

Decision No. R24-0673

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.

**RECOMMENDED DECISION
DENYING APPLICATION**

Issued Date: September 19, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision recommends that the Public Utilities Commission (“Commission” or “PUC”) deny the Application for Permanent Authority to Extend Operations Under Certificate of Public Convenience and Necessity (“CPCN”) No. 55980 (“Extension Application”) filed by MedRide, LLC (“MedRide” or “Applicant”) on June 29, 2023.

2. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge (“ALJ”) now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

B. Appearances and Exhibits

3. A fully remote hearing in this proceeding was held on Thursday, March 19, 2024, as scheduled and noticed by Decision No. R23-0798-I, issued December 4, 2023.

4. The parties to this Proceeding are Applicant MedRide and Intervenor Tazco, Inc., doing business as Sunshine Taxi (“Sunshine Taxi” or “Intervenor”).

5. Both parties to this Proceeding appeared at the hearing, and both were represented by counsel. The following individuals appeared on each party's behalf:

- Tyler Borzileri, Vice President of Business Development for MedRide appeared on behalf of Applicant MedRide. MedRide was represented at the hearing by its counsel Henry Baskerville and Lenora Plimpton of Fortis Law Partners.
- Intervenor Sunshine Taxi was represented by its General Manager, Kelly Milan. Sunshine Taxi was represented at the hearing by its counsel Mark Valentine of Keyes & Fox, LLP.

6. Both Mr. Borzileri and Mr. Milan testified at the hearing. No other witnesses testified.

7. During the hearing the following exhibits were admitted into evidence: Applicant's Hearing Exhibits 1, 2, 3, 5, 12, 13, and 14; and Sunshine Taxi's Hearing Exhibits 101, 102, 103, and 104.

8. Both parties filed Statements of Position ("SOPs") on April 19, 2024.

II. BACKGROUND AND FACTUAL FINDINGS

A. Procedural History

9. On June 29, 2023, MedRide, LLC initiated this matter by filing an Application for Permanent Authority to Extend Operations Under CPCN No. 55980, which had been granted by Decision No. C22-0555, issued December 19, 2022, in Proceeding No. 22A-0318CP. The Extension Application sought to expand MedRide's existing transportation authority to provide transportation services from Mesa County to all points throughout the State of Colorado.

10. 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.

11. 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.

12. Subsequently, by Decision No. R24-0271, issued April 24, 2024, MedRide's service area was extended a second time to include service originating in several Front Range counties, as well as Park County.

13. MedRide's current Letter of Authority, issued June 18, 2024, allows it to provide the following services under CPCN No. 55980, within the limitations posed by a number of restrictions:

- (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.
- (III) Transportation of passengers in call-and-demand shuttle service between all points in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, Park, and Weld Counties, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.
RESTRICTION: This authority is restricted against:
 - (a) service between all points within ten miles of Estes Park, Colorado, on the one hand, and Boulder, Colorado, and that portion of Boulder County which lies north of a line beginning at the intersection of Colorado State Highway 52 and the Boulder-Weld County line, thence west over Colorado State Highway 52 as extended to the Boulder-Grand County line, on the other hand, except that such restrictions shall not include a restriction on service to or from points within a 10-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado;
 - (b) service between all points within a 10-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, and between said points, on the one hand, and all points within a 75-mile radius of the intersection of U.S. Highways 34 and 36 in Estes Park, Colorado, on the other hand.
 - (c) service between Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, Park, and Weld Counties, on the one hand, and all points in Routt County, on the other;
 - (d) service between all points located within a 10-mile radius of the intersection of Elk Avenue and Colorado State Highway 135 in Crested Butte, Colorado, on the one hand, and on the other hand, all points within a 10-mile radius of Colfax Avenue and Broadway in Denver, Colorado;
 - (e) against service between all points in the County of Gunnison, State of Colorado, on the one hand, and points within a 1-mile radius of Denver International Airport;

- (f) service between all points in Denver, Colorado, including Denver International Airport, as the same exists on May 2, 2001, on the one hand, and all points in Grand County, Colorado, on the other hand;
- (g) service between Denver County or Boulder County, on the one hand, and any of Red Rocks Park and Amphitheatre, Mount Blue Sky (Mount Evans), Lookout Mountain, or Rocky Mountain National Park, on the other hand; and
- (h) service between all points located within that portion of San Miguel County lying within a 10-mile radius of Telluride, Colorado, and between said points, on the one hand, and all points within the State of Colorado, on the other hand.

14. 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 at issue in this Proceeding 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

15. 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.

16. 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

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

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;
- 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.

17. On August 16, 2023, the Commission deemed the Application complete and referred the matter to an ALJ by minute entry for disposition. Because MedRide did not file testimony and exhibits with its Extension Application, a final Commission decision would have been due 250 days from the date the Extension Application was deemed complete, or on or before April 22, 2024.

