

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10D-238TO

IN THE MATTER OF THE PETITION OF STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION FOR A DECLARATORY ORDER FINDING A CONSENSUAL TOW IS NOT SUBJECT TO ARTICLE 13 OF TITLE 40, C.R.S.

**ORDER ACCEPTING PETITION
FOR DECLARATORY ORDER AND ISSUING NOTICE**

Mailed Date: May 10, 2010

Adopted Date: April 28, 2010

I. BY THE COMMISSION:

A. Statement

1. This matter comes before the Commission for consideration of a Petition for Declaratory Order (Petition) filed by Staff of the Colorado Public Utilities Commission (Staff) on April 16, 2010. Being fully advised in the matter and consistent with the discussion below, we accept the Petition and therefore open a docket and issue notice.

2. The petition requests: (1) that the Commission interpret its statutory authority under Article 13 of Title 40, C.R.S., to be limited to motor vehicle transportation by towing vehicle, if such transportation is performed without the prior consent or authorization of the owner or operator of the transported motor vehicle; (2) that the Commission interpret the transportation of motor vehicles performed with the consent or authorization of the owner or operator of the motor vehicle as not subject to regulation by the Commission pursuant to § 40-16-102(3), C.R.S.; (3) that the Commission define the terms “towed” and “towing” in §§ 40-13-101(3)(a) and 40-13-101(4), respectively, to mean “non-consensual tow” as that term is defined in Rule 6501(h) of 4 *Code of Colorado Regulations* (CCR) 723-6; and (4) that the Commission

define the phrase “other equipment for the towing” found in §40-13-101(4) to include any motor vehicle or trailer upon which another motor vehicle is transported.

3. Staff also provides its analysis on the interplay of Article 13 of Title 40, C.R.S.; House Bill 09-1244, which amended 40-16-102, C.R.S.; 49 U.S.C. § 14501; and selected Commission Rules pertaining to towing carriers found at 4 CCR 723-6.

4. We believe that resolution of the issues set forth in the Petition is important to all stakeholders, including Staff and the towing carriers operating in Colorado. We therefore accept the Petition.

5. Service of this Order, together with the bi-weekly transportation notice, will provide notice of the Petition to all interested persons, firms, and corporations. Notice of the Petition will be provided in the May 10, 2010, bi-weekly transportation notice. The intervention period will expire on June 9, 2010. Following expiration of the intervention period, we will determine whether a hearing is necessary and establish such additional procedural requirements as may be necessary or appropriate.

II. ORDER:

A. The Commission Orders That:

1. The Petition for Declaratory Order (Petition) filed by Staff of the Colorado Public Utilities Commission (Staff) on April 16, 2010, is accepted.

2. Notice of the Petition will be provided in the May 10, 2010, bi-weekly transportation notice. The intervention period will expire on June 9, 2010.

3. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene on or before June 9, 2010. All persons who file a motion to

permissively intervene shall do so in accordance with the instructions set forth in the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and this Order.

4. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments on or before June 9, 2010, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

5. If a hearing is required in this matter, the Commission will notify the parties of the hearing date, time, and location. The Petitioner must appear at the hearing, if one is set, and present evidence in support of its Petition. Other parties may appear and present evidence in support of their position.

6. If a party does not meet the requirements of this Order and the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may dismiss or strike the intervention upon motion filed by any other party, or upon the Commission's own motion, unless good cause for failure to meet the requirements is shown.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 28, 2010.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners