

Decision No. C24-0215

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0165TR

IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S
TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO
REGULATIONS 723-6, IMPLEMENTING SENATE BILL 23-187 AND ESTABLISHING
DIFFERENT TIERS OF PERMIT FEES FOR TRANSPORTATION NETWORK
COMPANIES.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: April 12, 2024
Adopted Date: April 3, 2024

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to the Commission's Transportation Network Company (TNC) rules, 4 *Code of Colorado Regulations* (CCR) 723-6. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-10.1-606(2)(c), and 40-10.1-608, C.R.S., as well as Senate Bill (SB)23-187, enacted and effective May 18, 2023.

2. The Commission issues this NOPR to review, examine, and consider revisions to its rules regarding TNCs, as it pertains to legislative and statutory changes incorporated by SB23-187, which was passed by the Colorado Legislature during the 2023 session. The proposed amendments reflect the Commission's intent to amend and update the TNC rules to establish different tiers of permit fees for TNCs.

3. The proposed amendments to the TNC rules are available for review as Attachment A (redline) and Attachment B (clean) to this Decision, through the Commission's Electronic Filings website (Proceeding No. 24R-0165TR) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0165TR.

4. The Commission welcomes comments from interested rulemaking participants, regarding the amendments proposed in this NOPR. To the extent a participant disagrees with the proposed amendments, they are encouraged to submit comments that include any suggested revisions to the rule language in legislative (*i.e.* strikeout) format.

B. Background

5. On May 18, 2023, Governor Jared Polis signed SB23-187, Public Utilities Commission Administrative Fee Setting Transportation Services. This bill, in part, amended § 40-10.1-606, C.R.S., to allow the Commission to administratively set the annual permit fees for TNCs. The annual permit fees had previously been set in statute, dating back to the passing of SB14-125 in June 2014. In addition, the amendments enacted in SB23-187 allow the Commission to establish different tiers of permit fees for distinct types of TNCs, which are administratively set, based on the Commission's consideration of various market factors. These market factors include a TNC's market share in the areas in which it operates, the number of years a TNC has operated in Colorado, a TNC's ownership structure, and whether a newly formed TNC entering the market is an affiliate or subsidiary of an existing motor carrier or is a taxicab company or shuttle company converting to a TNC, pursuant to § 40-10.1-605(1)(n), C.R.S. The effective date of these statutory changes was May 18, 2023.

C. Discussion of Proposed Amendments to TNC Rules

6. The proposed amendments to the TNC rules are shown in Attachment A (redline) and Attachment B (clean) to this Decision. These changes are described below, along with discussion of the statutory and policy reasons associated with the proposed amendments.

(i) TNC Rule 6702

7. The proposed amendments add language to TNC Rule 6702(b)(II), which references the newly created TNC Rule 6702(e), as it pertains to a TNC being required to pay an annual application fee in order to obtain a TNC permit.

8. The newly created TNC Rule 6702(e) outlines the process through which TNCs may demonstrate which administratively set annual application fee tier is most appropriate for their operation. This is accomplished through the completion and submission of a questionnaire, on a Commission-prescribed form, prior to filing a TNC permit application. The criteria the Commission considers in establishing the annual application fee tiers includes a TNC's market share in the areas in which it operates, the number of years a TNC has operated in Colorado, a TNC's ownership structure, and whether a newly formed TNC entering the market is an affiliate or subsidiary of an existing motor carrier or is a taxicab company or shuttle company converting to a TNC, pursuant to § 40-10.1-605(1)(n), C.R.S. Furthermore, the proposed amendments include a requirement to notify TNCs, in writing, if/when there are increases to the annual application fee tiers. Such notification shall be at least thirty days prior to the increases taking effect. Also, there would be a requirement for the criteria being used to establish the different annual application fee tiers to be published on the Commission's website.

