

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0462TR

IN THE MATTER OF THE PROPOSED RULES REGULATING THE MAXIMUM RATES
BY TAXICABS FOR SERVICE WITHIN ESTABLISHED ZONES, 4 CODE OF COLORADO
REGULATIONS 723-6-6255 (C) AND (D).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ADOPTING PROPOSED RULES AS MODIFIED**

Mailed Date: February 16, 2023

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I. STATEMENT

1. On October 28, 2022, by Decision No. C22-0661, the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR at issue) and referred this matter to an Administrative Law Judge (ALJ) disposition. A public comment hearing was scheduled for December 12, 2022, at 11:30 am.

2. The purpose of this Proceeding is to propose modifications to Rule 6255 of the Commission Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado*

Regulations (CCR) 723-6, raising the transportation rates between certain defined geographical zones (Zones A, B, C, and D) and Denver International Airport (DIA) and within Downtown Denver zone (Zone A) (proposed rule amendments) by approximately 20 percent. The statutory authority for the proposed rule amendments is found at §§ 40-2-108 and 40-10.1-103, 106, and 702, C.R.S.

3. Also on October 28, 2022, the Commission gave notice of the NOPR to the Colorado General Assembly pursuant to § 24-4-103(3)(a.5), C.R.S. and the Colorado Office of Regulatory Reform.

4. On November 14, 2022, Union Taxi Cooperative (Union Taxi) submitted its Comments (Union Taxi's written comments) regarding the recommended rule amendment. In Union Taxi's written comments, Union Taxi is requesting the Commission to strike, altogether, Rule 6255, 4 CCR 723-6. If the Commission keeps Rule 6255, 4 CCR 723-6, then Union Taxi requests the addition of "an inflationary provision similar to the rule for tow-carriers." Union Taxi also attached a letter dated June 29, 2022, signed by Taxicab companies' representatives from Denver and surrounding areas, supporting elimination of the "flat-rate zones system" due to the current state of "hyper-inflation" and the replacement of the flat-rate zones system with a meter rates system.

5. On December 12, 2022, at 11:30 am, a public comment hearing was held. Mr. Mohammed Warid, General Manager for Union Taxi, submitted a public comment on behalf of Union Taxi. Mr. Ali Gulaid submitted a public comment on behalf of Darfur Taxi Company (Darfur Taxi). Mr. Fetseme Gebremariam submitted a public comment on behalf of the Taxi Drivers' Association. Mr. Ayasu Kirkos submitted a comment on behalf of Green Taxi. The

following taxicab operators¹ submitted public comments on behalf of themselves: Solomon Kidane, Abdella Washe, Jonathan Irvin, Lado Jurkin, Atila Amini, David John, Ahmed Ahmed, Muludata Hailu, and Muktar Buni (collectively, taxicab operators). No public comment was received other than by these representatives of the taxicab industry.

6. Messrs. Warid and Gulaid indicated that the flat-rate zone system is “unfair” for taxicab companies, taxicab drivers, and taxicab customers. They explained that the zone-based flat-fee rate system exacerbates the issues resulting from the rising cost of living and confuses customers not understanding when they are to be charged a flat rate and when they are to be charged a metered rate. Union Taxi’s and Darfur Taxi’s preference was, therefore, to eliminate the flat-rate zone-based system and instead apply the, already regulated, metered-based rates for all taxicab service, regardless of zones. Alternatively, to the extent the Commission was not inclined to eliminate the flat-rate zone-based system, Mr. Warid requested to increase the zone-based flat rates by 30 percent. Mr. Gulaid indicated that while increasing the flat rates would be “better than nothing,” he strongly favored eliminating the flat-rate zone-based system.

7. Similarly, Mr. Gebremariam indicated that the current zone-based flat-rate system was outdated, “unfair,” and “discriminatory” towards customers not located within the flat-rate zones and applies only to a small geographical area of the taxicab market. Mr. Gebremariam explained that the zone-based flat-rate system creates friction between taxicab operators and customers who often do not understand when must taxicab operators charge flat rates. Mr. Gebremariam voiced a strong preference to use for the already-regulated and “fair and equitable” meter rate system.

