receive comments on the petition from interested participants.¹ Once all comments are received, the Commission will deliberate 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.²

7. The Commission recognizes that there are numerous provisions in the new statutes that would benefit from official Commission review, analysis, and subsequent adoption of rules, regarding the implementation of these new standards. However, there are also many provisions in

¹ Rule 1306 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

² *Id.*

the statutes that can be read, and followed, based on a plain reading of the language. The Commission stresses that these new statutory standards became effective on August 10, 2022 and the incorporation of these provisions into current towing operations is not optional. In the event that certain provisions of HB 22-1314 are unclear, interested persons are encouraged to work with Commission Staff to resolve such issues.

8. It should also be noted that Transportation Staff, in consult with Commission counsel, has thoroughly reviewed this bill, since its passing and signature, and has been methodically creating draft amendments to the current towing rules, which incorporate all applicable standards and requirements, while at the same time remaining simplistic and easy to understand. Transportation Staff is, necessarily, expending much time and effort into this process in order to revise, as little as possible, the existing language and framework in the current towing rules, with the goal that the resulting rules will be easier and less confusing for towing carriers to incorporate into their established practices and operations, once adopted. In addition, the Commission has spent considerable resources engaging with stakeholders to review, discuss, and share its expertise regarding the provisions of HB 22-1314. The Commission has also made substantial updates to its website, which captures some of the more prominent features of the bill, such as the new 24-hour notice requirement and accompanying exceptions. The Commission has engaged with various media sources, as well, to ensure that correct information is being shared with the public.

9. The Commission finds that considering the Petition, and any comments filed in response, will provide helpful insight into how best to implement the statutory changes enacted by the legislature in HB 22-1314. Therefore, we accept the Petition and issue notice of the Petition to interested persons, by service of this Decision.

10. The Petition is available for inspection through the Commission's E-filing System, using Proceeding No. 22M-0412TO at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. **This Decision is the notice that Wyatt's Petition has been filed with the Commission.**

11. The Commission invites 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. Relatedly, we invite comment from interested persons on general considerations for the requested rulemaking, including specific proposed redline rule language for inclusion in any resulting notice of proposed rulemaking. Written comments shall be filed by **October 20, 2022**.

12. 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 grant the request for forbearance, as stated in the Petition.

II. ORDER

A. The Commission Orders That:

1. The Petition for Rulemaking and Request for Forbearance (Petition), filed by Wyatt's Towing on September 26, 2022, 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 file written comments with the Commission through the Commission's E-filing System, using Proceeding No. 22M-

0412TO at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>. Written comments may also be sent to the Public Utilities Commission at the following address: 1560 Broadway, Suite 250, Denver, Colorado 80202. Written comments, whether e-filed or mailed, must be received by the Commission by **October 20, 2022**, in order to be considered by the Commission.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 5, 2022.**

(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