18. 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.

19. Mr. Valentine appeared on behalf of Intervenor Sunshine Taxi. No one appeared on behalf of Applicant MedRide.

20. Despite MedRide's failure to appear, the ALJ agreed to Sunshine Taxi's request that an in-person evidentiary hearing be scheduled for its convenience in Grand Junction,

Colorado. By Decision No. R23-0665-I, issued October 4, 2023, the undersigned ALJ set an evidentiary hearing for **December 15, 2023**, 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.

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

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

23. Subsequently, on October 24, 2023, MedRide moved for an extension of time to submit its exhibits and witness/exhibit lists, and for the vacation and rescheduling of the December 15, 2023 evidentiary hearing.

24. 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 and that delaying the hearing could negatively impact the statutory timeline.

25. In its reply in support of its motion, MedRide waived the statutory time period pursuant to § 40-6-109.5(3), C.R.S., thereby alleviating pressure on the Commission to issue its final decision by April 22, 2024, which was 250 days after the Application was deemed complete.

26. By Decision No. R23-0757-I, issued November 14, 2023, the undersigned ALJ granted MedRide's Motion for Extension of Time and acknowledged its waiver of the statutory deadline.

27. Both parties appeared at a second prehearing conference held on Monday, November 27, 2023, at which the evidentiary hearing was rescheduled to March 19, 2024.

28. A fully-remote evidentiary hearing was held as scheduled on March 19, 2024.

29. At the conclusion of MedRide's case in chief, Sunshine Taxi moved for a directed verdict, arguing that MedRide had not met its burden of demonstrating that the existing service provided by Sunshine Taxi was inadequate or that MedRide was financially fit to provide the services it proposed in the Extension Application. MedRide countered that it had shown evidence of need and that its Extension Application included information about its financial fitness. The ALJ denied Sunshine Taxi's motion and permitted Sunshine Taxi to present its defense to the Extension Application.

30. After the evidentiary hearing, both parties filed their respective SOPs on April 19, 2024.

B. Findings of Fact

31. MedRide holds PUC CPCN No. 55980. It primarily provides shuttle and transportation services for individuals needing transport to or from a medical facility, but also provides other shuttle services. The extent of its authority is set out fully in ¶ 13 above. MedRide's services include providing non-emergency ambulatory and wheelchair accessible rides for riders with mobility issues. MedRide is approved by Medicaid to transport Medicaid patients to appointments throughout the State of Colorado. It also gives rides to private pay end users. Mr. Borzileri testified that MedRide has been providing rides to Medicaid patients in Mesa County since 2018.

32. Mr. Borzileri is MedRide's Vice President of Business Development and testified that he is familiar with MedRide's operations. He stated that MedRide's agreements with Medicaid permit it to transport Medicaid patients, but not Medicare patients. It provides Medicaid transportation services to 55-60 counties in the State of Colorado. It would like to move into transporting Medicare patients, as well as Medicaid patients. Most senior citizens fall under

Medicare, rather than Medicaid, and therefore are not eligible for MedRide transportation in Mesa County.

33. Sunshine Taxi holds PUC CPCN No. 19429 and, as set out fully in ¶ 16 above, is authorized to provide taxi, sightseeing, shuttle, call-and-demand limousine, and sightseeing services in Mesa County, within certain restrictions. It also serves Montrose County. It has held common carrier authority since 1991.

34. Sunshine Taxi opposed MedRide's Extension Application on the grounds that the former's services adequately meet the needs of customers and clients in Mesa County.

35. At the time of the hearing, MedRide was in the process of negotiating and finalizing its contract with the State of Colorado's Department of Health Care Policy & Financing ("HCPF") department to broker transportation services for patients in the nine-to-ten Denver Metro county area. Brokers oversee the rides and facilitate them but do not provide the rides. Should MedRide finalize the contract with the State, it may no longer be permitted to provide Medicaid rides in the Denver Metro area.

36. In addition to its Medicaid rides, Mr. Borzileri testified that it has received requests from school districts in Mesa County to provide students transportation to and from schools. It provides rides to school children in the areas it services in Pueblo and El Paso Counties. By way of example, Mr. Borzileri explained that MedRide provided "more than 150 trips" in Pueblo that were "non-Medicaid" during the second half of 2023. Mr. Borzileri stated that because MedRide's vehicles are equipped to transport medically-challenged individuals, it is uniquely situated to provide rides for students with special needs requiring ambulatory and wheelchair transportation. Thus, in addition to seeking to provide medical transport, MedRide also seeks to provide school transportation services in Mesa County.

37. MedRide has a total of 250 vehicles in its Colorado fleet, with a total fleet of 60 vehicles on the Western Slope where Mesa County is located. Approximately 240 drivers drive vehicles for MedRide. MedRide provides, on average, 1,500 “trip transports” per day in the State of Colorado. It does “not often” decline requests for rides. Based on these statistics, Mr. Borzileri testified that MedRide has “more than enough” capacity to meet the need of Mesa County.

