

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0499CP

IN THE MATTER OF THE APPLICATION OF HER RIDE LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
DENYING APPLICATION AND CLOSING PROCEEDING**

Mailed Date: April 15, 2024

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I. STATEMENT

A. Procedural Background

1. On October 6, 2023, Her Ride LLC (Her Ride or Applicant) filed the application described in the caption above (Application). The Application indicated that the Applicant would like to provide Taxi Service, except Large-Market Taxicab Service, in the areas of Colorado Springs, Manitou Springs, Fountain, and Security-Widefield, Colorado.¹

2. On October 9, 2023, Her Ride submitted an amendment to the Application (Application Amendment) indicating that Her Ride was seeking Shuttle Service, was not seeking to provide Taxi Service, and that the territory in which Her Ride was seeking to provide services was El Paso County.²

3. On October 16, 2023, the Commission issued a notice of the Application.³ As noticed, the Application, as amended on October 9, 2023 (hereinafter, Application) requests “authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand shuttle service between all points in El Paso County, State of Colorado.”⁴

4. On November 8, 2023, Pike Peak Cab LLC, doing business as Pikes Peak Transport (Pikes Peak or Intervenor) filed its intervention (Petition to Intervene). In the Petition to Intervene, Pikes Peak states that it owns Certificate of Public Convenience and Necessity (CPCN) PUC No. 55884, and that the same overlaps with the authority sought by Her Ride in the Application.

5. On November 21, 2023, Her Ride submitted eleven letters from eleven members of the public in support of the Application.

¹ Application at 3.

² Application Amendment at 1.

³ See Notice of Applications and Petitions Filed at 2.

⁴ *Id.*

6. On November 22, 2023, the Commission deemed the Application complete and referred this Proceeding to an Administrative Law Judge (ALJ) by minute entry. This Proceeding was subsequently assigned to the undersigned ALJ.

7. By Decision No. R23-0814-I, issued December 7, 2023, the ALJ established procedures and scheduled an evidentiary hearing for February 8, 2023.

8. On January 8, 2024, Pikes Peak filed a document⁵ (Motion for Extension of Time) in which it sought a 45-day extension to the of filing deadline of Pikes Peak's exhibits and witness list.

9. On January 24, 2024, Applicant filed a document⁶ (Motion to Dismiss) in which it sought to strike Pikes Peak's late filings of its hearing exhibits and vacate the hearing scheduled February 8, 2024 due to Pikes Peak's untimely submission of its hearing exhibits.

10. By Decision No. R24-0063-I, issued January 26, 2024, the ALJ vacated the hearing scheduled for February 8, 2024 and rescheduled it for February 27, 2024, granted, in part, the Motion for Extension of Time, and denied the Motion to Dismiss.

11. On February 27, 2024, the undersigned ALJ called this matter for an evidentiary hearing. During the hearing, Rhiannon Moon appeared on behalf of Her Ride and Marcos Griego appeared on behalf of Pikes Peak. Rosita Camargo-Gilliam, Dottie Gray Thomas, Katie Vigliotti, Kristopher Thomas, Sara Stegeman, and Ms. Moon testified on behalf of Her Ride, and Mr. Griego testified on behalf of Pikes Peak. During the hearing, Hearing Exhibits 100, 101, 103, 201, 202, 203, and 211 were admitted into evidence.

⁵ This document did not conform to the requirements set forth in Rule 1202 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 and did not otherwise contain a discernable title.

⁶ This document, too, did not conform to the requirements set forth in Rule 1202 of the Rules of Practice and Procedure, 4 CCR 723-1 and did not otherwise contain a discernable title.

II. EVIDENTIARY HEARING

A. Her Ride's Evidence

12. Ms. Camargo-Gilliam testified that she was a resident of Colorado Springs, Colorado, and worked in the social service field.⁷ She said that one of the main barriers to women being able to obtain social services is their ability to obtain a rideshare service with which they feel safe.⁸ Ms. Camargo-Gilliam testified that during the course of her professional work, she has spoken to women who have experienced sexual harassment, intimidation, and stalking while using or as a result of using a rideshare service.⁹ Ms. Camargo-Gilliam further stated that even though there are rideshare options in Colorado Springs, there are not enough female drivers and policies in place to make rideshare services safer for women, and Her Ride would provide a safe rideshare option for women.¹⁰

13. Ms. Gray Thomas testified that, based on research she conducted, the population of Colorado Springs is expected to grow substantially over the next 20 years; and the need for rideshare services in Colorado Springs is already in high demand and expected to increase.¹¹ Current ride share providers increase their prices during peak hours, making rideshare unaffordable to certain populations; and Ms. Thomas does not believe that Her Ride will cause a dilution in business for Pikes Peak.¹²

14. Ms. Vigliotti testified that she works as an Uber driver;¹³ and that during the course of her work as an Uber driver, she has spoken to women of various ages who expressed to Ms.