¹ The taxicab operators work for various taxicab companies who operate in the Denver metropolitan area, including Union Taxi, Green Taxi, and Darfur Taxi.

8. Mr. Kirkos stated that he agreed with the comment made by Mr. Warid. Mr. Kirkos added that a flat rate of \$51.00 for a ride from DIA to the downtown area zone, the most common flat rate trip, was “unfair” towards the taxicab operators, especially given the time² and expenses regularly expended by each taxicab driver.

9. The remaining taxicab operators who submitted a public comment on December 12, 2022, generally favored meter rates, and noted the unfair/low the relative income they earn, and the confusion caused to taxicab customers caused by the zone-based flat-rate rules. Multiple taxicab operators commented on the rate discrepancy between residential customers who do not live within a rate-rate zone as compared with residential customers who live within a flat-rate zone. They contend that this is source of tension between customers and operators that benefits only those within the zones. Multiple taxicab operators also indicated that the flat-rate zone-based system puts taxicab companies and operators at a disadvantage as compared with the far less regulated Transportation Network Companies that can change their rates at will. Lastly, multiple taxicab operators commented that the hotels located within the Tower Road flat-rate zone (Zone A) “take advantage” of taxicab operators by intentionally failing to pick up their clients from DIA, while relying on the low flat-rate taxicab service to bring in their customers.

II. RELEVANT HISRORY, CURRENT RULES, AND PRPOSED AMENDMENTS

10. By Decision No. C98-1302, issued on December 24, 1998, in Proceeding No. 98R-610CP, the Commission gave notice of proposed revisions to the Commission’s rules governing common carriers of passengers by motor vehicle for hire (1998 NOPR). The 1998 NOPR included proposed changes that would replace the then-existing shared ride rule with a

² Mr. Kirkos indicated that a ride from DIA to downtown Denver during rush hour can last forty-five minutes to an hour and taxicab drivers often have to wait three to four hours at the holding lot at DIA before providing taxicab service.

maximum flat rate rule for taxicab service between DIA and three Denver metropolitan area zones.³ Pertinently, the 1998 NOPR explained that the rule changes were being proposed to address unnecessary confusion as to taxicab transportation between DIA and the core zone/business districts.⁴ During Proceeding No. 98R-610CP, Denver metropolitan area taxicab operators maintained that the proposed maximum flat rate ceiling would not provide any meaningful competition at the airport because it is customary for passengers to take the first cab in line when leaving DIA.⁵ Instead, the Denver metropolitan area taxicab operators proposed uniform flat rates to be charged by all of the cab companies operating within DIA and the three flat-rate zones to be established pursuant to the proposed rules.⁶ The proposed Rules were ultimately adopted and included the Denver metro area taxicab operators' proposed uniform flat-rate rule change.⁷

11. By Decision No. C08-1130, issued October 10, 2008, in Proceeding No. 08R-478TR, the Commission gave notice of proposed revisions to the Commission's rules governing common carriers of passengers by motor vehicle for hire (2008 NOPR). The 2008 NOPR included, among other proposed changes, changes to rule 6256(f), 4 CCR 723-6, that would increase the flat rate for taxi service to and from DIA from \$43 to \$47 for Zone A, \$45 to \$54 for Zone B, and \$81 to \$84 for Zone C.⁸ The proposed new flat rates changes were based on

³ See 1998 NOPR at ¶1.

⁴ *Id.* at 1-2.

⁵ Decision No. C98-0329, issued April 6, 1999, in Proceeding No. 98R-610CP at 7.

⁶ *Id.*

⁷ See *id.* at 8 and Decision No. C99-557 in the same Proceeding at 7 (adopting proposed rules).

