

Decision No. C08-0626

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-251CP

IN THE MATTER OF THE EMERGENCY RULES IMPLEMENTING HOUSE BILL 08-1227
AND AMENDING THE REQUIREMENTS PERTAINING TO CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE TAXICAB SERVICE.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: June 20, 2008
Adopted Date: June 19, 2008

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules implementing House Bill 08-1227 (HB 08-1227) and amending the requirements pertaining to the entry standards for obtaining a certificate of public convenience and necessity (CPCN) to provide taxicab service. For the reasons set forth in this decision, we adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the emergency rules appended to this Decision as Attachment A.

2. Section 24 of House Bill 08-1227 substantially amended the provisions of § 40-10-105(2), C.R.S., with respect to the entry standards for obtaining a CPCN to provide taxicab service. In particular, the bill amends Article 10 of Title 40 of the *Colorado Revised Statutes* so that, depending on the counties included in the granting of a CPCN to provide taxicab service, one or a combination of three different entry standards apply.

3. First, the granting of a CPCN to provide a taxicab service within and between counties with a population of less than seventy thousand, based on the 2000 federal census, shall be governed by the doctrine of regulated monopoly.

4. Second, except as provided in the third entry standard below, the granting of a CPCN to provide a taxicab service within and between counties with a population of seventy thousand or more, based on the 2000 federal census, shall be governed by the doctrine of regulated competition.

5. Third, in an application to provide a taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson the applicant bears the initial burden of proving that it is operationally and financially fit to provide the proposed service. Further, HB 08-1227 provides that the applicant shall not be required to prove inadequacy of existing taxicab services, if any, within the applicant's proposed geographic area of operation. Finally, the bill provides that if the applicant sustains its initial burden of proof, there is a rebuttable presumption of public need for the service and the party or parties opposing the application shall bear the burden to prove that the public convenience and necessity does not require granting the application and that the issuance of the CPCN would be detrimental to the public interest.

6. Additionally, the rules delete a reference in Rule 6203(b)(I)(B) to nonexistent rule (a)(IV)(A). This was overlooked in earlier rulemakings.

7. HB 08-1227 becomes effective on July 1, 2008. Therefore, the purpose of the emergency rules adopted by this order is to ensure that there is no lapse of governing regulations concerning the granting of CPCN for taxicab service. More specifically, the purpose of the

emergency rules is to provide for the application requirements for a CPCN to provide a taxicab service.

8. We take this action in accordance with the provisions of §§ 40-2-108(2) and 24-4-103(6), C.R.S.

9. We find that immediate adoption of the emergency rules is imperative and necessary to implement the requirements of HB 08-1227. Without adopting the emergency rules, there will be a lapse in the governing regulations concerning application for a CPCN to provide a taxicab service. Compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to public interest.

10. The rules attached to this order shall be effective on July 1, 2008, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. The attached rules shall be effective on July 1, 2008.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 19, 2008.**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

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[signifies omission of unaffected rule sections]

6203. Applications to Operate as a Common or Contract Carrier.

- (a) Any person seeking permanent authority to operate as a common or contract carrier, or permanent authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain the following information:
- (I) The name, including trade name if applicable, physical address, mailing address, and telephone number of the applicant.
 - (II) The name, mailing address, and telephone number of the applicant's representative to whom the Commission may direct inquiries regarding the application.
 - (III) A statement describing the applicant's business structure (corporation, partnership, sole proprietorship, etc.).
 - (IV) If the applicant is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; the name and address of its Colorado agent for service of process; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (V) If the applicant is a limited liability company: the name of the state in which it is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VI) If the applicant is a partnership: the names, titles, and addresses of all general and limited partners; and a copy of the partnership agreement establishing the partnership and all subsequent amendments.
 - (VII) A complete description of the authority sought, which shall indicate:
 - (A) whether the applicant proposes to operate as a common or contract carrier;