38. Statistics prepared by the United States Census Bureau show that, in Mesa County, 21.1 percent of residents are over the age of 65. In contrast, only 14 percent of El Paso County residents, and 19.4 percent of Pueblo County residents are over the age of 65.² The statistics show that Mesa County has the highest concentration of residents over the age of 65. Mr. Borzileri theorized that as a result, Mesa County had a higher need for medical transportation services than other areas of the State.

39. In support of its contention that Mesa County’s transportation needs are not adequately being met, MedRide offered the written letters of support penned by Alyssa Kenney, Human Resource Manager with The Center at Foresight—a short-term rehabilitation facility in Grand Junction³, and Myron Klesnar of the Pace Program, which provides care for elderly and memory-impaired individuals in Grand Junction...⁴ Both Ms. Kenney and Mr. Klesnar wrote that the existing transportation services in Mesa County were insufficient to meet the needs of medically-challenged riders. Ms. Kenney conveyed that the need for long term and assisted care in Mesa County has risen “exorbitantly.”⁵

² Hearing Ex. 5.

³ Hearing Ex. 1.

⁴ Hearing Ex. 2.

⁵ Hearing Ex. 1.

40. However, neither Ms. Kenney nor Mr. Klesnar appeared at the hearing. Neither was therefore available to answer questions about the bases for their opinions. Their opinions, while noted, are consequently less persuasive.

41. Likewise, Sharon Walley, the Medical Records Director of Eagle Ridge Post Acute, a post-acute short-term care facility in Grand Junction, drafted a letter expressing her opinion that Mesa County needs additional medical ride options for Mesa County residents.⁶ She, too, did not testify at the hearing and consequently could not be cross-examined. Further, the ALJ notes that Ms. Walley's letter is dated November 28, 2013.⁷ While it is possible that the letter was written in 2023 and simply misdated, as Ms. Walley was not present at the hearing and did not testify, an error in dating the letter could not be rectified or examined. Ms. Walley's letter is consequently of little evidentiary value.

42. Mr. Borzileri testified that he has witnessed and seen patients at Eagle Ridge Post Acute waiting for rides in the lobby. He therefore stated he has first-hand, personal knowledge of patient need for rides from Eagle Ridge Post Acute. Mr. Borzileri testified that he had spoken with "over 25" patients who told him they were unable to obtain a ride. However, Mr. Borzileri admitted under cross-examination that he did not know for whom or from which ride providers the patients were waiting. Nor did Mr. Borzileri know precisely how many patients were unable to obtain a ride or have "hard data" establishing the number of patients unable to be transported.

43. Mr. Borzileri testified that he believes MedRide provides a needed service for patients requiring transport to medical care by providing a "warm handoff" of the patient to and from a health care provider. MedRide prides itself on timeliness and customer service, he stated.

⁶ Hearing Ex. 3.

⁷ *Id.*

44. Given the high population of older residents, Mr. Borzileri testified that, in his opinion, the 12 taxis owned and operated by Sunshine Taxi to serve the area are insufficient to serve the population's needs.

45. Mr. Milan has solely owned Sunshine Rides for seven years. He has served as its general manager for ten years. Sunshine Rides is the now the primary operating name of the company. Mr. Milan explained that Sunshine Taxi is its "legacy" identity which it maintains with the Colorado Secretary of State, but it now operates under the name Sunshine Rides.⁸

46. Among the services Sunshine Taxi provides are rides and door-to-door service between Grand Junction/Western Slope and the Grand Junction Airport and Grand Junction/Western Slope and Denver International Airport.⁹ Although Sunshine Taxi's 2022 permit with the PUC lists 12 active vehicles on any given day,¹⁰ Mr. Milan testified that Sunshine Taxi has 90 active vehicles available, all of which bear a PUC sticker. Of those 90 vehicles in service, 15 are currently active and dedicated for CPCN services, but the other vehicles are available if needed. Mr. Milan testified that "regulatory changes with the PUC" have led it to reduce the number of active PUC vehicles from 44 in 2020, to 15 in 2023-2024. He noted, though, that no vehicle is used "100%" of the time.

47. Sunshine Taxi employs about 100 drivers, who provide both regulated and unregulated transportation services. Fifteen of Sunshine Taxi's drivers provide PUC-regulated services. The majority of rides provided by Sunshine Taxi's other 85 drivers are non-regulated services for non-emergent medical transport.

⁸ Although Intervenor Tazco, Inc. now does business primarily under the name Sunshine Rides, for clarity in this Recommended Decision and this Proceeding, the ALJ will refer to the entity as "Sunshine Taxi" because it identified itself as doing business as "Sunshine Taxi" in its Intervention in this Proceeding.

⁹ Hearing Ex. 12.

¹⁰ Hearing Ex. 103.

