

Decision No. C24-0744

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24V-0315CP

IN THE MATTER OF THE PETITION OF PIKES PEAK CAB LLC DOING BUSINESS AS PIKES PEAK TRANSPORT FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**COMMISSION DECISION DENYING PETITION FOR
RULE WAIVER**

Issued Date: October 16, 2024
Adopted Date: October 9, 2024

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a Petition for Waiver/Variance of the Commission’s Rules Regulating Transportation by Motor Vehicle (“Petition”) filed on July 19, 2024, by Pikes Peak Cab LLC, doing business as Pikes Peak Transport (“Petitioner”).

2. Petitioner requests a waiver of Rules 6804 and 6805 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (“CCR”) 723-6. Rule 6804 outlines the maximum rates for Large-Market Taxicab Services (“LMT”) carriers operating in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld. This rule further elaborates on the intricacies of traffic delay, waiting time, flat rate zones, and multiple loading situations. Rule 6805 delineates the requirements for LMT carriers to

file their schedule of rates with the Commission and post their established maximum rates in each taxicab vehicle.

3. Pursuant to § 40-6-108(2)(a), C.R.S., the Commission noticed this petition to all interested persons, firms, and corporations on July 30, 2024. No petition to intervene or otherwise participate in this Proceeding has been filed. This Proceeding is therefore uncontested and, pursuant to Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, and § 40-6-109(5), C.R.S., may be determined without a hearing.

4. Under Rule 1003 of the 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.

5. In support of its request for rule waiver, Petitioner suggests authorizing, through rule waiver, a surcharge to the currently allowed LMT rates, referred to by Petitioner as both a “rate surcharge” and a “cost of living surcharge.” The suggested surcharge would be applied to the standard maximum rates for various LMT services, including increases to the entry rate, also known as the “flag drop,” and the per mile rate. Petitioner’s proposal would increase the entry rate from \$3.50 to \$11.50 and the per mile rate from \$2.80 to \$4.00, respectively. Petitioner argues that this additional revenue, the majority of which it states would be passed on to the drivers, will help to offset inflation and the increased cost of living, which Petitioner asserts has been acute since 2019. Petitioner cites the increases to insurance rates, day-to-day expenses, and gas prices. Petitioner also points to general increases to the cost of living in Colorado, such as vehicle maintenance and parts, interest and finance rates, used and new vehicle prices, advertising and marketing, rent and house payments, food, energy, and water.

6. In support of their arguments related to cost increases, Petitioner shares various exhibits, including graphs and charts, such as the gas price indexes from the U.S. Energy Information Administration and the American Automobile Association. Petitioner also submits data on transportation-related taxes and road usage fees, vehicle repair and labor costs, pricing of rent and home purchases, vehicle purchase prices, food costs, and other inflation-related information and cost of living metrics.

7. Based on our consideration of the regulatory framework, as well as the Petition and supporting materials, we find the best means to consider updates to the authorized LMT rates is through rulemaking instead of waiver. Accordingly, we deny the Petition; however, we contemporaneously will open a rulemaking to commence this process. We reach this determination for the following reasons.

8. First, a temporary waiver is ill-suited to remedy the underlying larger issue. A temporary waiver would provide Petitioner with only temporary relief to what we recognize as a long-term issue. Conversely, rulemaking would allow opportunity for the Commission to consider whether an overall adjustment to the rate set in rule is appropriate at this time. We also see potential unintended consequences if we were to grant a targeted waiver to a single entity, including the potential to provide an unfair advantage. Taking this issue up in rulemaking would allow the Commission to consider relief applicable to the LMT industry at large, rather than only to Petitioner.

9. Second, our rulemaking process affords more fulsome opportunity for public participation. The requested increase is significant; the proposal would increase the entry rate by approximately 328 percent and the per mile rate by approximately 143 percent. Both the public and other transportation stakeholders would have opportunity in rulemaking to provide input on

this adjustment. The robust rulemaking process would also allow more opportunity to examine the complicated rate-setting process. For example, whereas the Commission has historically allowed taxicab carriers operating under a certificate of public convenience and necessity to adjust their approved tariffs, which at times have included temporary surcharges,¹ the newer regulatory framework for LMTs contains no such mechanism (despite the offered transportation services being almost identical). Again, it seems that such issues should be addressed on a larger scale, rather than on an individual basis, at least until such time as these concerns can be reviewed to a greater extent.

10. Third, we are mindful that § 40-10.1-702(5), C.R.S., *et seq.*, states “the commission shall by rule determine the maximum rate that a motor carrier providing large-market taxicab service may charge its passengers.” Pursuant to this statutory directive, the Commission commenced an initial rulemaking² and set the maximum rates that LMTs may charge. In light of the statute’s plain language directing the Commission to set these maximum rates by rule, Petitioner’s filings fail to provide an argument or justification on why a waiver, despite this directive, is the most appropriate way to handle these circumstances.

11. While we deny the Petition, consistent with the discussion above, we intend to open contemporaneously a rulemaking to consider revisions to the maximum rate set pursuant to statute. Petitioner and other interested persons are encouraged to participate and provide input in that ongoing Proceeding.

¹ See Proceeding No. 22L-0495CP.

² See Proceeding No. 18R-0915TR.

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

1. The Petition of Pikes Peak Cab LLC, doing business as Pikes Peak Transport, for a waiver of Rules 6804 and 6805 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6, filed on July 19, 2024, is denied, consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the Commission mails this Decision.

3. This Decision is effective immediately upon its Issued Date.

**ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 9, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director