- (B) the proposed type of service (i.e., charter, limousine, sightseeing, taxicab, or scheduled, but not auto livery or special bus), if the applicant proposes to operate as a common carrier;
 - (C) the proposed geographic area of service or the proposed points or routes of service;
 - (D) any proposed restrictions to the authority sought; and
 - (E) a description of the make, model, and year of the motor vehicles proposed to be operated, or if unknown, then a summary of the number and types of motor vehicles proposed to be operated.
- (VIII) A map or diagram showing the proposed geographic area of service, or the proposed points or routes of service, if and in the form requested by the Commission or Commission staff.
- (IX) If the applicant seeks common carrier authority, the applicant shall attach (for an application to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the applicant may attach) signed letters of support indicating a public need for the proposed service. A letter from the applicant shall be considered a letter of public support. A letter of support:
- (A) shall contain the author's name, address, and phone number;
 - (B) should explain the public need;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the author, stating that the letter contains only information that is true and correct to the best of the author's knowledge and belief.
- (X) If the applicant seeks contract carrier authority, the applicant shall attach a letter signed by each proposed customer. Such a letter:
- (A) shall contain the proposed customer's name, address, and phone number;
 - (B) should indicate the proposed customer's special or distinctive transportation needs and whether those needs can be met by existing service;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the proposed customer, stating that the letter contains only information that is true and correct to the best of the proposed customer's knowledge and belief.

- (XI) A statement of the facts upon which the applicant relies to establish that the application should be granted. Except for an application to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, if the application seeks common carrier authority, the statement should establish how granting the application is in the public interest. If the application seeks contract carrier authority, the statement should establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customer's needs.
 - (XII) Except as provided in subparagraph (a)(XIII), A statement setting forth the qualifications of the applicant, including managerial, operational, and financial fitness, to conduct the proposed operations.
 - (XIII) For an applicant applying to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, a statement setting forth the qualifications of the applicant, including operational and financial fitness, to conduct the proposed operations.
 - ~~(XIIIIV)~~ A statement describing the extent to which the applicant, or any person affiliated with the applicant, holds or is applying for authority duplicating or overlapping in any respect the authority at issue in the application.
 - ~~(XIVXV)~~ If applicable, current copies of any authority, issued by either a state or federal agency, authorizing the applicant to provide for-hire transportation of passengers in the State of Colorado.
 - ~~(XVXVI)~~ If applicable, current copies of any authority, issued by either a state or federal agency, authorizing any affiliate of the applicant to provide for-hire transportation of passengers in the State of Colorado.
 - ~~(XVIXVII)~~ If applicable, a statement that the applicant understands the Commission will, in its discretion, cancel any duplicating or overlapping authorities created by granting the application.
 - ~~(XVIXVIII)~~ A statement indicating the town or city where the applicant prefers any hearing to be held.
 - ~~(XVIIIIX)~~ A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.
- (b) Any person seeking temporary authority to operate as a common or contract carrier, or temporary authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain the following information:
- (I) All the information specified by paragraph (a) of this rule, except that:
 - (A) Any support letters shall contain the following additional information: an explanation of the immediate and urgent need for the proposed service; whether there is any other transportation service available; if such service is available, a detailed description of the author's efforts to use it and whether it is capable of meeting the author's needs; and the extent to which available transportation services have refused to provide service.