48. Mr. Milan noted that there were other entities providing transportation services in Mesa County, although he could not identify them all by name. He testified that there are other carriers with sightseeing authority in Mesa County; —another company with shuttle service authority in Mesa County called Telluride Express; and, until recently, another entity in addition to Sunshine Taxi held taxi service authority.

49. Mr. Milan, as the general manager and sole owner of Sunshine Taxi, strongly countered Mr. Borzileri's characterization of Sunshine Taxi as unable to serve the transportation demands of its service area. Mr. Milan testified that Sunshine Taxi has ample capacity and, in his opinion and with his knowledge of the Mesa County market, Mr. Milan testified that he sees no unmet demand in the area necessitating the addition of another transportation carrier.

50. Sunshine Taxi reported approximately 48,000 transportation trips in 2022, most of which were taxi trips.¹¹ Although it is not possible to tease out how many of those taxi rides are for medical purposes, it is undisputed that Sunshine Taxi's taxi services are available to patients needing medical transport. Mr. Milan explained that the number of trips Sunshine Taxi provided in any given year could easily fluctuate by 300 trips year-over-year.

51. Mr. Milan testified that Sunshine Taxi declined less than one percent of requested rides. He also stated that Sunshine Taxi's average pick up time is 10-15 minutes after a call requesting a ride is received.

52. In 2022, Sunshine Taxi provided only 174 shuttle rides in Mesa County. It does not consider or include medical transport as a shuttle service. Nor does it provide regular shuttle service to other Western Slope locations like Aspen. Instead, Mr. Milan described Sunshine Taxi's

¹¹ Hearing Ex. 103.

shuttle service as transportation provided from defined locations, on a specific schedule, at a per-person rate. He intimated that Sunshine Taxi provided shuttle service to events such as concerts.

53. Sunshine Taxi's sightseeing services are generally within the Grand Junction valley. By way of example, Mr. Milan described sightseeing tours to local wineries and a national park.

54. Sunshine Taxi provides approximately 200,000 Medicaid rides per year in its service area. Mr. Milan identified Mercy Medical as another wheelchair-accessible transportation service operating in the Grand Junction area.

55. In addition, Mr. Milan stated that Sunshine Taxi was in contract negotiations to provide school transportation for the school district in Mesa County. Any contract with the school district would not be transportation services regulated by the PUC.

56. Based upon the Census data figure showing about 20 percent of Mesa County's population is over age 65, Mr. Milan estimated that of Mesa County's total population of approximately 160,000 people, 32,000 are seniors.¹² Although MedRide implied that Sunshine Taxi's services were inadequate to serve Mesa County's senior population, Mr. Milan insisted that the senior population "definitely needs transportation and support and we provide that." Mr. Milan characterized Mesa County as primarily rural and a "very small market" and Grand Junction as a small community "about the size of Parker," Colorado.

57. Mr. Milan also testified that Sunshine Taxi is adept at adjusting its number of drivers, including adding more drivers, to ensure it has enough drivers available when and where needed. In his own words, Mr. Milan stated that Sunshine Taxi has "it pretty dialed in."

¹² Hearing Ex. 5.

58. Yet, Mr. Milan acknowledged that Sunshine Taxi has only three vehicles capable of transporting patients in wheelchairs. Mr. Milan asserted, but did not identify, that other wheelchair-accessible transportation services are operating in Mesa County. Mr. Milan clarified, though, that it has purchased new vehicles to add to its fleet of sedans, minivans and shuttle buses. Moreover, Mr. Milan clarified that Sunshine Taxi has transported passengers in wheelchairs and passengers on oxygen.

59. Likewise, Mr. Milan stated that Sunshine Taxi would purchase more vehicles if needed to meet demand. Therefore, even though PUC documents from the years 2020 and 2022 showed that Sunshine Taxi had 44 and 12 vehicles, respectively, dedicated to PUC services on any given day, Sunshine Taxi was dexterous enough to adjust that number to meet fluctuating demands.

60. Mr. Milan also stated unequivocally that Sunshine Taxi has the ability and capacity to provide 300 to 500 more trips per year if necessary, and is happy to grow to meet any increase in demand.

III. MOTIONS

A. MedRide's Motion to Supplement Witness and Exhibit List

61. On March 15, 2024, two business days before the scheduled commencement of the evidentiary hearing, Applicant moved to supplement its witness and exhibit list and sought to present a witness who had not been previously identified. MedRide argued that until it was in the last stages of preparing for the evidentiary hearing, it did not know that a witness it intended to call was unavailable. It sought to supplement its witness lists to add several previously-unidentified substitute witnesses. In particular, MedRide asked that Pam Cribbarri, MedRide's General Manager in Mesa County, be permitted to testify.

