

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0641TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES**

Mailed Date: August 21, 2014

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I. STATEMENT

1. On June 13, 2014, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding. *See* Decision No. C14-0638 issued June 13, 2014. The Commission referred this matter to an administrative law judge (ALJ) and scheduled a hearing for August 11, 2014. The purpose of the proposed rules is to describe the manner of regulation over parties providing transportation service by motor vehicle in the State of Colorado. The amended rules generally describe the manner of regulation over persons

providing services by motor vehicle in the State of Colorado. More specifically, the purpose of Rule 6007(a)(I) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is to prescribe the necessary amounts of financial responsibility for regulated motor carriers.

2. Throughout the proceeding written comments were filed with the Commission by Cowen Enterprises, Youssef B Marrakchi, Presidential Worldwide Transportation (Presidential), Front Range Ski Bus (FRSB), Freedom Cabs Inc. (Freedom Cabs), Union Taxi Cooperative (Union Taxi), and Mile High Cab, Inc. (Mile High).

3. Being fully advised in this matter and consistent with the discussion below, 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.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

4. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-2-110.5, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10.1.101 to 507, 42-4-235, 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

5. In Proceeding No. 13R-0009TR, the Commission substantially increased applicable financial responsibility requirements based, in part, upon a reference to federal standards. *See* Decision No. C13-0054, issued January 11, 2013 at ¶6(b). In the NOPR, the Commission recited a previous finding that those increased requirements “resulted in a substantial and immediate hardship to regulated motor carriers. In particular, the prior requirements were threatening the sustainability of two of the four taxicab carriers then serving the Denver metro area, yet were not necessary to protect the public safety at the time.” Decision No. C14-0638 at ¶3, issued June 13, 2014 (footnote omitted).

6. By Decision No. C14-0456 issued May 1, 2014 in Proceeding No. 14R-0391TR, the Commission adopted the current version of Rule 6007(a)(I) on an emergency basis. The Commission invited comment regarding several issues in order to determine the minimum financial responsibility levels on a permanent basis in this proceeding.

7. By Decision No. R14-0916-I issued August 1, 2014, proposed rules were issued for consideration at the scheduled hearing based upon preliminary consideration of the NOPR and filed comments.

8. Staff of the Commission (Staff) compiled additional information regarding insurance requirements for passenger carriers, although still not comprehensive. Reported requirements were included for several states, airports, and local jurisdictions. *See* attached Appendix B to Decision No. R14-0916-I.

9. At the scheduled time and place, the hearing was convened. Oral comment was received from FRSB, Freedom Cabs, Union Taxi, Mile High, and Colorado Cab Company, LLC (Colorado Cab).¹ This Recommended Decision will generally focus upon comments and contested issues addressed during the course of the proceeding.

10. The undersigned ALJ has reviewed and considered the record in this proceeding to date, including written and oral comments. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption. Any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached are not adopted.

¹ Colorado Cab only commented that it is monitoring these proceedings and took no position on minimum financial responsibility to be adopted.

A. Discussion

11. Comments were filed by Cowen Enterprises, Youssef B Marrakchi, and Presidential supporting adoption of \$1,500,000 for a financial responsibility requirement. The comments appear to address luxury limousine service and higher amounts are encouraged based upon applicable federal standards and avoid disparity between interstate and intrastate transportation.

12. Presidential specifically contends that requirements applicable to luxury limousine service should be separated from common carriers and raised to \$1.5 million. In support, it is noted that the prior \$1 million standard was adopted in 1985. Over the past 27 years, it is submitted that medical expenses have more than tripled. Illustratively, an ambulance ride in the Denver metro area in 1985 was approximately \$1,200. The same ride today would be over \$3,800.² Cowen Enterprises also addressed how long it has been since the \$1 million standard was adopted.

13. FRSB filed comments addressing operation of a 30-passenger bus. Although finding the proposed increase applicable to this vehicle reasonable, concern is raised as to the effect on rates and the resulting barrier to new competition due to increased operating costs. FRSB's primary market is Denver to Loveland and Copper Mountain Ski Areas. Increasing financial responsibility from \$1,500,000 to \$5,000,000 more than doubled FRSB's insurance cost, now its largest single expense. The average expected cost of round-trip

² Presidential also addresses matters outside the intended scope of the NOPR that will not be addressed in detail.

transportation will increase from \$20 to a range of \$35 to \$39 as a result of this increased cost. It is anticipated this increase will result in a loss of passengers. At hearing, comments emphasized need for a transition period before requiring implementation of any increases in coverage. Also, it was argued that requirements should change consistently across all classes of business to avoid an unfair advantage in one class affecting other classes.

14. Remaining comments were provided by Freedom Cabs, Union Taxi, and Mile High regarding taxi service. No provider of taxi service opposed requiring \$500,000 minimum financial responsibility for vehicles based upon a seating capacity of eight passengers or fewer.

15. First, comment addressed some discrepancies in requirements reported by Staff based upon a comparison of Attachment B to Decision No. R14-0916-I and the Supplemental Joint Responsive Filing by Freedom Cabs and Union Taxi Cooperative to Inquiries in Interim Decision No. R14-0916-I. Comment also contends that information from across the country should be of little relevance in adopting financial responsibility requirements applicable in Colorado and that some types of coverage addressed by Staff are not applicable in this proceeding.

16. Union Taxi and Freedom Cabs filed their respective insurance claim history for approximately the past four years (Confidential Hearing Exhibits 1-4 and 9-11). Although filed subject to a claim of confidentiality, some aspects of the information were addressed publicly during hearing. It is argued that claims experience is very low and remarkably stable over the past several years, with one exception. Even in that instance where two people died, claims were well below the \$500,000 limits. Thus, taxi carriers contend that \$500,000 continues to be adequate and strikes the appropriate balance.

17. While not determinative of future risks, reviewing this experience sheds useful insight into matters to be decided. Most notably, there are remarkably few material claims identified and all are well below \$500,000.

18. Commentors address other aspects of operations affecting safety of operations. Intrastate regulated carriers operating vehicles with a seating capacity of 15 or less may not use vehicles older than 12 model years. *See* Rule 6213. Thus, there is a level of assurance that safety and quality of equipment will be maintained or improved over time as older equipment is retired. Taxi companies have significant safety and training programs to mitigate insurance costs and improve public safety.

19. Steven Friedberg, the President of Research Underwriters, Inc., also addressed several topics orally at hearing. His firm is one of the country's largest taxi insurance brokers.

20. Mr. Friedberg believes that increasing minimum requirements from \$500,000 to \$750,000 or \$1,500,000 for taxi carriers would differ very little in terms of financial impact due to the manner of reinsurance within the insurance industry. A threshold of \$750,000 would result in premiums very close to those for \$1,500,000 in coverage – perhaps a 10 percent reduction.

21. Mr. Friedberg has observed that the type of service by transportation mode affects the minimum financial responsibility required and the associated insurance premium costs. Notable here, any increase in coverage will have a greater impact on taxi service providers than luxury limousine service providers. He has observed that limousine and motor coach companies generally do not have the frequency of operations that occurs in the taxi industry, resulting in lower insurance costs.

22. Freedom Cabs most directly quantified the cost impact of implementing prior Commission rules requiring minimum requirements of \$1,500,000. Freedom Cabs' monthly insurance premium increased more than \$12,000, or more than 17 percent.

23. Mile High also raises concern that increased costs resulting from higher insurance costs may incent non-compliance with other Commission safety rules (*e.g.*, hours of service) resulting in a counter effect on public safety.

24. Many considerations affect insurance requirements adopted by the Commission. Without limitation, one must be mindful of the potential impact to the general public, in addition to vehicle occupants and carriers, in establishing insurance requirements. Size and capacity of vehicle have historically driven distinctions in requirements, although the population exposed to a loss involving a regulated carrier is not limited based upon vehicle size. The Commission must also be mindful of changes over time affecting the industry as well as past experience.

25. An appropriate balance must be struck in establishing minimum requirements. Ultimately, the resulting financial costs will be borne by all carriers, and some or all of the cost will be passed on to passengers in rates. Requiring excessive insurance coverage results in higher operating costs not justifying the marginal benefits gained. If passenger rates rise too much or carriers are unable to meet requirements, providers will fail. As a result, the public will suffer due to the lack of available services. Thus the public interest is harmed if the benefits of insuring the possibility of something extremely unlikely enough to occur may not exceed the certain costs of obtaining such insurance.

26. Insurance costs will disparately impact transportation providers. The Commission's rules apply to motor carriers across the State of Colorado. Insurance rates vary by company. Risk screenings affect rates based upon considerations such as safety records,

geographic location, value and number of vehicles, global positioning and “driver cam” technology implementations, as well as drivers’ background and experience.

27. Finally, it is noteworthy that, as with other insurance, required coverage provides minimum coverage. Carriers may choose to obtain greater coverage. Coverage amounts do not determine liability.

28. Other than the passage of time, which cannot easily be disregarded, there is little indication that prior coverage requirements were insufficient to insure claims of the traveling public. However, as comment suggests, the amount of coverage has effectively decreased by maintaining a constant coverage amount in an inflationary environment.

29. Little comment suggests that experiences under prior Commission rules indicated coverage was inadequate and the prior increase to \$1,500,000 has been found to result in financial hardship to carriers. It is also notable that insurance coverage is only one aspect of concerted efforts to ensure safety of the traveling public. Motor carriers undertake several obligations to ensure that only qualified drivers operate safe equipment.

30. A comprehensive consideration of context and the comments in this proceeding demonstrates that previous requirements effectively served the public interest in ensuring safety of the traveling public. While adopted years ago, the \$500,000 minimum financial responsibility requirement for taxi carriers has withstood the test of time and a higher threshold will have a material financial impact that may result in a substantial hardship.

31. The undersigned remains concerned with the potential for confusion arising from differing minimum financial responsibility requirements for interstate and intrastate transportation. Adoption of applicable federal amounts applicable to interstate transportation by

larger capacity vehicles for intrastate transportation would eliminate this potential and ease administrative enforcement.

32. Some comment generally supports a distinction based upon the differing types of service, and potentially, vehicle size. However, the undersigned finds a more direct relationship between vehicle capacity and coverage requirements than type of service. There is little comment addressing a distinction based upon service, except as to the impact upon insurance rates. Based thereupon, the same minimum requirements for vehicles having a capacity of eight or fewer will be extended to other Common and Contract Carriers as well as Limited Regulation Carriers. Higher thresholds will apply to larger-capacity vehicles, as tiered in the proposed rules attached.

33. Because the Recommended Decision adopts the same or lower thresholds applicable under emergency rules, comments regarding implementation period will not be addressed further.

B. Conclusions

34. Attachment A to this Recommended Decision represents the rule amendments adopted by this Decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

35. Attachment B to this Recommended Decision represents the rule amendments adopted by this Decision in final form.

36. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

37. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER**A. The Commission Orders That:**

1. The Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, are adopted.

2. 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.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, 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.

4. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director