

Decision No. C22-0705

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.

**COMMISSION DECISION GRANTING PETITION,
IN PART, AND DENYING, IN PART**

Mailed Date: November 9, 2022

Adopted Date: November 2, 2022

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants, in part, the Petition for Rulemaking and Request for Forbearance (Petition), as filed by Wyatt's Towing (Wyatt's) on September 26, 2022, and also denies the Petition, in part. The Commission grants the petition for rulemaking and directs Staff of the Public Utilities Commission (Commission Staff) to 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, in order to further implement the statutory changes incorporated by House Bill (HB) 22-1314, as soon as possible. HB 22-1314 was enacted June 7, 2022, and effective August 10, 2022. The Commission also denies, in part, the Petition, as it pertains to the request for forbearance.

B. Background**1. Petition - Request for Rulemaking**

2. 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.

3. 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. Petition - Request for Forbearance

4. 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.

3. Commission Decision C22-0605-I

5. On October 6, 2022, the Commission issued a decision accepting the petition for rulemaking, issuing notice, and requesting comments.¹ The public comment period was set for a condensed period of two weeks, in order to provide necessary direction and relief as soon as possible. The notice was sent to all currently licensed towing carriers. The comment period expired on October 20, 2022 and no public comments were filed, not even from Wyatt's.

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.² Once all comments are received, the Commission will deliberate and

¹ See Decision No. C22-0605-I.

² Rule 1306 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

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.³

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 the statutes that can be read, and followed, based on a plain reading of the language. 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 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.

³ *Id.*

9. Through Commission Decision No. C22-0605-I, the Commission acknowledged that a permanent rulemaking process is necessary to introduce, and reinforce, the new statutory standards implemented by HB 22-1314. Despite no comments being filed into the record, the substance of this position remains. As such, it is appropriate to grant the petition for rulemaking, as presented.

10. However, the request for forbearance from enforcement action, as requested by Wyatt's, does not appear to be appropriate, as evidenced by the lack of responsive comments from the towing industry in support of such a position. Furthermore, it is also important to point out that the effective date of the statutory changes incorporated through HB 22-1314 became effective on August 10, 2022 and the incorporation of these new provisions into current towing operations is not optional.⁴ Given that the Commission cannot waive a requirement of state statute, through administrative rule or order, the Commission finds it appropriate, in this circumstance, to deny the request for forbearance.

11. Consistent with the discussion above, the Commission grants the petition, in part, and denies the petition, in part.

II. ORDER

A. The Commission Orders That:

1. The Petition for Rulemaking and Request for Forbearance, filed by Wyatt's Towing on September 26, 2022, is granted, in part, and denied, in part, consistent with the discussion above.

⁴ See Decision No. C22-0605-I, ¶ 7.

2. Commission Staff is directed to initiate a permanent Notice of Proposed Rulemaking, as outlined in this Decision, as soon as possible.

3. The request for forbearance from enforcement action is denied.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 2, 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