⁸ See 2008 NOPR at 5.

the lowest meter rate then on file with the Commission. As pertinent herein, one taxicab company, Colorado Cab Company, LLC (Colorado Cab Company), while generally agreeing with the proposed changes, argued that the flat rates for Zones A and B should be further increased to \$51 and \$57, respectively.⁹ The Commission ultimately adopted the proposed changes pertaining to the flat rate increase, including the additional increase requested by Colorado Cab Company.¹⁰

12. Following the joint filing of the taxicab companies' petition to open a rulemaking to change Rule 6257(d)(I)¹¹, 4 CCR 723-6, on June 15, 2015, in Proceeding No. 15R-0454TR, the Commission issued a NOPR regarding proposed Rules Regulating Transportation by Motor Vehicle (2015 NOPR). The 2015 NOPR proposed to expand the geographical area of Zone A.¹² A single comment was jointly submitted in Proceeding No. 15R-0454TR by three taxicab companies¹³ that operated in the Denver metropolitan area.¹⁴ The comment stated that the proposed expansion of Zone A would "serve the public interest by continuing to ensure fare

⁹ See Decision No. R09-0149, issued February 19, 2009, in Proceeding No. 08R-478TR at 18. Colorado Cab Company argued that the total percentage increase for all transportation Zones should amount to approximately 20 percent.

¹⁰ See *id.*

¹¹ See Proceeding No. 15M-0316TR.

¹² 2015 NOPR at 1, 2, and 3.

¹³ The taxicab companies that submitted the public comment in Proceeding No. 15M-0316TR were Colorado Cab Company, MKBS, LLC; Freedom Cabs, Inc.; Union Taxi Cooperative; and Mile High Cab, Inc.

¹⁴ See Decision No. R15-0839, issued June 15, 2015, in Proceeding No. 15R-0454TR.

consistency and predictability for downtown Denver hotel patrons and visitors.”¹⁵ The Commission ultimately granted the proposed geographical expansion of Zone A.¹⁶

13. On November 30, 2017, in proceeding No. 17R-0796TR, the Commission issued a NOPR that included changes to the 6200 series of rules in the Rules Regulating Transportation by Motor Vehicle (2017 NOPR). The 2017 NOPR proposed to add a new Zone D, changes Zone C, and establish flat rate within Zone A. No commenter in proceeding No. 17R-0796TR objected to the new Zone D or the changes to Zone C. One taxicab industry commenter requested that Zone A, the downtown area, be expanded. The Commission ultimately adopted the proposed changes involving Zones A, C, and D, including the expansion of Zone A.¹⁷

14. By Decision No. C22-0539, issued September 13, 2022, in Proceeding No. 22M-0355TR, the Commission denied the petition for emergency rulemaking filed by Union Taxi to eliminate the flat rates in Rule 6255, but directed Staff of the Commission (Staff) to address the issues raised in a proposed NOPR. The NOPR in this Proceeding proposes that the flat rate zones be maintained and that the maximum rates allowed by Rule 6255 be increased by approximately 20 percent of the existing rate for all flat-rate zones (NOPR at issue). The NOPR at issue states: “[w]e specifically invite input from stakeholders on options available to include inflation adjustments within the rule.”

15. The flat rates in current Rule 6255(c), 4 CCR 723-6, are as follows: \$51 between DIA and Zone A, \$57 between DIA and Zone B, \$84 between DIA and Zone C, and \$24 between DIA and Zone D. Staff proposes to increase them as follows: \$61 between DIA and Zone A,

¹⁵ See Ex. 1 to Decision No. R15-0839, issued June 15, 2015, in Proceeding No. 15R-0454TR.

¹⁶ *Supra*, Footnote 14.

¹⁷ See Decision No. R18-0968 in Proceeding No. 17R-0796TR, issued October 31, 2018.

\$65 between DIA and Zone B, \$101 between DIA and Zone C, and \$29 between DIA and Zone D.

16. The maximum rate within Zone A under current Rule 6255(d), 4 CCR 723-6, is \$8.00, plus an additional \$3.00 drop off fee for each additional stop. Staff proposes to increase the maximum rate within Zone A to \$10.00, plus an additional \$3.00 drop off fee for each additional stop.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS.

17. It is noteworthy that the only public comments in this proceeding were submitted by taxicab industry members. No other stakeholders (such as DIA representatives or members of the public who are not affiliated with the taxicab industry) submitted a comment in this Proceeding.

