

Decision No. C24-0729

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24V-0321EC

IN THE MATTER OF THE PETITION OF BLACK BEAR TRANSPORTATION LLC FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**COMMISSION DECISION GRANTING APPLICATION
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C24-0604**

Issued Date: October 9, 2024

Adopted Date: October 2, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Application for Rehearing, Reargument, or Reconsideration ("Application for RRR"), filed by Black Bear Transportation LLC ("Petitioner") on September 9, 2024, pursuant to § 40-6-114, C.R.S. Petitioner requests reconsideration of Commission Decision No. C24-0604, issued on August 21, 2024, which denied Petitioner's request for a two-year waiver of Rule 6305(a) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6. Upon review of the arguments and further explanation offered in the Application for RRR, the Commission finds good cause to revise its previous findings and grant the requested rule waiver for the requested two-year period.

B. Background

2. On July 29, 2024, Petitioner filed a Petition for Waiver/Variance of Regulated Intrastate Carrier Rules ("Petition"), requesting a rule waiver to allow their vehicle, a 2022 Toyota Sienna XSE, to be qualified as a luxury limousine.

3. The Petition requested the Commission waive Rule 6305(a), 4 CCR 723-6, which provides, in relevant part, the criteria for luxury limousine vehicles, including categories of vehicles that can be classified as a luxury limousine. Rule 6305(b), 4 CCR 723-6, provides that "[a] Person who believes that the Motor Vehicle that they have purchased or plan to purchase provides a luxurious and specialized transportation service may file a petition for waiver of paragraphs (a) or (c) of this rule, as set forth in rule 6003, explaining why the use of their vehicle of choice will effectively implement the Commission's policies of a luxury transportation experience in the relevant market to be served." This rule allows for the Commission to exercise discretion regarding a particular vehicle's fitness to be operated as a luxury limousine. The Petition requested the rule waiver be granted for the period of July 30, 2024, through July 30, 2026.

4. Through Decision No. C24-0604, the Commission denied the Petition. The Commission concluded that there was not sufficient support to grant the waiver, based largely on the underlying vehicle being classified as a minivan by the manufacturer, which conflicts with the language found in Rule 6305(a)(III), 4 CCR 723-6.

C. Application for RRR

5. In its Application for RRR, Petitioner requests the Commission reconsider Decision No. C24-0604. As good cause for the Commission to grant the requested rule waiver, Petitioner reiterates and further explains the arguments found in the Petition and offers the following arguments and additional insight into the vehicle features and its proposed operations.

6. Petitioner further explains the features of the underlying vehicle, including the spacious interior, Captain Chairs, and ample seating and cargo space. Petitioner extols the large digital touchscreen display, advanced radio and sound system, electronic charging, and synthetic leather seating. Petitioner reiterates the safety features, including pre-collision systems, automatic emergency braking, driver assist, lane departure alert, and pedestrian detection. Additionally, Petitioner describes a need for luxury transportation in the Steamboat Springs area, especially during the winter months. This includes airport transportation and getting around town for events such as, concerts,, skiing, and other entertainment.¹

7. Petitioner also argues that the underlying vehicle's classification as a minivan should not be the key point of analysis by the Commission. Petitioner claims that luxury vehicles "are synonymous with comfort, plush interiors, and amenities to impress and provide a luxurious experience for discerning passengers." Petitioner further submits that the underlying vehicle not only meets luxurious standards, but exceeds them. Petitioner states that the vehicle includes an upgraded "Plus Package," which includes nearly identical features to those found in other luxury sport utility vehicles manufactured by Acura, Audi, Volvo, GMC, Ford, and Chevrolet.²

8. Finally, Petitioner claims that the similarity of the underlying vehicle to other luxurious sport utility vehicles, including its inherent sport utility functionality, warrants reconsideration of the Petition. Petitioner argues that they should not be penalized for their ability to find such a high-quality vehicle at below market value, as purchasing the same vehicle for over \$50,000 would have qualified it as a luxury limousine, pursuant to Rule 6305(a)(VI), 4 CCR 723-6.

¹ Petitioner's Application for RRR at pp. 2, 4.

² *Id.* at p. 2.

D. Findings and Conclusions

9. In accordance with Rule 1003 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission may, for good cause shown, grant a request to waive Commission rules. In rendering its decision, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

10. Upon review of Petitioner's Application for RRR, the Commission finds Petitioner has provided good cause to grant the requested waiver of the luxury limousine qualification standards found in Rule 6305(a), 4 CCR 723-6. The Commission finds compelling the additional arguments made by Petitioner, including how close the underlying vehicle was to qualifying as a luxury limousine under Rule 6305(a)(III), 4 CCR 723-6, the need for transportation options in Colorado's mountainous areas, and the ample seating and cargo space available to passengers through use of the underlying vehicle. The Commission also notes its intent to review and potentially reconsider Rule 6305, 4 CCR 723-6, in an upcoming rulemaking.

11. The Commission therefore grants the requested rule waiver for the 2022 Toyota Sienna XSE named in the Petition, for two years from the Issued Date of this Decision.³

II. ORDER**A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0604, filed on September 9, 2024, by Black Bear Transportation LLC, is granted.

³ Commissioner Gilman dissents from this Decision, noting a preference to address such issues through a rulemaking, as opposed to the granting of a petition for waiver.

2. The Petition of Black Bear Transportation LLC for a waiver of Rule 6305 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6, filed on July 29, 2024, is granted, for the 2022 Toyota Sienna XSE, VIN No. 5TDDSKFC9NS041241, for two years from the effective date of this Decision.

3. The waiver is conditional on the aforementioned vehicle passing a vehicle safety inspection, pursuant to Rule 6117(b), 4 CCR 723-6.

4. Black Bear Transportation LLC shall keep a copy of this Decision and proof of inspection in the aforementioned vehicle, pursuant to Rule 6107(b), 4 CCR 723-6.

5. This Decision shall be effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 2, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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TOM PLANT

Commissioners

COMMISSIONER MEGAN M.
GILMANDISSENTED