62. Although Sunshine Taxi did not file a written response to Applicant's Motion to Supplement Witness and Exhibit List (Motion to Supplement), it responded on the record at the evidentiary hearing. Sunshine Taxi opposed the Motion to Supplement. Sunshine Taxi pointed out that the deadline for submitting its initial and supplemental witness and exhibit lists had expired on January 16, 2024, and February 27, 2024, respectively, long before MedRide filed its Motion to Supplement on March 15, 2024.

63. Sunshine Taxi argued that MedRide had failed to establish good cause for the late filing of a supplemental witness and exhibit list.

64. Sunshine Taxi also argued that permitting MedRide to supplement its witness and exhibit list so close to the evidentiary hearing was prejudicial because Sunshine Taxi did not have an opportunity to conduct any discovery pertinent to the added witnesses in advance of the evidentiary hearing.

65. MedRide responded at the hearing that it only intended to call one of the witnesses on its supplemental list, Ms. Cribbari, who had knowledge of MedRide's operations in Mesa County. In its written Motion to Supplement, MedRide represented that it had only "realized" days before the hearing that Ms. Cribbari "has unique testimony and knowledge regarding Mesa County" pertinent to MedRide's Extension Application.¹³ Yet, Ms. Plimpton conceded during the evidentiary hearing that MedRide could have identified Ms. Cribbari as a potential witness sooner.

66. With respect to its request to supplement its exhibit list, MedRide pointed out that the additional information offered in its supplemental exhibit list was publicly available

¹³ MedRide, LLC's Motion for Leave to Supplement Witness and Exhibit List, p. 3, ¶ 11(d), filed Mar. 14, 2024.

information and “judicially noticeable” because the information is not reasonably subject to dispute.

67. Nevertheless, the ALJ concluded and ruled at the hearing, and reaffirms here, that MedRide failed to establish good cause for its late supplemental witness and exhibit list.

68. Even if MedRide was unaware that certain witnesses would not be available for the evidentiary hearing, it failed to demonstrate that the witnesses and exhibits listed on its witness and exhibit lists could not have been discovered, added, or disclosed sooner.

69. Further, the ALJ pointed out that MedRide had filed this Extension Application in June 2023, but had failed to attend the first prehearing conference and had missed the initial deadline to submit its witness and exhibit lists. Once MedRide retained counsel to represent it in this Proceeding, the evidentiary hearing originally scheduled for December 2023 was vacated and reset to March 2024, and all deadlines were extended. Thus, MedRide had several months to prepare and file a supplemental witness and exhibit list but did not file its request to supplement until two business days before the evidentiary hearing.

70. Contrary to MedRide’s assertion in its Motion to Supplement, such a late disclosure and identification of witnesses and exhibits would have been prejudicial to Sunshine Taxi. Due to this very late disclosure — only days before the scheduled evidentiary hearing — Sunshine Taxi would not have had adequate time to prepare for the examination of additional witnesses such as Ms. Cribbarri, or thoroughly review and analyze the additional exhibits.

71. The ALJ therefore denied the Motion to Supplement.

B. Sunshine Taxi’s Motion for Directed Verdict

72. At the close of MedRide’s presentation of its case in chief, Sunshine Taxi moved for a directed verdict, arguing that MedRide had failed to demonstrate both the inadequacy of the

existing service and its financial fitness to provide the extension of its existing service in Mesa County.

73. MedRide countered that it had offered sufficient evidence to support its Extension Application.

74. The ALJ agreed. Sunshine Taxi's oral motion for directed verdict was therefore denied. Sunshine Taxi then proceeded to present its case in opposition to the Extension Application.

IV. RELEVANT LAW

A. **Commission Jurisdiction.**

75. 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.¹⁴ 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.¹⁵ A common carrier is defined as:

a public utility as defined in § 40-1-102, C.R.S., and includes the obligation to indiscriminately accept and carry Passengers for Compensation. Common Carrier includes every Person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state, by Motor Vehicle.¹⁶

76. Motor carriers providing call-and-demand shuttle service are common carriers.¹⁷ Thus, carriers seeking to provide call-and-demand shuttle service must obtain a Commission-issued certificate of public convenience and necessity ("CPCN").

¹⁴ See *Miller Bros., Inc. v. Pub. Utils. Comm'n*, 525 P.2d 443, 446 (Colo. 1974).

¹⁵ §§ 40-10.1-103(1) and 203(1), C.R.S.

¹⁶ Rule 6001(p) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colo. Regulations* ("CCR") 723-6.

¹⁷ Rule 6001(gg) and (nnn), 4 CCR 723-6.