18. It is also noteworthy that other than Union Taxi's general comment alternatively requesting the Commission to adopt "an inflationary provision similar to the rule for tow-carriers,"¹⁸ the inflation-related comments that were submitted in this Proceeding were entirely anecdotal.¹⁹ The record in this Proceeding is devoid of any data quantifying the taxicab industry's inflation-related concerns, or the extent to which the elimination of flat-rates, or an increase of the flat rates, would alleviate such concerns.

¹⁸ See Union Taxi's Comments, dated November 14, 2022 at 2.

¹⁹ The ALJ genuinely appreciates the comments regarding inflationary concerns by the taxicab companies and operators in this Proceeding. While anecdotal comments are helpful in rulemaking proceedings, it may not be appropriate to heavily rely on the same, especially when the anecdotal comments are made by only one affected segment of the public (in this case, the taxicab industry) and are not supported by appropriate data.

19. Given the above, the ALJ will recommend upholding the long-standing, historically-supported,²⁰ flat rate and maximum rate fare structure as set forth in Rule 6255(c) and (d), 4 CCR 723-6. It has not been shown that eliminating the flat fee fare structure proposed by the taxicab industry herein would avoid the circumstances that led to adoption of the long-standing structure in the first place.

20. For the same reasons, the ALJ is reluctant to recommend adopting an inflationary mechanism to be incorporate into Rule 6255, 4 CCR 723-6, applicable to rates for common carriage. Incorporating an inflationary mechanism into Rule 6255, 4 CCR 723-6, would effectively eliminate the long-standing flat rate and maximum rate fare structure as set forth in Rule 6255(c) and (d), 4 CCR 723-6. In addition, there are substantial differences between the towing industry as compared to the taxicab industry that make adoption of an inflationary mechanism like the one in Rule 6511, 4 CCR 723-6 into Rule 6255, 4 CCR 723-6, not to be in the public interest. These include fundamental differences in the type of service provided, the type and scope of Commission's regulation of tow-carriers as compared with taxicab service providers²¹, as well industry-based differences.

21. Given Staff's support of an increase, the length of time since the flat rates were last increased (approximately 14 years)²², and the inflation-related concerns addressed in the

²⁰ Until August 2022, no petitions have been filed with the Commission requesting to eliminate the flat-fee fare structure for taxicab service.

²¹ Those differences include the fact that consensual tows are not regulated by the Commission. In addition, unlike taxicab service rates, the rates of non-consensual tows are not fully regulated by the Commission.

²² The flat rates increase, approximately 14 years ago, applied only to Zones A, B, and C. *See* Decision No. R09-0149, issued February 19, 2009, in Proceeding No. 08R-478TR. The incorporation of Zone D into Rule 6255, 4 CCR 723-6, became effective in November 2018. *See* Decision No. R18-0968, issued October 31, 2018, in Proceeding No. 17R-0796TR.

public comments presented in this Proceeding, the ALJ finds that an approximately²³ 30 percent increase of the flat rates set forth in Rule 6255(c), 4 CCR 723-6 is reasonable. Therefore, the ALJ will recommend increasing the flat rates in Rule 6255(c) as follows: from \$51 to \$66 for Zone A, from \$57 to \$74 for Zone B, from \$84 to \$109 for Zone C, and from 24 to \$31 for Zone D.

22. Given Staff's support of an increase, the length of time since the flat rates were last increased, the inflation-related concerns presented in the public comments in this Proceeding, and the public comments specifically addressing Zone D, the ALJ finds that an approximately²⁴ 35 percent increase of the maximum rate within Zone A is reasonable. Therefore, the ALJ will recommend increasing the maximum rate set forth in Rule 6255(d), 4 CCR 723-6 from \$8 to \$11.

23. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

IV. 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 as Attachment B are adopted and are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0462TR.

²³ In order to maintain whole-number flat rates, the 30 percent increase is rounded to the nearest whole number.

²⁴ See *Supra*, Footnote 23.

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.

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



AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director