D. Stakeholder Engagement

9. On July 10, 2023, Transportation Staff coordinated and conducted a stakeholder event to discuss potential options related to the implementation of this new framework. Those in attendance included representatives from all licensed TNCs, including Rasier LLC (aka Uber), Lyft, Inc., HopSkipDrive, Inc, and River North Transit LLC, as well as a prospective applicant interested in the TNC market. During this discussion, it was suggested that certain data points could be used to establish the different annual application fee tiers, such as ride volume, personal vehicle and driver count, and/or generated revenue. There was also discussion on prioritizing certain market factors over others, such as the size/scope of a TNC operation being given more weight than whether a TNC operation has been doing business in Colorado for a specified period of time. However, everyone appeared to agree that establishing different tiers to measure the size/scope of a TNC operation was appropriate, perhaps limited to between three and five tiers.

10. In December 2023, these same stakeholders were again contacted to discuss a model that had been created by Transportation Staff. This model consisted of the same parameters outlined in the proposed rule amendments, including having TNCs fill out a questionnaire prior to submitting a permit application, which would then be used to designate the most appropriate of three possible fee tiers. As had been previously discussed, the model would give more weight to the size/scope of the TNC operation. Everyone contacted was comfortable with the model created by Transportation Staff.

11. This model was also incorporated as part of the administrative setting of TNC permit fees, effective January 1, 2024, which was necessary since SB 23-187 repealed the fixed fee previously set in statute and delegated to the Commission the function of administratively setting the annual permit fees. This model was implemented for immediate effect, with this

follow-on rulemaking to consider any adjustments or modifications, and to expand access to the TNC industry to smaller and cooperative-style operations, which is consistent with the intent of SB 23-187. This implementation has been well received by currently licensed TNCs, some of whom have renewed their TNC permits using this new framework, as well as prospective TNC operations that are considering entering the market.

E. Conclusion

12. Through this NOPR, the Commission solicits comments from interested persons and stakeholders on whether to adopt, revise, or not adopt, some or all of the proposed amendments to the TNC rules, as set forth in the attachments to this Decision and discussed above. The Commission encourages members of the transportation industry and other interested persons to participate in this Proceeding and to contribute to the rulemaking record, on which the Commission will base its decision on whether to adopt rule amendments.

13. Among other issues that rulemaking participants may wish to comment on in this Proceeding, the Commission specifically solicits comment from interested participants on whether the approach contained in the proposed rules provides sufficient substance regarding the various annual application fee tiers or if the rules should further describe the resulting tiers. As with all comments, participants are encouraged to submit proposed redline rule language for consideration along with any comments.

14. The Commission refers this matter to an Administrative Law Judge (ALJ) for the issuance of a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations

unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, including attachments, shall be filed with the Colorado Secretary of State for publication in the April 25, 2024 edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the Commission's Rules Regulating Transportation Network Companies, 4 *Code of Colorado Regulations*, 723-6, as described in this Decision and its attachments. The Commission prefers and encourages interested persons to file comments through the Commission's Electronic Filings website (Proceeding No. 24R-0165TR) at:

<https://puc.colorado.gov/>

3. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

4. The rulemaking hearing on the proposed rules and related matters shall be held before an ALJ, as follows:

DATE: June 20, 2024

TIME: 11:30 a.m. until not later than 5:00 p.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website, available at:
<https://puc.colorado.gov/puccalendar>

5. The ALJ will set procedures for a remote hearing, if necessary, by a separate decision issued in this Proceeding.

6. The ALJ may set additional hearings, if necessary.

7. Written comments may be filed at any time in this Proceeding. Initial written comments are requested to be filed no later than May 24, 2024, and any comments responsive to the initial comments are requested to be filed no later than June 7, 2024, so that the initial comments and responsive comments may be considered at the hearing.

8. At the time set for hearing, interested persons may submit written comments and may present these orally, unless the ALJ deems oral comments unnecessary. The Commission will consider all comments, whether written or oral.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 3, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners