

Decision No. R23-0757-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
GRANTING MOTION TO MODIFY PROCEDURAL SCHEDULE,
ACKNOWLEDGING WAIVER OF STATUTORY TIME PERIOD,
VACATING EVIDENTIARY HEARING, AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: November 14, 2023

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I. STATEMENT AND PROCEDURAL HISTORY

1. 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 December 19, 2022, in Proceeding No. 22A-0318CP (Extension Application). MedRide seeks to

expand its existing transportation authority to provide call-and-demand shuttle services from Mesa County to all points throughout the State of Colorado.

2. 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.

3. By Decision No. C23-0458, issued July 17, 2023, in Proceeding No. 23A-0239CP-EXT, MedRide's authority was extended to include service originating in Pueblo County as well.

4. MedRide currently holds CPCN No. 55980, under which Letter of Authority it is entitled 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.

5. 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 Extension Application indicated that MedRide will be represented in this Proceeding by Lenora Plimpton of Fortis Law Partners LLC, 1900 Wazee St., Suite 300, Denver, CO 80202. However, neither Ms. Plimpton nor anyone from her law firm entered an appearance on behalf of Applicant at that time.

6. 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 Extension 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

7. On July 19, 2023, Tazco, Inc., doing business as Sunshine Rides and/or 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.

8. 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;

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

- D. Item (II) is restricted against providing service from points in the Counties of Gunnison, Eagle, Denver, San Juan, or Archuleta, State of Colorado;
- 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.

9. On August 16, 2023, the Commission deemed the Extension Application complete, and referred the matter to an Administrative Law Judge (ALJ) by minute entry for disposition. This Proceeding was then assigned to the undersigned ALJ.

10. Pursuant to § 40-6-109.5(2), C.R.S., a final Commission decision is due 250 days after MedRide's Extension Application is deemed complete, or on or before April 22, 2024.

11. 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 Extension Application and evidentiary hearing would be discussed. Both parties and counsel for Intervenor were served copies of Decision No. R23-0603-I.

12. 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.

13. At the prehearing conference, Mr. Valentine requested that an in-person evidentiary hearing be held in Grand Junction, Colorado because 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 the offices of the Colorado Department of Transportation in Grand Junction, Colorado.

14. Decision No. R23-0665-I also established the following procedural schedule to govern this Proceeding:

- MedRide's Pre-Marked Exhibits and Witness/Exhibit lists: **October 13, 2023**
- Sunshine Taxi's Pre-Marked Exhibits and Witness/Exhibit lists: **November 3, 2023**
- MedRide's Rebuttal Exhibits and Witness/Exhibit lists: **November 22, 2023**
- Settlements and Stipulations: **December 7, 2023**
- Post-Hearing Statements of Position: **January 5, 2024**

The adopted procedural schedule and scheduled evidentiary hearing is designed to permit the parties, the undersigned ALJ, and the Commission sufficient time to review exhibits, consider testimony, issue a recommended decision, and allow time for exceptions before the April 22, 2024, statutory deadline.

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

16. Six days after MedRide's deadline to file its exhibits and witness/exhibit lists expired, on October 19, 2023, Henry M. Baskerville of Fortis Law Partners LLC, entered his appearance as counsel on behalf of Applicant MedRide.

II. MOTION FOR EXTENSION OF TIME TO SUBMIT EXHIBITS, EXHIBIT LIST, AND WITNESS LIST

17. On October 24, 2023, MedRide moved for an extension of time to submit its exhibits and witness/exhibit lists. In support of its motion, MedRide pointed out that its counsel entered his appearance after the deadline for it to file its exhibits and witness/exhibit lists had

already expired. It proposed an alternative schedule and also requested that the December 15, 2023, evidentiary hearing be rescheduled.

18. Sunshine Taxi opposes MedRide's motion and requests that this Proceeding be dismissed because of MedRide's failure to timely submit its exhibits and witness/exhibit lists. Sunshine Taxi points out that someone from MedRide's counsel's office was aware of the proceeding as far back as July 2023; that MedRide was served with Decision No. R23-0603-I which set the prehearing conference, and also received an emailed link for the remote hearing, yet nonetheless chose not to appear. Further, Sunshine Taxi notes, in discussions regarding MedRide's Motion for Extension of Time, MedRide's counsel did not commit to waive the statutory deadline.