77. Shuttle service is transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate, using vehicles that are not exclusive to any individual or group.¹⁸

78. A sightseeing service is the transportation of passengers by a common carrier on a call-and-demand basis “originating and terminating at the same point for the sole purpose of viewing or visiting places of natural, historic, or scenic interest.”¹⁹

B. Legal Standards.

79. MedRide, as the proponent of this decision and the Applicant seeking a common carrier (or CPCN) certificate, bears the burden of proof by a preponderance of the evidence.²⁰ The preponderance standard requires the fact finder to determine “whether the existence of a contested fact is more probable than its non-existence.”²¹ A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.²²

80. Although the preponderance standard applies, substantial evidence in the record must support the Commission’s decision.²³

The evidence underlying the agency’s decision must be adequate to support a reasonable conclusion. Substantial evidence is more than a scintilla . . . it must do more than create a suspicion of the fact to be established. It means such relevant evidence as a reasonable 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.²⁴

¹⁸ Rule 6001(nnn), 4 CCR 723-6.

¹⁹ Rule 6001(ooo), 4 CCR 723-6.

²⁰ §§ 13-25-127(1) and 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1.

²¹ *Swain v. Colo. Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

²² *See Schocke v. Colo. Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

²³ *City of Boulder v. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000).

²⁴ *Id.*, (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)).

81. Applicants for a CPCN must establish their financial, managerial, and operational fitness to conduct the proposed operations.²⁵ 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; credit history and assessment of financial health over the near future; capital structure and current cash balances; managerial competence and experience; fixed physical facilities such as office space and maintenance garages (as appropriate); appropriate licenses and equipment necessary to operate a radio dispatch system; and vehicles of appropriate type.²⁶ Whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of fitness.²⁷

82. In addition to fitness, applicants must show that the public convenience and necessity requires the certificate.²⁸ In deciding that question, the Commission must apply the regulated monopoly doctrine.²⁹ 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.³⁰ More specifically, an applicant seeking a common carrier certificate “must demonstrate that existing services are *substantially* inadequate to meet public needs because ‘the

²⁵ Rule 6203(a)(XI), 4 CCR 723-6.

²⁶ See e.g., Decision No. C08-0933, at ¶ 7, Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP issued September 4, 2008.

²⁷ See *Thacker Bros. Transp. v. Pub. Utils. Comm’n*, 189 Colo. 301, 303, 543 P.2d 719, 721 (1975).

²⁸ See *Yellow Cab Coop. Ass’n v. Pub. Utils. Comm’n*, 869 P.2d 545, 548, (Colo. 1994) (“[A]pplications for authority to operate a motor vehicle service require a showing that the public convenience and necessity require such service.”).

²⁹ *Ephraim Freightways Inc. v. Pub. Utils. Comm’n*, 151 Colo. 596, 599, 380 P.2d 228, 230 (1963).

³⁰ Rule 6203(a)(XVII), 4 CCR 723-6.

test of inadequacy is not perfection’ and some legitimate complaints will arise regarding any common carrier that provides service to many customers.”³¹

83. The regulated monopoly doctrine is based on the principle that fewer carriers who can make a reasonable return will give the public safe, efficient, and more economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public.³² Under this doctrine, a common carrier serving a particular area is only entitled to protection against competition if its service is adequate to satisfy the public’s needs.³³ As a result, the public need and adequacy elements are closely related.³⁴ The Commission has “wide discretionary powers in determining the demands of ‘public convenience and necessity.’”³⁵

84. “Whether the incumbent carrier’s service is substantially inadequate is a question of fact that is to be determined by the Commission.”³⁶ The Commission may consider “a broad range of evidence in determining whether an incumbent carrier’s service is substantially inadequate.”³⁷ That is because common carriers must “furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just and reasonable.”³⁸ Consistent with this statute, the Colorado Supreme Court has noted that the Commission may consider “any relevant evidence” in determining whether the public convenience and necessity requires additional service.³⁹ The Court has expressly approved

³¹ *RAM Broad. v. Pub. Utils. Comm’n*, 702 P.2d 746, 750, (Colo. 1985).

³² See e.g., *Denver & R.G. W. R. Co. v. Pub. Utils. Comm’n*, 142 Colo. 400, 405, 351 P.2d 278, 280 (1960).

³³ *Ephraim*, 151 Colo. at 599, 380 P.2d at 230.

³⁴ See *id.*

³⁵ *Pub. Utils. Comm’n v. Donahue*, 138 Colo. 492, 498, 335 P.2d 285, 288 (1959).

³⁶ *Durango Transp. Inc. v. Pub. Utils. Comm’n*, 122 P.3d 244, 248 (Colo. 2005); see also *RAM Broad.*, 702 P.2d at 751.

³⁷ *Durango Transp. Inc.*, 122 P.3d at 250.

³⁸ § 40-3-101(2), C.R.S.; and see § 40-10.1-103(1), C.R.S.

³⁹ *Durango Trans. Inc.*, 122 P.3d at 250-51.

