Decision No. C04-0978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04L-419CP

RE: IN THE MATTER OF THE APPLICATION OF RDS TRANSPORTATION, LTD. DOING BUSINESS AS YELLOW CAB COMPANY OF COLORADO SPRINGS TO PUBLISH A FUEL SUPPLEMENT PASSENGER TARIFF NO. 32, TO BECOME EFFECTIVE ON LESS-THAN-STATUTORY NOTICE.

COMMISSION ORDER GRANTING TARIFF CHANGES ON LESS-THAN-STATUTORY NOTICE

Mailed Date: August 19, 2004
Adopted Date: August 18, 2004

I. BY THE COMMISSION:

A. Statement

1. On August 10, 2004, RDS Transportation, LTD. doing business as Yellow Cab Company of Colorado Springs ("Yellow Cab") filed an application for authority to publish a fuel supplement increase to Passenger Tariff No. 32 to become effective on less-than-statutory notice. Yellow Cab provides passenger service between points in El Paso County, Colorado.

2. Yellow Cab proposes a forty-cent fuel surcharge to every trip. The proposed surcharge will expire 60 days from the effective date of the fuel supplement filing. The proposal will add a 5.9 percent cost increase to the average trip.

3. In support of the application Yellow Cab states that fuel costs to the drivers has increased substantially since the beginning of the year and have not abated during summer months. Yellow Cab drivers must pay for the fuel themselves. Yellow Cab represents under oath that the entire surcharge would accrue to the benefit of its drivers.

4. Rule 31(f)(1) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, allows an order authorizing carriers to change tariffs or time schedules on less-than-statutory notice for good cause shown.

5. The Commission finds that good cause has been shown for the approval of the proposed forty-cent increase on a per trip basis to the rates in Passenger Tariff No. 32 and that the application should be granted. Because the Commission is uncertain about the duration of elevated fuel prices, the supplement should have an expiration date of 60 days from the effective date of the supplement. We also hold Yellow Cab to its promise that its drivers will receive the benefit of the entire surcharge.

II. ORDER

A. The Commission Orders That:

1. The application of RDS Transportation, LTD. doing business as Yellow Cab Company of Colorado Springs to publish a fuel supplement to Passenger Tariff No. 32 on less-than-statutory notice is granted.

2. Fuel Supplement Number One to Passenger Tariff No. 32, 1) shall be published on not less than one day’s notice to the Commission and the general public, 2) shall be filed immediately, 3) and shall be published to expire 60 days from the effective date of the supplement.

3. The 20-day time-period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, re-argument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

4. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING AUGUST 18, 2004.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

CHAIRMAN GREGORY E. SOPKIN
SPECIALLY CONCURRING.

ATTEST: A TRUE COPY

Bruce N. Smith
Director

II. CHAIRMAN GREGORY E. SOPKIN SPECIALLY CONCURRING:

1. I concur with the result of today's decision, but write separately to question our authority to impose a rate increase as a result of fuel cost increases *that are not the responsibility of the petitioner*. That is, the petitioner is not paying for fuel, but is relying on fuel costs to justify an increase to its rates. Those who do pay for fuel – the drivers – are extra-jurisdictional to the Commission. As stated by Chairman Gifford in Docket No. 00L-346CP[1] four years ago:

> A. The purported beneficiaries of this rate increase—petitioner's drivers—are not within the jurisdiction of this Commission. *See, e.g.,* § 40-3-103, C.R.S., § 40-11.5-101 *et seq.,* C.R.S. The matter of increased fuel costs properly belongs in the unregulated contractual relationship between petitioner and the drivers.
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> B. The effect of the Commission's decision here is to affect indirectly—the lease rate between drivers and carriers—what it is explicitly forbidden to do directly. § 40-3-103, C.R.S. The Commission thus relieves petitioner from the downside of its legislative bargain in § 40-3-103, C.R.S.
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> C. Petitioner should have to account for the vagaries of fuel costs—costs borne wholly by the drivers—in its contractual relationship with the drivers. To the extent these costs in turn affect petitioner, it could ask the Commission for appropriate rate changes. By approving this application, the Commission obviates that course, and protects petitioner at the expense of consumers.

Decision No. C00-744 (July 7, 2000) (Gifford, C., Dissenting).

2. The same analysis applies here to what is essentially the same application. Under C.R.S. § 40-3-103, "the Commission may not prescribe by rule or regulation the lease rate that is charged to a driver of a motor vehicle by a common or contract carrier." As a result, the Commission by statute cannot do what it purports to do in today's decision, namely, "hold [the taxicab company] to its promise that its drivers will receive the benefit of the entire surcharge."

[1] *In The Matter Of The Application Of Boulder Taxi, LLC, Doing Business As Boulder Yellow Cab And/Or Super Shuttle Airport Van For Authority To Publish An Emergency Fuel Surcharge To Passenger Tariff, Colorado PUC No. 24, To Become Effective On Less-Than-Statutory Notice*.

If, for example, the taxicab company raised its lease rate of its drivers tomorrow, the Commission could not question that decision.

3. I have agreed to the increases for now in light of the substantial increased cost of fuel and the plight of drivers faced with that cost. However, it remains true that taxicab companies who prevailed upon the legislature to take away any Commission authority over the relationship between companies and drivers – precluding our ability to hold a company to promises of not raising lease rates[2] – are now seeking rate increases under the implied premise that we have authority over this relationship.

4. I write separately to say that my patience for the (apparently endless) cycle of requested fuel cost rate increases wears thin. One way to clear up the shaky legal premise for these rate increases is for companies to assume the cost of fuel purchases (and adjust its lease rates with drivers as it sees fit), in which case fuel costs would be an appropriate basis to request a rate increase. I urge companies to consider doing just that before making any further such requests.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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CHAIRMAN

[2] I would note that the petitioner did not even promise *that*; rather, it promised only that drivers would be the beneficiaries of the rate increase. So, even if the Commission had the ability to hold the petitioner to its promise, the petitioner could easily claim that a lease rate increase was for reasons other than the fuel cost rate increase we approved in this case.