⁷ See Hearing Exhibit 100 at 7 (compilation of crime data and support letters, letter dated November 12, 2023, from Ms. Rosita Camargo-Gilliam, filed November 22, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Hearing Exhibit 100 at 10 (letter dated November 13, 2023, from Ms. KD Thomas, filed November 22, 2023).

¹² *Id.*

¹³ See Hearing Exhibit 100 at 8 (undated letter from Ms. Katie Vigliotti, filed November 22, 2023).

Vigliotti their satisfaction at having been picked up by a woman.¹⁴ As a single mother, Ms. Vigliotti feels as though her rideshare options in the Colorado Springs area are “limited;”¹⁵ that the training required of Uber drivers “very limited” and Ms. Vigliotti felt as though it was done with the intention of “check[ing] a box.”

15. Ms. Howe testified that, having used public transportation in the Colorado Springs area, she believes that public transportation options in the Colorado Springs area are lacking, are unsafe, and uncomfortable;¹⁶ and that whenever she uses rideshare services, she takes extra precautions, such as sharing her location with a trusted person;¹⁷ Her Ride, she claims, could help with the safety and security of women who are in need of transportation in the Colorado Springs area.¹⁸ She said that riders of Her Ride would be able to pick their driver in advance using an electronic application; and Pikes Peak had very limited online presence, including on major websites such as Facebook, Instagram, and Google.¹⁹

16. Mr. Thomas testified that was case manager for veterans at Homeward Pikes Peak. Mr. Thomas testified that he has attempted, on multiple occasions, to obtain rideshare services for his mother in the Colorado Springs area. Rideshare services in Colorado Springs are lacking, he said, with insufficient options available and long wait times during certain times during the day. and that in certain hours of the day, the cost of rideshare services in Colorado Springs is double or triple the normal amount. During the course of his professional work, Mr. Thomas learned that the MedRide option is often not dependable, requiring passengers to wait long periods, forcing some to seek alternative transportation after a ride has become unavailable.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Hearing Exhibit 100 at 9 (undated letter from Ms. Cheyene Howe, filed November 22, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *id.* and Hearing Exhibit 103.

17. Ms. Stegeman testified that she moved to Colorado Springs in 2020, and does not own a vehicle. She said she frequently uses rideshare services; and at times has difficulty finding rideshare services.²⁰ At times, she has had to wait substantially long periods of time to be picked up.²¹ Ms. Stegeman states that she had been unaware of the services provided by Pikes Peak until her preparation for this Proceeding. She said the problems with current rideshare services in Colorado Springs include availability, timeliness, surging prices, and safety issues. Lastly, Ms. Stegeman stated that she trusted that Her Ride would vet its drivers so that Ms. Stegeman would feel comfortable using Her Ride's rideshare services.²²

18. Ms. Moon testified that, according to Colorado Springs Police data taken from the Colorado Springs website, www.coloradosprings.gov, 3,704 crimes were reported in El Paso County in a little more than a month-long period, between December 2023 and January 2024.²³ Ms. Moon further offered into evidence summary statistics from the website of the National Coalition Against Domestic Violence regarding sexual assault, stalking, homicide, the physical and mental effects of violence, and economic effects of violence.²⁴ Ms. Moon further testified that she obtained a considerable amount of training and volunteering, which are listed on pages 1-3 of Hearing Exhibit 101. Lastly, Ms. Moon testified that she did not believe that her criminal conviction from 22 years ago is relevant to this Proceeding and should not negatively affect the Application.²⁵

²⁰ See Hearing Exhibit 100 at 12 (compilation of crime data and support letters, undated letter from Ms. Sara Stegeman, filed November 22, 2023).

²¹ *Id.*

²² *Id.*

²³ See *id.* at 2.

²⁴ See *id.* at 3-6.

²⁵ See Hearing Exhibit 211.

B. Intervenor's Evidence

19. Mr. Griego testified that Pikes Peak has been in business since 2016, and that Pikes Peak's business has been in decline since before the beginning of the COVID pandemic. He said that while he does not see a Pike Peak recovering to pre-pandemic level business anytime in the near future; Her Ride would create "destructive competition" for Pike's Peak. Pikes Peak's annual statements show that – in comparison to its revenue in 2019 – in 2020 and 2021, Pike's Peak's revenue decreased;²⁶ He further claimed that, due to Ms. Moon's criminal record,²⁷ Her Ride would be unable to provide transportation services to a large portion of the population of Colorado Springs, which seeks transportation services to and from the four military bases in the Colorado Springs area.

III. RELEVANT LAW**1. Commission Jurisdiction**

20. The Commission has authority to issue certificates to operate as a common carrier under Colo. Const. art. XXV, §§ 40-10.1-103(1) and 203(1), C.R.S., (2024).²⁸ Common carriers may only operate with a Commission-issued certificate declaring that the present or future public convenience and necessity requires or will require the common carrier's operation.²⁹ Motor carriers providing call-and-demand shuttle, charter, and sightseeing service are common carriers.³⁰ Thus, the Commission has jurisdiction to issue a certificate of public convenience and necessity allowing motor carriers, such as Her Ride, to provide call-and-demand shuttle service.

²⁶ Compare Hearing Exhibit 201 at 3 with Hearing Exhibits 202 at 3 and Hearing Exhibit 203 at 3.

²⁷ See Hearing Exhibit 211.

²⁸ See *Miller Brothers, Inc. v. Public Utilities Comm'n*, 525 P.2d 443, 446 (Colo. 1974).

²⁹ Section 40-10.1-201(1), C.R.S.

³⁰ Rule 6001 (l), (nnn), and (ooo) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

2. Burden

21. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”³¹ The bearer of the burden must establish the legal elements of its claim(s) by a preponderance of the evidence.³² The evidence must be “substantial evidence,” which is defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”³³ This standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.³⁴

3. Regulated Monopoly

22. Applicants for a certificate of public convenience and necessity must establish their financial, managerial, and operational fitness to conduct the proposed operations.³⁵ In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, and facilities to operate the proposed service. The Commission has identified the following evidentiary factors as relevant to the fitness inquiry: minimum efficient scale to operate under the proposed authority; credit worthiness and access to capital; assessment of financial health in the near future; capital structure; cash balances; managerial competence and experience; fixed physical facilities such as office space and maintenance garages; licenses and equipment necessary to operate a radio dispatch system; and vehicles of appropriate type.³⁶ Whether the

³¹ § 24-4-105(7), C.R.S.

³²Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

³³ See, e.g., *City of Boulder v. PUC*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 585 (Colo. 1997)).

³⁴ *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985).

³⁵ Rule 6203(a)(XI), 4 CCR 723-6.

³⁶ See e.g., Decision No. C08-0933, at ¶ 7, Consolidated Proceeding Nos. 08A-241CP, 08A-281CPEExtension, 08A-284CP-Extension, and 08A-300CP.

applicant is willing and able to comply with applicable public utilities laws also bears upon fitness.³⁷

23. In addition to fitness, applicants must show that the present or future public convenience and necessity requires or will require the proposed service.³⁸ In deciding that question, the Commission must apply the regulated monopoly doctrine.³⁹ Commission Rules reflect the regulated monopoly doctrine by requiring an applicant seeking a common carrier certificate to demonstrate: the public need for the proposed service; that granting the authority is in the public interest; and that the existing service is inadequate.⁴⁰ In addition, the question is not whether the extent of business in a particular area is sufficient to warrant more certified carriers, but whether the public convenience and necessity demand the service of an additional carrier.⁴¹ Letters of support submitted to demonstrate public need must contain the author's name, address, telephone number, signature; must describe the public need; explain whether and how the existing service is inadequate; and include a statement that the letter contains only information that is true and correct to the best of the author's knowledge and belief.⁴²

24. The Commission has "wide discretionary powers in determining the demands of 'public convenience and necessity.'"⁴³ Whether an incumbent's service is substantially inadequate is a question of fact that the Commission must determine.⁴⁴ The Commission may consider "a broad range of evidence in determining whether an incumbent carrier's service is substantially

³⁷ See *Thacker Brothers Transp. v. Public Utilities Comm'n*, 543 P.2d 719, 721 (Colo. 1975).