19. The chronology of events supports Sunshine Taxi's position. The exhibit Sunshine Taxi attached to its response is an email exchange between Sunshine Taxi's counsel and Ms. Plimpton, who was identified on the Extension Application as MedRide's attorney. The exhibit establishes several key events in the chronology:

- Mr. Valentine emailed a copy of Sunshine Taxi's Intervention to Ms. Plimpton on July 19, 2023, the day the Intervention was filed.
- When Ms. Plimpton expressed confusion about the filing, Mr. Valentine explained that she had been identified on the Extension Application as MedRide's counsel.
- After the September 26, 2023 prehearing conference which MedRide failed to attend, Mr. Valentine again contacted Ms. Plimpton to advise that an evidentiary hearing had been scheduled for December 15, 2023.

20. Despite being provided this information, MedRide did not file its exhibits and witness/exhibit lists in accordance with the procedural schedule established by Decision No. R23-0665-I. Indeed, it did not retain counsel until after the deadline had already expired.

21. Nevertheless, MedRide’s reply in support of its Motion for Extension of Time establishes two additional key facts: (1) In an email dated October 23, 2023, Mr. Valentine suggested that MedRide waive the statutory deadline, as it is permitted to do under § 40-6-109.5(3), C.R.S.; and (2) MedRide has now unequivocally stated that it “remains willing to waive the statutory deadline.”²

22. Section 40-6-109.5(3), C.R.S., permits an applicant to waive the statutory time limits specified in section 40-6-109.5(2), C.R.S., and “if so waived,” the statutory time limits “shall not be binding on the [C]ommission.” The ALJ interprets MedRide’s statement as a written waiver of the statutory time limit and acknowledges the same.

23. Given that the timeline established by § 40-6-109.5, C.R.S., has now been waived, neither party will be prejudiced by the rescheduling of the hearing and the procedural schedule. Moreover, as MedRide accurately points out in its reply, if this Proceeding were dismissed because of MedRide’s failure to meet the procedural schedule deadlines, it would be free to re-file its Extension Application.

24. For these reasons, the ALJ finds and concludes that it is appropriate to grant MedRide’s Motion for Extension of Time to Submit Exhibits, Exhibit List, and Witness List, and will grant the motion.

25. However, because a new evidentiary hearing will need to be scheduled, the ALJ will not adopt the procedural schedule proposed by MedRide in its motion.

² MedRide’s Reply in Support of Motion for Extension of Time to Submit Exhibit, Exhibit List, and Witness List, filed Nov. 6, 2023.

III. VACATION OF EVIDENTIARY HEARING

26. In light of the granting of MedRide's Motion for Extension of Time to Submit Exhibits, Exhibit List, and Witness List, the in-person evidentiary hearing currently scheduled to be held at the offices of the Colorado Department of Transportation in Grand Junction, Colorado, on Friday, December 15, 2023, will be vacated.

IV. SECOND PREHEARING CONFERENCE

27. To ensure this Proceeding now moves forward, to set a new procedural schedule, and to schedule an evidentiary hearing, the ALJ is scheduling a second fully-remote prehearing conference per Rule 1409(a), 4 CCR 723-1, to be held on **Monday, November 27, 2023, at 10:30 a.m.**

28. Participants will appear at the prehearing conference from remote locations by video-conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

29. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

30. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates that, consistent with Sunshine Taxi's

request, an in-person evidentiary hearing will be held in Grand Junction, Colorado. Alternatively, the parties may choose to hold a fully-remote hearing or a hybrid hearing which accommodates both in-person and remote participation in the evidentiary hearing. With the waiver of the statutory deadline, the ALJ is not constricted by a deadline for the issuance of a Commission final decision but is limited by other scheduling conflicts. Consequently, the ALJ anticipates that an evidentiary hearing in this matter is likely to be scheduled in March 2024. The participants should keep this in mind when preparing for the prehearing conference. Other issues relevant to this proceeding may be raised or addressed at the prehearing conference, including whether the parties have met the requirements of this Decision and relevant Commission rules.

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

V. **ORDER**

A. **It Is Ordered That:**

1. The Motion for Extension of Time to Submit Exhibits, Exhibit List, and Witness List filed by Applicant MedRide, LLC (MedRide), on October 24, 2024, is granted.

2. MedRide's waiver of the statutory time period set by § 40-6-109.5, C.R.S., is acknowledged.

3. The in-person evidentiary hearing scheduled for Friday, December 15, 2023, at the offices of the Colorado Department of Transportation, 222 S. 6th St., Room 101, Grand Junction, CO 81501, is vacated.

4. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Monday, November 27, 2023

TIME: 10:30 a.m.

PLACE: Join by video-conference using Zoom

5. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

6. This Decision is effective immediately.

(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