

Decision No. R23-0798-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0347CP-EXT

IN THE MATTER OF THE APPLICATION OF MEDRIDE, LLC FOR AUTHORITY TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55980.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ESTABLISHING DEADLINES AND
RESCHEDULING EVIDENTIARY HEARING**

Mailed Date: December 4, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a one-day, in-person evidentiary hearing in Grand Junction, Colorado for Tuesday, March 19, 2024, commencing at 9:00 a.m.

B. Procedural History

2. On June 29, 2023, MedRide, LLC (MedRide or Applicant) initiated this matter by filing an Application for Permanent Authority to Extend Operations Under Certificate of Public Convenience and Necessity No. 55980, granted by Decision No. C22-0555, issued September 20, 2022, in Proceeding No. 22A-0318CP (Extension Application). MedRide seeks to expand its existing transportation authority to provide transportation services from Mesa County to all points throughout the State of Colorado.

3. MedRide was issued its Letter of Authority to operate out of El Paso County by Decision No. C22-0555, issued September 20, 2022, in Proceeding No. 22A-0318CP.

4. By Decision No. C23-0458, issued July 13, 2023, in Proceeding No. 23A-0239CP-EXT, MedRide's authority was extended to include service originating in Pueblo County.

5. MedRide currently holds CPCN No. 55980, of which the Letter of Authority entitles it to provide the following services:

- (I) Transportation of passengers, in call-and-demand shuttle service between all points in El Paso County, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.
- (II) Transportation of passengers, in call-and-demand shuttle service between all points in Pueblo County, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

6. MedRide's current Extension Application in this Proceeding was signed and submitted by its Vice President of Business Development, Tyler Borzileri. However, Mr. Borzileri declared that he did not wish to represent MedRide's interests in this Proceeding. Instead, the Application indicated that MedRide would be represented in this Proceeding by Lenora Plimpton of Fortis Law Partners.

7. On July 10, 2023, the Public Utilities Commission (the Commission) provided public notice under § 40-6-108(2), C.R.S., of the Extension Application. As noticed, the Application seeks:

an order of the Commission authorizing the extension of Certificate of Public Convenience and Necessity (CPCN) No. 55980. The proposed extension of operations under CPCN No. 55980 is as follows:

Transportation of passengers, in call-and-demand shuttle service between all points in Mesa County, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.¹

8. On July 19, 2023, Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi or Intervenor), filed its Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance and Request for Hearing. Its Intervention was submitted through its counsel, Mark Valentine of Keyes & Fox, LLP.

9. Sunshine Taxi's Letter of Authority, CPCN No. 19429, which it provided with its Intervention, authorizes Sunshine Taxi to offer the following services:

- I. Transportation of passengers, in taxi service, between all points in the County of Mesa, State of Colorado, and between these points, on the one hand, and all points in the State of Colorado, on the other hand.
- II. Transportation of passengers, in charter and call-and-demand limousine service, between all points in the County of Mesa, State of Colorado, and between these points, on the one hand, and all points in the State of Colorado, on the other hand.
- III. Transportation of passengers, in sightseeing service, between points in the Counties of Mesa and Delta, State of Colorado.

RESTRICTIONS: This Certificate is restricted as follows:

- A. Item (I) is restricted against the pickup of passengers within a ten-mile radius of the downtown post office in Telluride, Colorado;
- B. Item (II) is restricted against providing service to or from points in the County of Routt, State of Colorado;
- C. Item (II) is restricted against providing service from points within a five-mile radius of the intersection of U.S. Highway 160 and 550 in Durango, Colorado;
- D. Item (II) is restricted against providing service from points in the Counties of Gunnison, Eagle, Denver, San Juan, or Archuleta, State of Colorado;

¹ Notice of Application and Petitions Filed, p. 2, filed July 10, 2023.

- E. Item (II) is restricted against providing service from points within a 25-mile radius of the downtown post office in Telluride, Colorado; and
- F. Items (I) and (II) are restricted against the maintenance of an office within a 25-mile radius of the downtown post office in Telluride, Colorado.

10. On August 16, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry for disposition.

11. Absent waiver of the statutory time period established by § 40-6-109.5(2), C.R.S., a final Commission decision would be due 250 days after MedRide's application is deemed complete, or on or before April 22, 2024.

12. By Decision No. R23-0603-I, issued September 15, 2023, the undersigned ALJ scheduled a prehearing conference for September 26, 2023, at 10:30 a.m., at which procedural issues concerning the Application and evidentiary hearing would be discussed. Both parties and counsel for Intervenor were served copies of Decision No. R23-0603-I.

13. On September 26, 2023, at the appointed time, the ALJ held the fully remote prehearing conference as scheduled. Mr. Valentine appeared on behalf of Intervenor Sunshine Taxi. No one appeared on behalf of Applicant MedRide.

14. At the prehearing conference, Mr. Valentine requested that an in-person evidentiary hearing be held in Grand Junction, Colorado, because, he said, most of Intervenor's witnesses are located there. By Decision No. R23-0665-I, issued October 4, 2023, the undersigned ALJ set an evidentiary hearing for December 15, 2023, at 9:00 a.m., at the offices of the Colorado Department of Transportation in Grand Junction, Colorado. Decision No. R23-0665-I also established a procedural schedule to govern this Proceeding, including deadlines by which the parties were to file their pre-marked exhibits and witness and exhibit lists.

15. However, Applicant MedRide did not file any exhibits or witness and exhibit lists by the deadline of October 13, 2023.

16. On October 19, 2023, Henry M. Baskerville of Fortis Law Partners, entered his appearance as counsel on behalf of Applicant MedRide.