³⁸ See § 40-10.1-201(1), C.R.S.

³⁹ *Ephraim Freightways Inc. v. Public Utilities Comm'n*, 380 P.2d 228, 230 (Colo. 1963).

⁴⁰ Rule 6203(a)(XVII), 4 CCR 723-6.

⁴¹ See *Ephraim Freightways Inc.*, at 231.

⁴² Rule 6203(a)(XVII)(A) to (E), 4 CCR 723-6.

⁴³ *Public Utilities Comm'n v. Donahue*, 335 P.2d 285, 288 (Colo. 1959).

⁴⁴ *RAM Broadcasting v. Public Utilities Comm'n*, 702 P.2d 746, 751 (Colo. 1985); *Durango Transportation Inc. v. Pub. Utilities Comm'n*, 122 P.3d 244, 248 (Colo. 2005).

inadequate.”⁴⁵ The Colorado Supreme Court has noted that the Commission may consider any relevant evidence in demonstrating whether the public convenience and necessity requires additional service.⁴⁶ The Court has expressly approved, as relevant, consideration of various aspects of incumbents’ service and operation, including rates and charges, speed and efficiency and quality of its facilities, organization, equipment, and personnel.⁴⁷

25. An applicant may demonstrate substantially inadequate service through evidence that the incumbent is not ready, willing, and able at all times to render service to anyone who might demand it.⁴⁸ But the Commission is not required to find that the incumbent has failed or refused to provide service to a requesting customer.⁴⁹ An applicant must show that the incumbent has demonstrated a general pattern of inadequate service.⁵⁰ But, “the test of inadequacy is not perfection.”⁵¹ That is because any common carrier providing service to many clients will receive some legitimate complaints.⁵² Expressions of mere opinion, preference, desire, and willingness to use an applicant’s service over an incumbent’s, alone, do not establish that the incumbent’s service is substantially inadequate.⁵³ The Commission has found that it does not follow that expressions of preference supported by evidence relating to the adequacy of the incumbent’s service may not prove substantial inadequacy.⁵⁴

⁴⁵ *Durango Transportation Inc.*, at 250.

⁴⁶ *Id.*

⁴⁷ *Id.* at 251.

⁴⁸ *Durango Transportation Inc.*, at 247, citing *Ephraim*, 380 P.2d at 232.

⁴⁹ *Durango Transportation Inc.*, at 251.

⁵⁰ *Id.* at 248.

⁵¹ *Ephraim Freightways Inc.*, 380 P.2d at 232.

⁵² *RAM Broadcasting*, 702 P.2d at 750.

⁵³ See *Durango Transportation Inc.*, at 248, quoting *Public Utilities Comm’n v. Weicker Transfer & Storage Co.*, 451 P.2d 448, 449 (Colo. 1969). Put differently, if expressions of preference are supported by evidence relating to the adequacy of the incumbent’s service, such evidence may establish substantial inadequacy.

⁵⁴ See Decision No. C19-0941 at 10 (mailed November 19, 2019) in Proceeding No. 19A-0144CP (affirming Decision No. R19-0784 in same proceeding); see also *Weicker*, at 449, citing *Donohue v. Public Utilities Comm’n*, 359 P.2d 1024 (Colo. 1961); *Denver & R.G. W. R. Co. v. Public Utilities Comm’n*, 351 P.2d 278 (Colo. 1960); and *Public Utilities Comm’n v. Harvey*, 371 P.2d 452 (Colo. 1962).

26. Although the applicant bears the burden of proving that the incumbent carrier's service is substantially inadequate, "where an applicant's evidence tend[s] to prove the existing carrier's substantial inadequacy, 'it [is] incumbent upon [the existing carrier] to rebut this evidence.'"⁵⁵

27. Therefore, for the Application to be granted, Her Ride must show by a preponderance of the evidence that: (1) it is financially, operationally, and managerially fit to conduct the proposed service; (2) the public needs the proposed service; (3) the current service in the area is substantially inadequate; and (4) approving the Application is in the public interest. If Her Ride can meet each of these burdens, Intervenor can overcome Her Ride's showing of substantial inadequacy of Intervenor's service by presenting evidence that rebut Her Ride's evidence by a preponderance of the evidence.

