

Decision No. R23-0601-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0150CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY
TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55979.

PROCEEDING NO. 23A-0152CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY
TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55979.

PROCEEDING NO. 23A-0159CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY
TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55979.

PROCEEDING NO. 23A-0160CP-EXT

IN THE MATTER OF THE APPLICATION OF MOUNTAIN TAXI, LLC FOR AUTHORITY
TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55979.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING MOTION TO WITHDRAW APPLICATIONS
AND VACATING EVIDENTIARY HEARING**

Mailed Date: September 12, 2023

I. STATEMENT, SUMMARY AND BACKGROUND**A. Summary**

1. This decision grants the motion filed by Applicant, Mountain Taxi, LLC (Applicant or Mountain Taxi), to withdraw its four Applications for extensions of its Certificate of Public Convenience and Necessity (CPCN), and vacates the evidentiary hearing scheduled for September 25, 26, and 28, 2023.

B. Procedural History

2. On March 30, 2023, Mountain Taxi initiated Proceeding Nos. 23A-0150CP-EXT and 23A-0152CP-EXT by filing the above-captioned Applications. In both Applications, Mountain Taxi seeks to extend operations under its existing CPCN No. 55979. Specifically, in 23A-0150CP-EXT, Mountain Taxi sought to extend operations to allow it to transport passengers in call-and-demand taxi service between all points in Montrose and Ouray Counties, Colorado. In 23A-0152CP-EXT, Applicant sought to extend operations to allow it to transport passengers in call-and-demand taxi service between all points in Garfield and Pitkin Counties, Colorado.

3. On March 31, 2023, Mountain Taxi initiated Proceeding Nos. 23A-0159CP-EXT and 23A-0160CP-EXT by filing two more Applications. Like the first two Applications, Proceeding Nos. 23A-0159CP-EXT and 23A-0160CP-EXT sought to extend operations under Mountain Taxi's existing CPCN No. 55979. Specifically, in 23A-0159CP-EXT, Mountain Taxi sought to extend operations to allow it to transport passengers in call-and-demand taxi service between all points in Eagle and San Miguel Counties, Colorado. And, in 23A-0160CP-EXT, it sought to extend operations to allow it to transport passengers in call-and-demand taxi service between all points in La Plata and Mesa Counties, Colorado

4. The Commission provided public notice of all four of the above Applications on April 10, 2023, and established a 30-day intervention period.

5. On April 26, 2023, Hy-Mountain Transportation Inc., doing business as High Mountain Taxi (High Mountain), filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance of High Mountain Taxi, and Request for Hearing (High Mountain's Intervention) in Proceeding No. 23A-0152CP-EXT.

6. On May 1, 2023, Tazco, Inc., doing business as Sunshine Taxi (Tazco) filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance of Tazco Inc., and Request for Hearing (Tazco's Intervention) in Proceeding No. 23A-0160CP-EXT.

7. On May 2, 2023, Wilson Peak Limo LLC, doing business as Mountain Limo (Wilson Peak), filed Motions to Permissively Intervene and Request for Hearing in Proceeding Nos. 23A-0150CP-EXT and 23A-0159CP-EXT (collectively, Wilson Peak's Interventions).

8. On May 17, 2023, the Commission deemed all four of the above-referenced Applications complete and referred all four of the above-referenced Proceedings to an Administrative Law Judge (ALJ) by minute entry for disposition.

9. On May 25, 2023, by Decision No. R23-0353-I, the ALJ consolidated all of the above-captioned Proceedings; ordered that all future filings be made solely in primary Proceeding No. 23A-0150CP-EXT and that filings reflect the above updated caption; and scheduled the Consolidated Proceeding for a remote prehearing conference for June 8, 2023.

10. At the prehearing conference, the ALJ determined that all three Intervenors had properly intervened and could proceed as parties to the Consolidated Proceeding. By Decision No. R23-0399-I, issued June 12, 2023, the ALJ memorialized this finding.

11. In addition, at the prehearing conference, the parties agreed to a fully remote three-day evidentiary hearing. By Decision No. R32-0399-I, the ALJ scheduled the evidentiary hearing for September 25, 26, and 28, 2023.