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.⁴⁰ For example, in *Durango Transportation, Inc.* the Court approved the Commission's reliance on evidence that the incumbent's rates were so high as to be "tantamount to a denial of service to the tourist population requiring transportation . . ."⁴¹ This is consistent with the Commission's purpose in granting a transportation authority to "ensure that the public's transportation needs are met."⁴²

85. An applicant may demonstrate that the incumbent provider(s)'s service is substantially inadequate through evidence that the incumbent is *not* "ready, willing and able at all times to render service to anyone who might demand it, including all of applicant's customers."⁴³ But the Commission is not required to find that the incumbent "has failed or refused to provide service to a requesting customer," because the Commission is authorized "to consider a broad range of factors in its substantial-inadequacy analysis."⁴⁴ Rather, an applicant must show that the incumbent has demonstrated a general pattern of inadequate service.⁴⁵

86. 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.'"⁴⁶

⁴⁰ *Id.* at 251.

⁴¹ *Id.* at 249.

⁴² *Id.* at 250.

⁴³ *Ephraim*, 380 P.2d at 232; *see also Durango Transp. Inc.*, 122 P.3d at 247.

⁴⁴ *Durango Transp. Inc.*, 122 P.3d at 251.

⁴⁵ *Id.*, at 248.

⁴⁶ *Ephraim*, 151 Colo. at 601, 380 P.2d at 232.

87. Based in the foregoing, MedRide 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) granting the Application is in the public interest. If MedRide meets its burdens, the Intervenor must rebut evidence concerning substantial inadequacy by a preponderance of the evidence.

V. DISCUSSION, ANALYSIS, AND CONCLUSIONS

88. MedRide has not met its burden of establishing that it should be granted a CPCN in this Proceeding. As discussed more fully below, although MedRide has offered some evidence suggesting that there is a need in the Mesa County/Grand Junction community for medical transportation services, it has not established either that it is fit to provide the services it seeks to provide or that the existing service provided by Sunshine Taxi is substantially inadequate.

A. Fitness

89. As noted above, to be granted an extension of its CPCN authority, MedRide had to establish that it is financially, operationally, and managerially fit to conduct the proposed service. MedRide holds a CPCN which allows it to provide transportation services and non-Medicaid services in several Colorado counties. It operates approximately 250 vehicles and employs approximately 204 drivers. It thus offered some evidence tending to show that it has the vehicle and driver capacity to operate in Mesa County because it has 60 vehicles on the Western Slope. It is unclear, though, where on the Western Slope these vehicles operate. The ALJ notes that Western Slope areas such as Telluride and Durango are not in close proximity to Grand Junction. Vehicles in Durango, thus, may not be available to operate in Grand Junction. Regardless, MedRide offered no evidence of its physical facilities, office or maintenance space; hence that aspect of MedRide's

fitness to operate is largely unknown. Thus, although evidence of its driver and vehicle capacity suggests MedRide is operationally fit, other issues, such as its vehicle maintenance plans are entirely unknown. The ALJ therefore cannot conclusively state that MedRide has established its operational fitness.

90. Likewise, MedRide offered no evidence about its managerial fitness. Although Mr. Borzlieri testified that he is MedRide's Vice President of Business Development, MedRide offered no evidence whatsoever about its management structure, hierarchy, or even its dispatching services. It offered no insight into how it intends to operate in Mesa County and Grand Junction. MedRide offered no evidence about any other personnel in managerial positions. Without such supporting evidence in the record, the ALJ cannot find that MedRide is managerially fit.

91. More concerningly, though, with respect to its financial fitness, MedRide relied upon its existing operations and the statements it made in its Extension Application to establish its financial fitness. While the Extension Application contains some basic information, it does not provide the depth of information about MedRide's finances to support a finding that it is financially fit.

92. MedRide operates in approximately 55 Colorado Counties already, and has CPCN authority to operate as a common carrier in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Park, Pueblo and Weld Counties. This fact suggests that it is at least sufficiently capitalized to operate.

93. But relying solely on the mere existence of its current operations does not satisfy the financial fitness requirement. In prior Commission decisions, 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; credit history and

assessment of financial health over the near future; capital structure and current cash balances; managerial competence and experience; fixed physical facilities such as office space and maintenance garages, as appropriate; appropriate licenses and equipment necessary to operate a radio dispatch system; and vehicles of appropriate type.⁴⁷

94. MedRide has offered no documentation or evidence demonstrating its current financial fitness and stability. The record is devoid of documentation illustrating MedRide's account ledgers, its revenue flow, its profit margins, its credit history, its projected earnings, its access to capital, its credit worthiness, or the like. Without such information, it is impossible for the ALJ to find that MedRide is financially fit to operate in Mesa County.

95. Nor can the ALJ assume that simply because MedRide operates in a number of Counties already, it is financially fit to expand its CPCN operations to Mesa County. Without evidence of MedRide's finances, the ALJ cannot determine whether MedRide is currently financially stable or is operating in the red. Such information is crucial to determine whether MedRide can successfully extend its operations to Mesa County.