IV. FINDINGS, ANALYSIS AND CONCLUSIONS

28. As noticed, the Application seeks "authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and demand shuttle service between all points in El Paso County, State of Colorado."⁵⁶

29. Under CPCN PUC No. 55884, Pikes Peak has authority for the (t)ransportation of passengers in call-and-demand shuttle service: (I) between all points in County of El Paso, State of Colorado..."⁵⁷

30. The ALJ finds and concludes that the Authority sought by Her Ride in the Application overlaps Pikes Peak's authority granted to it via CPCN PUC No. 55884.

⁵⁵ *Durango Transportation Inc.*, 122 P.3d at 250 (quoting *Ephraim Freightways Inc.*, 380 P.2d at 231-32).

⁵⁶ Notice of Applications and Petitions Filed at 2.

⁵⁷ Petition to Intervene at 3.

31. As summarized above, for the Application to be granted, Her Ride's evidence must establish by a preponderance of the evidence that: (1) it is financially, operationally, and managerially fit to conduct the proposed service; (2) the public needs the proposed service; (3) the current service in the area is substantially inadequate; and (4) approving the Application is in the public interest.

32. In the Application, and through the testimony of Ms. Howe, Her Ride suggests that the scheduling of a ride, and the selection of a driver, by a Her Ride customer would be done through an electronic application.⁵⁸ However, nothing in the record suggests what the technical capacities and limitations of such application are, and more importantly, whether and when such an application is/would be operational. If an electronic application is the only way by which customers may reserve a ride through Her Ride, and the application is not operational, Her Ride cannot provide call-and demand shuttle services to its customers. While it is conceivable that Her Ride could accept call-and demand shuttle service requests via alternative means, such as phone or email, the record is also silent on such alternatives. Therefore, the ALJ finds and concludes that Her Ride failed to meet its burden of proof with respect to Her Ride's operational fitness.

33. Regarding the adequacy of Pikes Peak's service, Ms. Howe testified that Pikes Peak has limited online presence, Ms. Gray Thomas testified that Her Ride would not cause dilution of Pike's Peak's services, and Ms. Stegeman testified that she was unaware of the services offered by Pikes Peak. The remaining witnesses who testified on behalf, and/or wrote letters in support, of Her Ride⁵⁹ have generally stated that the rideshare options in the Colorado Springs area are expensive, unreliable, unsafe, or otherwise inadequate. No additional evidence as to the adequacy

⁵⁸ See Application at 4.

⁵⁹ See generally, Hearing Exhibit 100 at 7-16. It is noted that one of the letters in support of Her Ride did not address the adequacy (or lack thereof) of the current transportation services offered in El Paso County. See *id.* at 17.

of Pike's Peak services can be gleaned from the record. Taken as a whole, the evidence on the record fails to establish that Pikes Peak has demonstrated a general pattern of inadequate service. Therefore, the ALJ finds and concludes that Her Ride failed to meet its burden of proof with respect to a showing that Pike's Peak Services are substantially inadequate.

34. Based on the foregoing, the Application will be denied, as ordered below.

35. The ALJ agrees with Ms. Moon that her criminal record, as outlined in Hearing Exhibit 211, is irrelevant for purposes of the Application and notes that he did not consider the same in making the findings and reaching the conclusions herein.

36. Because Applicant did not meet its burden of proof with respect to at least two of the legal elements under the doctrine of regulated monopoly, the ALJ finds it unnecessary to discuss whether Applicant met its burden with respect to the two remaining elements (whether the public needs the proposed service and whether approving the Application is in the public interest). Similarly, because Applicant did not meet its burden of proof with respect to a showing of substantial inadequacy on the part of Pikes, Peak, it is unnecessary to discuss whether Pikes Peak's evidence was sufficient to rebut a showing of substantial inadequacy in its services.

37. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

V. ORDER

A. It Is Ordered That:

1. The above-captioned application filed by Her Ride LLC on October 6, 2023, and amended on October 9, 2023, is denied.

2. Proceeding No. 23A-0499CP is closed.

3. 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.

4. 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.

5. 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 cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director