12. Decision No. R23-0399-I also established a procedural schedule, setting deadlines for the parties to file witness and exhibit lists, submit their exhibits, and file a joint witness examination matrix. Pursuant to the setting order adopted by Decision No. R23-0399-I, on July 25, 2023, High Mountain, Tazco, and Wilson Peak each filed their respective witness and exhibit lists. The deadline for the parties to amend their exhibit and witness lists expired August 29, 2023, and the deadline for the parties to submit their joint witness examination matrix is approaching on September 18, 2023.

13. However, on August 25, 2023, Applicant Mountain Taxi filed its Unopposed Motion to Withdraw Applications. The deadline for the parties to file amended witness and exhibit lists has now expired, and no party has amended its witness and exhibit list.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Withdrawal of Applications

14. Mountain Taxi has now moved to withdraw without prejudice all four of its pending Applications for extensions of its existing CPCN No. 55979 — Proceeding Nos. 23A-0150CP-EXT; 23A-0152CP-EXT; 23A-0159CP-EXT; and 23A-0160CP-EXT. Mountain Taxi states as grounds for its motion that “business conditions have changed since it originally filed [its] CPCN extension Applications in March 2023 and [it] does not currently desire to pursue the Applications at this time.”¹

¹ Unopposed Motion to Withdraw Applications, ¶ 11, p. 3, filed Aug. 25, 2023.

15. Mountain Taxi reserves the right to file new applications seeking similar authority, but pledges not to do so within six months of withdrawing the four Applications at issue in this Consolidated Proceeding.²

16. Mountain Taxi also represents that its counsel conferred with all three Intervenors and/or Intervenors' counsel and none opposed Mountain Taxi's Motion to Withdraw.³ Mountain Taxi further stated that none of the Intervenors would be prejudiced by the withdrawal of its Applications.⁴

17. Rule 1309(d) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, governs withdrawals of applications. Rule 1309(d) allows a party to withdraw an application "upon notification to the Commission and all parties prior to 45 days before the first day of hearing." Thereafter, however, "the party shall file a motion to obtain leave of the Commission to withdraw the application."

18. The evidentiary hearing in this Proceeding is set to commence on September 25, just thirty-one days after Mountain Taxi filed its request to withdraw its Applications. It therefore styled its request as a Motion to Withdraw.

19. In ruling on a motion to withdraw, "the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal."⁵

20. Here, Mountain Taxi has stated that business conditions have changed and it no longer wishes to extend its existing CPCN No. No. 55979. It states that all three Intervenors have

² *Id.*

³ *Id.* at ¶ 1, p. 1.

⁴ *Id.* at ¶ 12, p. 4.

⁵ Rule 1309(d) of the Rules of Practice and Procedure, 4 CCR 723-1.

indicated that they do not oppose the Motion to Withdraw. And, indeed, the Commission has not received any objections.

21. Based on these representations, the ALJ finds and concludes that there is good cause to grant withdrawal of the Application. The ALJ further finds that, based on the lack of opposition on Intervenors' part, there will be no prejudice to the Intervenors should the Application be withdrawn.

22. The ALJ will therefore grant the Motion to Withdraw

B. Vacation of Procedural Schedule and Evidentiary Hearing

23. As referenced above, an evidentiary hearing is scheduled to be held September 25, 26, and 28, 2023. In addition, the parties' joint witness examination matrix is due September 18, 2023.

24. In light of the granting of Mountain Taxi's Motion to Withdraw its Applications, the remaining procedural schedule and scheduled evidentiary hearing will be vacated and the Proceeding will be closed.

25. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Motion to Withdraw Applications filed August 25, 2023, by Applicant Mountain Taxi, LLC, is granted.

2. The evidentiary hearing scheduled for September 25, 26, and 28, 2023, is vacated.

3. The remaining procedural schedule set by Decision No. R23-0399-I, issued June 12, 2023, is likewise vacated.

4. Proceeding Nos. 23A-0150CP-EXT, 23A-0152CP-EXT, 23A-0159CP-EXT, and 23A-0160CP-EXT are closed.

5. 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.

6. 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.

7. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director