96. The ALJ notes, too, that MedRide had no documentation of its financial fitness available to offer into evidence. Even its late-filed supplemental exhibit list — which the ALJ rejected as untimely — omitted any financial documents. Thus, the ALJ must conclude that MedRide did not intend to put forth any financial information in support of its Extension Application.

⁴⁷ See e.g., Decision No. C08-0933, at ¶ 7, in Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP issued September 4, 2008.

97. Based on the foregoing, the ALJ finds that MedRide has not met its burden of demonstrating by a preponderance of the evidence that it has sufficient facilities and financial resources to operate the proposed service.⁴⁸

B. Public Need and Substantial Inadequacy

98. The parties disputed the public need for new service and the adequacy of the services currently provided. Specifically, Sunshine Taxi argued that MedRide has failed to demonstrate both that Sunshine Taxi's services are not meeting public demand or that unmet public demand exists necessitating Sunshine Taxi's proposed new service. The ALJ agrees.

99. MedRide offered no witnesses testifying to their inability to obtain a desired service or an unmet need for medical rides in Mesa County. Although MedRide offered letters of support which expressed the belief that additional medical transportation services were needed in Mesa County and Mr. Borzileri testified that he witnessed patients waiting for rides, no evidence was offered establishing that riders in fact could not get rides.

100. MedRide argues that the aging population in Mesa County necessitates an expansion of medical transportation services. It suggested at hearing that Sunshine Taxi's taxi services may not meet the needs of patients in wheelchairs or on oxygen requiring transport. While it may be true that wheelchair users and patients on oxygen require special transportation services, in the absence of a showing that these riders' needs were not met, MedRide has not established this element, either.

101. The test for inadequacy requires more than just a showing that some service is distinctive. Rather, a showing must be made that the existing service is *inadequate*. Thus,

⁴⁸ See §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 6203(a)(XI), 4 CCR 723-6; and Rule 1500, 4 CCR 723-1.

MedRide was required to establish that the existing service is *not* “ready, willing and able at all times to render service to anyone who might demand it, including all of applicant's customers.”⁴⁹ But no evidence was offered establishing that any riders were unable to obtain requested transport to and from any specific location.

102. To the contrary, Mr. Milan pointed out that riders needing transport to medical services can and do take advantage of Sunshine Taxi’s taxi services. In addition, Mr. Milan noted that its vehicles are never used to their full capacity. He also testified that should the transportation needs of Mesa County grow, Sunshine Taxi has ample capacity to meet the existing need and the ability to expand its services to meet any increase in demand.

103. In contrast, MedRide offered no specific evidence establishing that Sunshine Taxi’s services; it offered no witnesses or evidence showing that Sunshine Taxi was not ready, willing, and able to provide its customers with rides. Nor did MedRide offer evidence showing that Sunshine Taxi engaged in a “general pattern of inadequate service.”⁵⁰ The absence of such evidence supports Sunshine Taxi’s argument that MedRide has not demonstrated that the existing transportation services in Mesa County are “substantially inadequate.”⁵¹

104. The ALJ therefore finds and concludes that MedRide has not established that the existing service provided by Sunshine Taxi is “substantially inadequate” warranting the granting of a new CPCN.

C. Conclusion

105. As set out above, an Applicant for a CPCN must establish *all* of the following elements: (1) that it is financially, operationally, and managerially fit to conduct the proposed

⁴⁹ *Ephraim*, 380 P.2d at 232.

⁵⁰ *Id.*, at 248.

⁵¹ *See id.*

service; (2) that the public needs the proposed service; (3) that the current service in the area is substantially inadequate; *and* (4) that granting the Application is in the public interest.⁵² Here, MedRide offered no evidence of its current financial, managerial, and operational fitness. Nor has it shown that the existing service in Mesa County is substantially inadequate to meet the community's transportation needs. In the absence of such evidence, MedRide cannot establish all of the elements of the CPCN test, which is fatal to its Extension Application for a certificate of public convenience and necessity.

106. For the reasons and authorities discussed, the ALJ concludes that MedRide has failed to meet its burden to prove by a preponderance of the evidence that there is a public need for the proposed service, that the Sunshine Taxi's service is substantially inadequate, and that granting the Extension Application is in the public interest. As such, the ALJ recommends that the Commission deny the Extension Application.

⁵² See *id.*; see also *Durango Transp. Inc.*, 122 P.3d at 247.

VI. ORDER**A. It Is Ordered That:**

1. Consistent with the above discussion, the Motion to Supplement Witness and Exhibit List filed by MedRide, LLC on March 15, 2024, is denied.

2. The motion for directed verdict verbally made by Intervenor Tazco, Inc., doing business as Sunshine Taxi, at the March 19, 2024, evidentiary hearing is denied.

3. Consistent with the above discussion, the above-captioned Extension Application filed by Amazing Adventures Tours, MedRide, LLC on June 23, 2023, is denied.

4. Proceeding No. 23A-0347CP-EXT is closed.

5. This Recommended Decision will 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 twenty (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