

Decision No. R20-0524

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0161CP

IN THE MATTER OF THE APPLICATION OF UNION TAXI COOPERATIVE DOING BUSINESS AS UNION TAXI SEEKING A DECLARATORY ORDER PURSUANT TO THE COMMISSION'S RULE OF PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(1).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DECLARATORY ORDER**

Adopted Date: July 17, 2020

I. STATEMENT

1. On April 9, 2020 Union Taxi Cooperative (Union Taxi) filed a Petition for Declaratory Order (Petition). The Petition requests the Commission enter an order declaring that the Regional Transportation District's (RTD) actions in imposing a liability insurance requirement that differs from the Commission's minimum liability insurance requirements, in order for Union Taxi to participate in RTD's Access-a-Cab program, constitutes a breach of due process, the usurping of the constitutional and legislative powers of the Commission, and an action against public policy and public interest.

2. On May 6, 2020, by Decision No. C20-03467-I the Commission accepted and referred to an Administrative Law Judge (ALJ). The Decision also established a 14-day period for notice, interventions, and any responsive briefs.

3. On May 19, 2020, Green Taxi Cooperative (Green Taxi) Entry of Appearance and Petition for Leave to Intervene.

4. On May 20, 2020, The Regional Transportation District (RTD) filed its Intervention as of Right and Brief in Response to Petition.

5. On May 28, 2020, Union Taxi filed its Motion for Leave to File Responsive Brief and for Oral Argument (Motion).

6. On June 11, 2020, RTD filed Response Opposing Petitioner's Motion for Leave or Order to File Responsive Brief and Request for Oral Argument (Response).

A. Motion for Leave to File Responsive Brief and for Oral Argument

7. In their Motion Union Taxi states that the attached brief will "will greatly clarify, assist and appropriately help resolve its legal rights that were incorrectly denied by RTD and its factual and legal presentation in its pleadings." Union Taxi continues that there is no rule under the Commission's Rules of Practice and Procedure that prohibits the filing of Petitioner's proposed response, or prohibits the filing of this type of a motion.

8. Union Taxi also requests an oral argument limited to legal issues in this proceeding. Union Taxi does not state why an oral argument is necessary.

9. RTD objects to the Motion.

10. Union Taxi is correct that there is no rule that prohibits the Motion. But Commission Rule 1308(b) of 4 *Code of Colorado Regulations* (CCR) 723-1, PUC Rules of Practice and Procedure requires that "[n]o response may be filed to an answer, response, or notice, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against."

11. Union Taxi does not allege a material misrepresentation of a fact, an incorrect statement or error of law, or accident or surprise which ordinary prudence could not have guarded against. The Motion is denied.

12. The ALJ does not feel that it is necessary to conduct oral arguments on the petition. The request for oral argument is denied.

B. Argument of Union Taxi

13. In its Petition, Union Taxi states that it is subject to regulation by the Commission and that its liability insurance policy limit of \$500,000 per occurrence meets the financial responsibility requirements mandated by the Commission's rules.

14. Through its April 9, 2020 filing, Union Taxi indicates that prior to January 1, 2020, it was a party to an agreement with RTD that allowed Union Taxi to provide service to riders using RTD's Access-a-Cab program. The Access-a-Cab program provides cab service to riders who have disabilities preventing them from using buses or light rail. RTD connects riders making trip requests to a taxicab company through RTD's Access-a-Cab call center, and then pays a portion of a rider's fare when they use the Access-a-Cab program as subsidy payment that is sent directly to the taxi cab company. Late in 2019, RTD amended the Access-a-Cab Operating Agreement (Operating Agreement) effective January 1, 2020. The Operating Agreement, effective January 1, 2020, would require Union Taxi to maintain liability insurance with a policy limit of \$1,000,000 per occurrence and that the insurer have at least an AM Best Key Rating of A-. Union Taxi indicates that its liability insurance does not meet these new requirements, and that as a result, it is no longer eligible to provide Access-a-Cab service.

15. In its Petition, Union Taxi contends that the Commission has the sole power to regulate the taxicab industry in Colorado, including financial responsibility requirements, and that RTD's requirement of a liability insurance policy limit that is greater than the requirement prescribed by the Commission is legally unsupported.

16. Union Taxi requests that the Commission enter an order declaring that RTD's actions in imposing a liability insurance requirement that differs from the Commission's liability insurance requirements in order for Union Taxi to participate in RTD's Access-a-Cab program, constitutes a breach of due process, the usurping of the constitutional and legislative powers of the Commission, and an action against public policy and public interest.

C. Argument of Green Taxi

17. Green Taxi owns and operates a CPCN under certificate number 55883 and has participated in the RTD Access-a-Cab program pursuant to an RTD Access-a-Cab Program Annual Operator Agreement since June 1, 2016.

18. Green Taxi has in force and effect a liability policy with policy limits of \$500,000 per occurrence.

19. Green Taxi argues that its due process rights have been deprived due to RTD's unilateral action to amend the liability policy limits provision in its Operator Agreement because Green Taxi is no longer eligible to enter into the new Access-a-Cab Program Annual Operator Agreement under its present limit of \$500,000 liability limit per occurrence.

D. Argument of RTD

20. RTD argues that Union Taxi mischaracterizes Commission's regulations concerning liability coverage for Motor Carriers. RTD state that the regulations that Union Taxi states are "limits" are in reality liability coverage minimums for Motor Carriers.

21. RTD points to Decision No. R14-1000 in Proceeding 14R-0641TR in which ALJ Adams stated that "Carriers may choose to obtain greater coverage."