- (B) The statements in subparagraphs ~~(a)(IV)(A) and~~ (a)(XVI) are unnecessary.
- (II) A statement indicating whether the Commission has previously granted to the applicant authority to render all or any part of the proposed service. If this statement is answered in the affirmative, a copy of the decision granting the authority shall be attached to the application.
- (III) A statement of facts establishing an immediate and urgent need for the proposed service and further establishing that no existing regulated intrastate carrier is capable of providing the proposed service.
- (IV) A statement of the period of time which applicant requests the temporary authority to cover, not to exceed 180 days.
- (c) Any person seeking emergency temporary authority to operate as a common or contract carrier, or emergency temporary authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain all the information required by paragraph (b) of this rule, except that the period of time identified in subparagraph (b)(IV) shall not exceed 30 days. The application shall include a statement of facts establishing the basis and nature of the emergency need for the proposed service. Support letters shall explain the basis and nature of the emergency.
- (d) The granting of emergency temporary authority creates no presumption that temporary or permanent authority will be granted. The granting of temporary authority creates no presumption that permanent authority will be granted.
- (e) Burden of proof for contract carrier applicants.
- (I) A contract carrier applicant shall bear the burden of proving that the service it proposes is specialized and tailored to the potential customer's distinct need.
- (II) Such a showing is overcome by an intervenor's showing that the intervenor has the ability and willingness to meet the potential customer's distinct need.
- (III) If the intervenor makes such a showing, the applicant shall bear the burden of proving that the applicant is better suited than the intervenor to meet the distinct needs of the potential customer.
- (IV) The intervenor may overcome such a demonstration by establishing that the applicant's proposed operation will impair the efficient public service of any common carrier then adequately serving the same geographic area.
- (V) Nothing in this paragraph shall be construed to direct the sequence of evidence presented by the parties.

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[signifies omission of unaffected rule sections]

6205. Encumbrances, Transfers, Mergers, Consolidations, and Acquisitions of Control.

- (a) For purposes of this rule:

- (I) "Encumbrancer" means a person seeking or holding an encumbrance (e.g., lien or mortgage) against the authority of a common or contract carrier.
 - (II) "Transfer" means, without limitation, any sale, lease, assignment, license, change in ownership, foreclosure of an encumbrance, execution in satisfaction of any judgment or claim, merger, consolidation, or similar transaction in which control of any authority or portion thereof changes from one entity to another, whether voluntarily, by court order, or otherwise.
 - (III) "Transferee" means any entity newly acquiring control of any authority from a transferor.
 - (IV) "Transferor" means any entity transferring control of any authority to a transferee.
- (b) Except with regard to foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, only the owners of an authority as shown in the official records of the Commission may transfer the authority.
- (c) An application to encumber any authority, transfer any authority, acquire control of any regulated intrastate carrier, or permit a merger or consolidation of a regulated intrastate carrier with any other entity, shall, if possible, take the form of a joint application submitted by all parties to the transaction. Such an application shall contain all the following information. If an applicant is unable to supply the required information, the applicant shall explain the reason for the lack of information.
- (I) All applicants shall provide the information required by subparagraphs 6203(a)(I), (II), and ~~(XIV)(XVIII)~~.
 - (II) Transferees and encumbrancers shall provide the information required by subparagraphs 6203(a)(III) - (VI), and ~~(XIX)(XIV)~~ - ~~(XX)(XVI)~~.
 - (III) If a transferee or encumbrancer is an executor, trustee, receiver, or other similar representative of the real party in interest: a copy of the court order evidencing the representative's appointment, or other evidence of authority if not under court order.
 - (IV) If the transaction covers only portions of an authority: a statement fully explaining which portions are covered by the transaction and which are not.
 - (V) A complete description of the type of transaction for which the applicants seek Commission approval, together with a statement describing each applicant's role in the transaction.
 - (VI) If the transaction involves an acquisition of stock: a statement of the transferor's total number of outstanding capital stock shares, by class; and the number of shares of each class to be acquired by transferee.
 - (VII) A copy of all agreements concerning the transaction, including a copy of all documents creating a security interest, if any, and a statement of the consideration paid in the transaction.
 - (VIII) A statement explaining how the transferee proposes to meet the financial requirements of the transaction, including, if a loan is involved, the amount, maturity, interest rate, and other terms and conditions.