17. Subsequently, on October 24, 2023, MedRide moved for an extension of time to submit its exhibits and witness/exhibit lists. It also requested that the December 15, 2023, evidentiary hearing be rescheduled.

18. Sunshine Taxi opposed MedRide's motion, pointing out that MedRide had been notified of all the procedural deadlines in this Proceeding, but had disregarded them.

19. In its reply in support of its motion, MedRide clarified that it would waive the statutory time period, thereby alleviating pressure on the Commission to issue its final decision by a certain date.

20. By Decision No. R23-0757-I, issued November 14, 2023, the undersigned ALJ then granted MedRide's Motion for Extension of Time and acknowledged its waiver of the statutory deadline. Decision No. R23-0757-I also scheduled another prehearing conference to be held on Monday, November 27, 2023, at 10:30 a.m., during which a new procedural schedule would be established and the evidentiary hearing rescheduled.

21. On November 27, 2023, at the appointed time, the ALJ held the fully remote prehearing conference as scheduled. Mr. Baskerville appeared on behalf of MedRide, and Mr. Valentine appeared on behalf of Intervenor Sunshine Taxi.

II. SCHEDULING OF EVIDENTIARY HEARING

22. During the prehearing conference, Mr. Valentine indicated that Sunshine Taxi continued to prefer that the evidentiary hearing be held in person in Grand Junction, Colorado. Mr. Baskerville expressed his preference that the evidentiary hearing be held remotely because both he and his client, MedRide, are based in the Denver area. However, he conceded that several of MedRide's witnesses reside in or around Grand Junction. The ALJ finds and concludes that because Intervenor prefers that the hearing be held in-person in Grand Junction, and because numerous potential witnesses are located on the Western Slope, an in-person hearing in Grand Junction is appropriate. Accordingly, the ALJ will schedule an in-person evidentiary hearing to be held at the offices of the Colorado Department of Transportation in Grand Junction, Colorado, on **Tuesday, March 19, 2024, commencing at 9:00 A.M.**

23. With the parties' input, the ALJ will also establish procedural deadlines as detailed in the ordering paragraphs below.

A. **Advisements**

24. *All parties are on notice* that failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

25. MedRide bears the burden of proof by a preponderance of the evidence that it should be granted the requested authority.² The preponderance standard requires that the evidence

² §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 CCR 723-1.

of the existence of a contested fact outweighs the evidence to the contrary.³ That is, the fact-finder must determine whether the existence of a contested fact is more probable than its non-existence.⁴ A party meets this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

26. *The parties are on notice* that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

27. *The parties are also on notice* that if circumstances change before the hearing date, the ALJ may modify this hearing to be held remotely or hybrid (in person with the option for witnesses, parties, and/or representatives to appear virtually), or may enter such other orders as appropriate in the circumstances.

28. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at:

<https://www.colorado.gov/pacific/dora/pucrules>

29. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

³ *Mile High Cab, Inc. v. Colo. Pub. Utils. Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

⁴ *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

30. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

III. ORDER

A. It Is Ordered That:

1. An in-person evidentiary hearing on the merits of the Application for Permanent Authority to Extend Operations Under Certificate of Public Convenience and Necessity No. 55980 in this proceeding is scheduled as follows:

DATE: March 19, 2024
TIME: 9:00 a.m.
PLACE: Colorado Department of Transportation
222 S. 6th St.
Room 101
Grand Junction, CO 81504

2. **Deadlines for Witness Lists, Exhibit Lists, and Exhibits:** Applicant MedRide, LLC, (MedRide), must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on January 16, 2024**. Intervenor Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi), must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on February 6, 2024**. MedRide may supplement its witness and exhibit lists in response to Intervenor's witness and exhibit list but must do so by filing and serving amended witness and exhibit lists, and any additional exhibits not already filed **by the close of business on February 27, 2024**. Any amended witness and exhibit lists filed by MedRide on or before February 27, 2024, should list all the witnesses and exhibits that MedRide intends to present at the hearing, including those listed in its previous witness and exhibit lists, and will supersede its prior

witness and exhibit lists.⁵ As noted, the parties must mark their exhibits for identification *before* filing and serving them; additional information on marking exhibits for identification is set forth below.

3. **Requirements for Witness Lists.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

4. **Requirements for Exhibit Lists.** Exhibit lists must include the hearing exhibit number assigned to each exhibit and a brief description of the exhibit. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

5. **Requirements for Exhibits.**

- a. **Assigned Hearing Exhibit Numbers & Pre-Marking Exhibits.** The parties must mark hearing exhibits for identification using a number within their assigned hearing exhibit number block, as set forth below, and this proceeding number (23A-0347CP-EXT).
- b. **MedRide** is assigned hearing exhibit numbers 1 through 99;
- c. **Sunshine Taxi** is assigned hearing exhibit numbers 100 through 199.

6. By way of example, MedRide should pre-mark its first exhibit as "Hearing Exhibit 1, Proceeding No. 23A-0347CP-EXT" and file and serve the pre-marked exhibit consistent with the above deadlines.

⁵ This is intended to avoid MedRide filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

7. Any settlement agreement, stipulation, or related documents memorializing any agreement reached by the parties should be filed with the Commission **no later than March 5, 2024.**

8. **Deadline to File Statements of Position:** After the evidentiary hearing, the parties may file their respective Statements of Position in lieu of verbal closing arguments. Any party wishing to do so must file with the Commission and serve on the opposing party their statement of position **by the close of business on April 12, 2024.**

9. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director