22. RTD continues that the requirements are in the public interest and do not usurp the Commission's constitutional or legislative powers.

E. Petition

1. Applicable Law

23. A rule or statute must be read as a whole giving effect to every word possible. *Bennett Bear Creek Farm Water and Sanitation District v. City and County of Denver*, 928 P.2d 1254, 1262 (Colo. 1996).

24. Interpretation of a rule by an Administrative Agency cannot be contrary to the plain reading of the language of the rule. *Three Bells Ranch Associates v. Cache La Poudre Water Users Ass'n*, 758 P.2d 164, 172 (Colo. 1988).

25. The interpretation of a statute should be done to avoid defeating the obvious intent of the legislature. *M.C. v. Adoption Choices of Colo., Inc.*, 369 P.2d 659 (Colo. Ct. App. 2014).

26. Colorado Revised Statute 40-10.1-107 reads as follows:

(1) Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

(2) The financial responsibility required by subsection (1) of this section must be in the form of a liability insurance policy issued by an insurance carrier or insurer authorized to do business in this state, or a surety bond issued by a company authorized to do business in this state, or proof of self-insurance.

(3) An insurance policy, surety bond, or self-insurance pursuant to subsection (2) of this section shall be kept continuously effective during the life of a certificate or permit and the commission shall require such evidence of continued validity as the commission deems necessary.

(4) No termination of an insurance policy or surety bond is valid unless the insurer or surety has notified both the holder of the policy or bond and the commission at least thirty days before the effective date of the termination.

27. The Commission's Rules Regulating Transportation by Motor Vehicle require motor carriers with a vehicle capacity of eight or less liability insurance at a minimum of \$500,000. Rule 6008(a)(I) of 4 *Code of Colorado Regulations* (CCR) 723-6.

2. Discussion

28. In filing a petition for a declaratory order the Petitioner is required to be seeking "to terminate a controversy or remove an uncertainty affecting a petitioner with regard to a statutory provision or a rule, regulation or order." Rule 1304 (i) of 4 *Code of Colorado Regulations* (CCR) 723-1.

29. The Petitioner in the instant case fails to explicitly state what statutory provision, rule regulation or order is causing the controversy¹. It appears the issue in this proceeding concerns a contract between RTD and any party who wishes to contract with RTD to participate in its Access a Cab program.

¹ Potentially Rule 6008(i) could be in controversy although the petitioner does not state that he does not understand the minimum insurance requirements for taxi cab service.

30. Union Taxi believes that a liability insurance requirement contained in the Access-a-Cab program contract that is greater than is required by the Commission in some way subverts the Commission's authority and violates Union Taxi's due process in some way.

31. This argument is without merit. The Commission requires that a taxi company maintain \$500,000 in liability insurance to operate as a common carrier service as a taxi service. Nothing in the contractual requirement at issue here between RTD and any taxi company changes that requirement. Rule 6008 states a minimum that must be met to conduct this service but does not establish any restriction as to a maximum amount of coverage that may be required in any service contract with another entity. Nothing in the contract, that Union Taxi does not need to enter into, changes that requirement or prevents Union Taxi from providing common carriage service.

32. The decision to enter into the contract is Union Taxi's. If they wish to enter into a private contract that allows them to participate in RTD's Access-a-Cab program, they must carry an additional amount of liability insurance. Failure to carry that amount of liability insurance does not strip Union Taxi of its authority to act as a common carrier nor prevent them from carrying out their service. Instead, choosing to not carry the additional insurance would only preclude Union Taxi from participating in RTD's program – i.e., from receiving trip requests from RTD's Access-a-Cab call center, and receiving the subsidy paid by RTD directly to taxi companies that participate.

33. An argument could be made if the liability insurance requirement of RTD was below the Commission's requirement that this would usurp the Commission's authority. This would potentially provide a loophole and allow companies to provide taxi service without meeting Commission requirements for financial responsibility. But that is not the case.

34. Union Taxi's second argument is that this insurance requirement, again contained only in a contract between RTD and taxi companies, was put in place without a rulemaking proceeding.

35. Union Taxi fails to understand that the Commission-established insurance requirement to carry out service as a common carrier has not changed; it remains \$500,000. It is not necessary for the Commission to conduct a rulemaking proceeding to determine the contents of a contract between two parties.

36. Petitioner has failed to show that there is any actual controversy or uncertainty affecting Petitioner with regard to a statutory provision, rule, regulation, or Commission order that will be resolved by issuance of a declaratory order. Therefore, Petitioner's request for such a declaratory order will be denied pursuant to Rule 1304(i)(III) of 4 *Code of Colorado Regulations* (CCR) 723-1.

37. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to File Responsive Brief filed by Union Taxi Cooperative (Union Taxi) on May 28, 2020, is denied

2. The Motion for Oral Argument filed by Union Taxi on May 28, 2020 is denied.

3. The above-captioned Petition filed by Union Taxi on April 9, 2020 for a declaratory ruling that the Regional Transportation District's (RTD) actions in imposing a liability insurance requirement that differs from the Commission's minimum liability insurance requirements, in

order for Union Taxi to participate in RTD's Access-a-Cab program, constitutes a breach of due process, the usurping of the constitutional and legislative powers of the Commission, and an action against public policy and public interest is denied consistent with the discussion above pursuant to Rule 1304(i)(III) of 4 *Code of Colorado Regulations* (CCR) 723-1.

4. 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.

5. 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 state 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.

6. If exceptions to this Recommended 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director