- (IX) A statement setting forth the nature, extent, and proposed disposition of any existing encumbrances against the affected authorities.
 - (X) A current copy of each of the letters of authority encompassing the authorities at issue in the application.
 - (XI) If the transaction involves the lease of an authority: a copy of the proposed lease and a statement of the lease's effective date and termination date.
 - (XII) If a transferor or encumbrancer seeks foreclosure of an encumbrance or execution in satisfaction of any judgment or claim: the transferee's written consent to transfer, or in lieu thereof, a judicial order authorizing unilateral action by the transferor or encumbrancer.
 - (XIII) Except in the case of an application involving only the creation of an encumbrance or as provided in subparagraph (c)(XIV), a statement setting forth the qualifications of the transferee, including managerial, operational, and financial fitness, to conduct the proposed operations.
 - (XIV) For an application involving only taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, a statement setting forth the qualifications of the transferee, including operational and financial fitness, to conduct the proposed operations.
 - ~~(XIVXV)~~ A statement that the applicants understand the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction.
 - ~~(XVXVI)~~ A statement setting forth whether the transferor has been and is conducting active, bona fide operations under the authorities at issue in the transaction.
 - ~~(XVIXVII)~~ A statement of the facts upon which the applicants rely to show that the application should be granted. In this regard, the applicants should consult paragraph (e) of this rule.
 - ~~(XVIXVIII)~~ A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.
- (d) An application filed under § 40-6-120(2) or (4), C.R.S., seeking temporary or emergency temporary approval to operate the regulated intrastate carrier or regulated intrastate carrier properties, shall be filed concurrently with the permanent application filed under paragraph (c) of this rule. A temporary and/or emergency temporary application shall contain a statement of the facts establishing that failure to grant temporary or emergency temporary approval may result in destruction of or injury to the utility's properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. In the case of an emergency temporary application, the application shall contain a statement explaining the nature and extent of the emergency.
- (e) Applicants seeking temporary or emergency temporary approval to transfer control of any authority have the burden of proving the elements prescribed by § 40-6-120(2) or (4), C.R.S., as applicable. Applicants seeking approval to permanently transfer any authority have the burden of proving:
- (I) that the transferor has not abandoned the authority and has not allowed the authority to become dormant;

- (II) that the transferor has been and is engaged in bona fide operations under its authority, or the extent to which bona fide operations have been excused because of a Commission-approved suspension;
 - (III) that the transfer is not contrary to the public interest;
 - (IV) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and
 - (V) except in transfers involving foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, that the transferee will engage in bona fide regulated intrastate carrier operations and is fit to do so.
- (f) A transferor shall not cancel its insurance, surety bond, or tariffs until the Commission has approved the transfer, the transferee has filed all required documents in the transferee's own name, and the Commission has advised the transferee that it is authorized to begin operations. This paragraph (f) applies regardless of the type of transfer, whether permanent, temporary, or emergency temporary.
- (g) Upon approval of a transfer application (permanent, temporary, or emergency temporary) the transferee shall, in accordance with the timelines set forth by the Commission's order:
- (I) file with the Commission an adoption notice, in a form available from the Commission, whereby the tariff and/or time schedule of the transferor shall become those of the transferee until changed in accordance with Commission rules;
 - (II) cause to be filed with the Commission certificates of insurance as required by Commission rules; and
 - (III) pay the issuance fee and annual motor vehicle identification fee.
- (h) Upon approval of a permanent transfer application, the transferor and transferee shall file an acceptance of transfer form, which form shall be provided by the Commission. The form shall be signed by both parties, indicating acceptance of the terms and conditions of the Order authorizing the transfer. The acceptance of transfer shall contain a statement indicating that the transferee has complied with all provisions of the agreement of sale, lease, or other transfer.
- (i) A transferee shall not begin operations until after the Commission has advised the transferee that it is in compliance with all requirements and is authorized to begin operations.
- (j) The granting of emergency temporary authority creates no presumption that temporary or permanent authority will be granted. The granting of temporary authority creates no presumption that permanent authority will be granted.

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[signifies omission of unaffected rule sections]