

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04L-534CP

RE: IN THE MATTER OF THE APPLICATION OF MKBS DOING BUSINESS AS METRO TAXICAB, INC. TO PUBLISH A EMERGENCY FUEL SUPPLEMENT TO PASSENGER TARIFF NO. 27 TO BECOME EFFECTIVE ON LESS-THAN-STATUTORY NOTICE.

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

Mailed Date: November 10, 2004

Adopted Date: November 3, 2004

I. BY THE COMMISSION:

A. Statement

1. On October 19, 2004 MKBS, doing business as Metro Taxicab, Inc., filed an application for authority to publish a fuel supplement increase to Passenger Tariff Number 27 to become effective on less-than-statutory notice. Metro Taxicab provides passenger service between points in the Denver Metropolitan area.

2. Metro Taxicab proposed a forty cents fuel surcharge to every trip that would expire 60 days from the effective date of the fuel supplement filing. The proposal would have added a 3.1 percent increase to the average trip. The Commission tabled the matter on October 27, 2004 on request from Metro Taxicab because of failure to give notice and the need to revise the supplemental need. On October 29, 2004, the Commission received fax communications requesting a downward adjustment in the supplemental request to twenty-five cents and a copy of the notice. The originals of the revised proposal had not arrived by the November 3, 2004 Commission Open Meeting. The revised proposal would add 2.6 percent increase to the average

trip. On November 2, 2004, the Commission received the letter requesting the reduction of the supplemental from 40 to 25 cents. On November 3, 2004, the Commission received the original notice. On November 4, 2004, the Commission received the revised tariff page reflecting the reduced request.

3. In support of the application Metro Taxicab states that fuel costs to the drivers have increased substantially in the last year. Metro Taxicab drivers must pay for the fuel themselves.

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 twenty-five cent increase on a per trip basis to the passenger trip rates in Passenger Tariff No. 27 and that the application should be granted.

II. ORDER

A. The Commission Orders That:

1. The application of MKBS doing business as Metro Taxicab, Inc., for authority to publish a fuel supplement increase to Passenger Tariff Number 27 on less-than-statutory notice is granted.

2. The Fuel Supplement to Passenger Tariff No. 27, 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) shall be published to expire 60 days from the effective date of the supplement, and 4) shall contain a provision that only those responsible for the purchase of fuel shall receive the increase.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
NOVEMBER 3, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
DISSENTING.

I/TRANS/ORDERS/04L-534CP

III. CHAIRMAN GREGORY E. SOPKIN DISSENTING:

1. I dissent from today's decision because I do not believe we have the legal 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-346CP¹ 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.

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.

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. C00-0744 (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.” 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

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.*

raising lease rates – are now seeking rate increases under the implied premise that we have authority over this relationship. As a result, the Commission by statute cannot hold Metro Taxicab to its promise that its drivers will receive the benefit of the entire surcharge. If, for example, Metro Taxicab raised its lease rate of its drivers tomorrow, the Commission could not question that decision.

3. I have agreed in the past to rate increases based on the substantial increased cost of fuel and the plight of drivers faced with that cost. However, as I forewarned in Decision No. C04-0978 (Docket No. 04L-419CP), my patience for the (apparently endless) cycle of requested fuel cost rate increases is exhausted. 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 urged companies to consider doing just that before making any further such requests; that didn't happen with respect to Metro Taxicab.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN