Decision No. R14-0853

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0892CP-TRANSFER

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO TRANSFER CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 1481 FROM MKBS LLC, DOING BUSINESS AS METRO TAXI TO SUPERTAXI, INC.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE PAUL C. GOMEZ GRANTING JOINT APPLICATION

Mailed Date: July 18, 2014

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I. STATEMENT

A. Background

1. On August 8, 2013, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), and SuperTaxi, Inc. (SuperTaxi) (collectively, Joint Applicants) filed a Joint Application for Authority to Transfer Control (Joint Application).

2. According to the Joint Applicants, they propose the sale and transfer of control of the limited liability company membership interests in MKBS, LLC (MKBS), the owner and operator of Certificate of Public Convenience and Necessity (CPCN) PUC No. 1481 to SuperTaxi. The Joint Application indicates that the parties contemplate that MKBS will continue to own and operate all of the facilities, equipment, and other assets MKBS presently employs to provide transportation service to the public. While the local management and personnel will continue to perform their duties in providing service, it is anticipated that over time, certain functions such as dispatch, marketing, finance, training, and maintenance will be consolidated with the functions of SuperTaxi and its subsidiary, Colorado Cab Company, LLC (Colorado Cab).[1]

3. The Colorado Public Utilities Commission (Commission) provided notice of the Joint Application to all interested persons, firms, and corporations pursuant to § 40-6-108(2),

[1] According to the Joint Application, SuperTaxi is the parent of Colorado Cab which operates CPCN PUC Nos. 2378 and 150 under the trade names Denver Yellow Cab and Boulder Yellow Cab. Colorado Cab is the parent company of Shamrock Taxi of Fort Collins, Inc., operating CPCN PUC No. 13043, as well as Colorado Springs Transportation, LLC which operates CPCN PUC No. 109.

C.R.S., on August 12, 2013. As a result, parties seeking to intervene in this proceeding had until September 11, 2013 in which to file pleadings seeking intervenor status.

4. On September 24, 2013, the Commission issued Decision No. C13-1184 by which it deemed the Joint Application complete and noted the interventions as of right filed by Commission Transportation Staff (Staff), Union Taxi Cooperative (Union Taxi), and Freedom Cabs, Inc. (Freedom Cabs). No other parties sought to intervene in this matter. In addition, the Commission referred the Joint Application to an Administrative Law Judge (ALJ) for hearing and issuance of a Recommended Decision. The matter was subsequently assigned to the undersigned ALJ.

5. By Interim Decision No. R13-1287-I, issued October 11, 2013, a procedural schedule was adopted which among other things, set an evidentiary hearing in this matter for February 18 through 21 and 24, 2014. Closing Statements of Position were to be filed no later than March 6, 2014.

6. The evidentiary hearing was held from February 19 through 21 and 24, 2014. Hearing Exhibit Nos. 1, 3, 5 through 28, 30 through 56, 58, and 60 through 69 were entered into evidence. Confidential Hearing Exhibit Nos. 2, 4, 29, 57, and 59 were entered into evidence. Witnesses testifying in this proceeding include: Mr. Kyle Brown, General Manager of Metro Taxi; Mr. Thomas Lavoy, Deputy Chief Operating Officer of Veolia Transportation;[2] Mr. William L. Cotter, a member of the MKBS limited liability company which operates Metro Taxi; Mr. Brad Whittle, Senior Vice President of Veolia Transportation on Demand; Dr. Ray Mundy of the University of Missouri, St. Louis, testifying as an expert witness on behalf

[2] Veolia Transportation is the parent company of SuperTaxi and Colorado Cab.

of Applicant SuperTaxi; Mr. Matthew W. Daus, Esq. of the law firm Windels Marx Lane & Mittendorf, and a lecturer at the City University of New York, testifying as an expert witness on behalf of Applicant SuperTaxi; Dr. Diana Moss, formerly an economist with the Federal Energy Regulatory Commission, and currently adjunct faculty in the University of Colorado Department of Economics, and Vice President and a member of the Board of Directors for the American Antitrust Institute, testifying as an expert witness on behalf of Union Taxi and Freedom Cabs; Dr. Scott England testifying on behalf of Staff; Mr. Haile Michael Gebre Michael, President of Freedom Cabs; Mr. Max Sarr, General Manager of Freedom Cabs; Mr. Jamal Said, President of the Board of Union Taxi; and, Mr. Fred Hair, General Manager of Yellow Cab Company of Colorado Springs.

7. Prior to the commencement of testimony on February 19, 2014, the Parties indicated that they wished to bifurcate the proceeding whereby the February evidentiary hearing would address the issue of whether the proposed transfer of Metro Taxi's authority to SuperTaxi was in the public interest. The Parties further proposed that an evidentiary hearing be scheduled approximately four weeks after the February evidentiary hearing to hear testimony regarding any issues regarding overlapping authorities arising as a result of the proposed transfer. The Parties indicated that this would provide them time in which to discuss any possible settlement agreement regarding that issue. As a result, Interim Decision No. R14-0215-I was issued on February 26, 2014, which bifurcated the issues as set out above, and set a second hearing on the issue of overlapping authorities for March 20, 2014. In addition, it was noted in that Interim Decision that Applicant SuperTaxi also voluntarily waived the 210-day statutory deadline in which to issue a final Decision in this proceeding. At the conclusion of the hearing, the Parties

also requested that the original date of March 6, 2014 to file Closing Statements of Position be continued to April 11, 2014.

8. On March 17, 2014, Staff, SuperTaxi, and Metro Taxi filed a Joint Motion and Stipulation for Approval (Stipulation). According to the terms of the Stipulation, any concerns raised by Staff regarding duplicate or overlapping authorities if the Application is granted are resolved by a revised Metro Taxi CPCN PUC No. 1481. The proposed revised CPCN PUC No. 1481 cancels the duplicating and overlapping authority between CPCN PUC No. 1481 and CPCN PUC Nos. 109 and 150 held by SuperTaxi. The Stipulation further provides that the revised CPCN PUC No. 1481 does not cancel the "technical but immaterial overlap" with CPCN PUC No. 12043 because the public interest is best served by allowing these authorities to continue to provide service between the core of their respective, distinct base areas out to the perimeter of each operating authority. The parties represent that revised CPCN PUC No. 1481 does not cancel the authority of CPCN PUC No. 2378 because it is in the public interest to maintain both certificates according to the terms of the Stipulation.

9. Staff also represents that it will be easier to administer and enforce separate certificates in the Denver metro area as opposed to a "combined certificate" with complex vehicle and geographic restrictions. The proposed revised CPCN PUC No. 1481 is attached to the Stipulation as Attachment A.

10. According to Staff, SuperTaxi, and Metro Taxi, the revised CPCN PUC No. 1481 would be operated by MKBS if the Application is granted. The Parties further state that the revised CPCN would restrict the ability of MKBS to operate in geographic territories in which other subsidiaries of SuperTaxi operate, including Colorado Cab. The Parties explain that these companies would operate as before, and the revised CPCN PUC No. 1481 would allow MKBS

to operate as much as it could before its acquisition by SuperTaxi, excluding the restricted territories.

11. On April 11, 2014, Metro Taxi, SuperTaxi, Union Taxi, Freedom Cabs, and Staff each filed their respective Closing Statements of Position.

12. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission, the record in this proceeding along with a written Recommended Decision.

II. FINDINGS OF FACT

A. Joint Application

13. As indicated *supra*, the Joint Applicants propose transferring control of the limited liability interests in MKBS owner and operator of CPCN PU No. 1481 to SuperTaxi. While the Joint Applicants indicate in the Application that Metro Taxi will operate somewhat autonomously, it is anticipated that many functions such as dispatch, marketing, finance, training, and maintenance, to name a few, will eventually be consolidated with those of Colorado Cab in order to increase efficiencies and economies of scale.

14. SuperTaxi, a Delaware company registered and in good standing in Colorado owns the LLC membership interests of, and is the parent company of Colorado Cab (*see*, Exhibit 4 attached to the Joint Application entered into evidence as Hearing Exhibit No. 1; *see also*, Supplemental Support Statements attached to Joint Application). In turn, Colorado Cab operates CPCN PUC No. 2378 under the name Denver Yellow Cab, which operates in the Denver metropolitan area, and CPCN PUC No. 150 under the name Boulder Yellow Cab which operates in the eastern portion of Boulder County. SuperTaxi also owns the membership interests in Colorado Springs Transportation, LLC operating in Colorado Springs, Colorado under CPCN PUC No. 109. Colorado Cab is the parent company of Shamrock Taxi of Fort

Collins, Colorado operating in Larimer and Greeley Counties and in and around Longmont, Colorado in northeastern Boulder County under CPCN PUC No. 13043.

15. According to SuperTaxi, each of the taxi providers under its control is organized and operates autonomously. Each entity has its own business plan, as well as its own general manager; vehicle fleet; its own office and shop facilities; its own options and terms for driver leases; and, its own marketing managers, other managers, and staff.

16. SuperTaxi maintains that it enhances the ability of each of its operating entities to serve the public with taxi and specialized services by offering efficiencies of centralized electronic dispatch; executive management; central contract for Medicaid transportation services; accounting services; human resources; insurance, financial backing for capital expenditures; driver safety and training; risk management; and, other services and assets.

17. SuperTaxi represents that it intends to take the same approach with Metro Taxi if the Joint Application is approved. According to SuperTaxi, Metro Taxi is to continue to operate in its current circumstances as a separate operating entity with its own trade names, general manager, local managers, taxi fleet, various driver lease options, office and repair facilities, and other business plans and strategies. In addition, Metro Taxi will retain its general phone number in order to preserve the preference the public may have for Metro Taxi service.

18. Attached to the Application is also a confidential balance sheet which, according to SuperTaxi demonstrates its financial fitness to consummate the transaction and operate Metro Taxi as a going concern, as well as the confidential Membership Interest Purchase and Sale Agreement filed under seal in this proceeding.

19. According to the testimony of Mr. William L. Cotter, a member of MKBS, he purchased Ritz Cab of Metro Denver on August 1, 1985 and immediately began operations as

Metro Taxi. Since that time, Metro Taxi has operated under the same business model, which is that nearly all of its leases are provided on a weekly basis to its drivers. Metro Taxi prefers to own its fleet; however, it does provide a few owner-driver arrangements where the driver owns the taxicab and pays a fee to Metro Taxi to operate under its brand. Mr. Cotter testified that Metro Taxi incorporated a computerized dispatch system in 1989 and was one of the first taxi companies in the country to automate its system. In addition, Metro Taxi is currently in the process of upgrading its computer system in order to better track driver hours of service and comply with Commission regulations.

20. Sometime in approximately 2008, Metro Taxi created South Suburban Taxi in order to serve the south metro area more effectively. Drivers for South Suburban are restricted to providing service to the south metro area pursuant to its CPCN.

21. Mr. Cotter stated that Metro Taxi has recently incorporated the use of Toyota Priuses in order to operate a greener fleet, which is attractive to drivers due to lower operating costs. While Metro Taxi has authority to operate a maximum of 492 cabs, there was some debate as to the total number of vehicles it operates at any given time.

22. Mr. Cotter testified that he and his partner in MKBS were approached by a representative of Veolia Transportation (parent company of SuperTaxi) and asked if they would be interested in selling the company. That conversation set in motion the decisions that led to the Joint Application.

23. Metro Taxi’s CPCN PUC No. 1481 authorizes it to provide point-to-point taxi service within the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, and between said points on the one hand, and all points within an 85-mile radius of the intersection of

16th and Champa Streets in Denver, on the other hand. CPCN PUC No. 1481 restricts Metro Taxi to the use of a maximum of 492 vehicles in service at any time.

B. Expert Witness Testimony

1. Dr. Ray A. Mundy on behalf of SuperTaxi

24. Dr. Ray Mundy offered expert testimony on behalf of SuperTaxi. Dr. Mundy, of course, supports the transfer as being in the public interest because it will provide significant economies of scale in the Denver metro area that are beneficial to both the retail public market for taxi services and wholesale market for taxi leasing and driving opportunities for those wishing to operate as independent contract drivers. Citing his own study,[3] Dr. Mundy asserts that taxi researchers agree that large, full service taxi companies that continually upgrade their dispatch technologies, market their taxi services, and support their drivers, are best suited to provide quality taxi call (or bell) service to the overall community by employing, and constantly upgrading, state-of-the-art dispatch systems.

25. As related to the Denver taxi market, Dr. Mundy opines that such dispatch systems allow taxicabs to be spread out throughout the entire Denver metro area, thereby allowing drivers to travel fewer miles to pick up fares. In turn, this provides service to a customer as quickly as possible while reducing fuel consumption by having the closest taxicab respond to a call.

26. Consolidating computerized dispatch systems through the proposed transfer would significantly benefit the public, according to Dr. Mundy, due to the large geographic and

[3] Mundy, *et al.*, "Taxi! Urban Economics and the Social and Transport Impacts of the Taxicab," 2010, Ashgate Press, Farnham Surrey, England.

sparsely populated areas of the Denver metro area. Dr. Mundy suggests that given its widespread population, significant economies-of-scale exist through a consolidated dispatch system in the Denver taxi bell submarket. Such economies-of-scale, according to Dr. Mundy, arise not just from combined facilities, shared marketing costs, training, business development, and reduction of general overhead, but also from lower operating costs for drivers as they accept calls for service. Dr. Mundy sees economies-of-scale with a combined dispatch system, which will benefit both taxi users and drivers.

27. Much debate occurred in this proceeding regarding the relevant market for the Commission to consider when making public interest findings regarding the proposed transfer. Distinct and disparate definitions of the relevant market further influenced the parties' use and interpretation of the Herfindahl-Hirschman Index (HHI) of market concentration.[4]. While Staff's and Freedom's experts (discussed in more detail below) characterize the Denver taxi market in relatively narrow terms, Dr. Mundy takes the position that due to the approach by which large full service taxi companies generate business through various lease options, at a wholesale lease level, no common product or service exists for taxi companies that is suitable for an HHI comparison of possible market concentration.

28. Dr. Mundy criticizes the characterization of the taxicab market in the Denver metropolitan area by Dr. Moss and Dr. England. Although they define the market as only comprising the other taxi companies in Denver, such as Freedom Cabs, Union Taxi, and potentially Mile High Cab (Mile High), Dr. Mundy argues that it is more accurate to define the potential market to include taxis and "taxi-type" substitutes. Dr. Mundy's opinion is that the

[4] The HHI, a tool utilized by the U.S. Department of Justice and the Federal Trade Commission in evaluating the advisability of proposed mergers, is calculated by summing the squares of the individual firms' market shares, and therefore gives proportionately greater weight to the larger market shares.

market should include not only other taxi companies, but also the following: carriers with scheduled authority; shuttles from Denver International Airport (DIA); carriers with call-and-demand limousine/shuttle authority; contract carrier permits; luxury limousines providing services on a pre-arranged basis; legitimate third-party transportation apps which leverage the authority of other existing carriers to dispatch trips; carriers operating under federal (rather than state) authority; rental cars; bus and light rail service; as well as other indirect competitors such as Car2Go car rentals; volunteer drivers for social service agencies; church and school buses; and electric shuttle vehicles. Consistent with Dr. Mundy's expanded market concept, he posits that the HHI for the current market should be highly competitive. Post-merger, Dr. Mundy surmises that by his calculations, the HHI would still indicate a highly competitive market.

29. Dr. Mundy further notes that the Denver taxi market has naturally ebbed and flowed over the last 70 years. Under the doctrine of regulated competition, Dr. Mundy assumes that the market fluctuation of between three and seven taxi companies in the Denver area will continue. As a result, Dr. Mundy concludes that the common ownership of Yellow Cab and Metro Taxi by SuperTaxi will not be detrimental to either the retail taxi market or the wholesale taxi lease market.

2. Matthew W. Daus, Esq. on behalf of Metro Taxi

30. Mr. Daus's testimony somewhat mirrored the testimony of Dr. Mundy. Mr. Daus contends that approval of the transfer of ownership of Metro Taxi to SuperTaxi will not negatively affect competition in the Denver taxi market because the relevant market to be considered is broader than merely licensed taxi companies. Rather, Mr. Daus argues that the taxi market is a subset of the larger for-hire vehicle (FHV) market which should be the relevant market to consider here. Consequently, Mr. Daus takes the position that the Denver taxi market

is affected by price and output changes within the licensed taxi market, as well as changes in other subsets of the general FHV market including, auto liveries, luxury limousines, para-transit shuttles, and transportation arranged through smart phone applications. Mr. Daus bases his opinion on his experience as an FHV regulator in New York

31. Mr. Daus is of the opinion that the taxi market is only one part of the general FHV industry impacted by price changes, fluctuations in demand and supply, which is only partially regulated by the Commission. Due to cross-industry pollination caused by smart phone applications, Mr. Daus finds it reasonable to conclude that the taxicab industry in Denver (and elsewhere) no longer exists on a regulatory island. Rather, Mr. Daus finds that such smart phone applications are now deployed in luxury limousines and sedan services that previously were operated exclusively by pre-arrangement. As a result, the lines between limousine and taxicab service is becoming more and more blurred according to Mr. Daus, resulting in less and less distinction between the two in the minds of passengers.

32. In order to emphasize his point that taxicabs are now a part of a broader FHV industry, Mr. Daus points to his experience as chairman of the New York City Taxi and Limousine Commission where a passenger’s decision on which FHV service to use is independently determined and typically depends on the fare, destination, and availability of service. Mr. Daus concludes that the interoperability of those services, as well as the independent passenger control over which type of for-hire service to use, illustrate that taxis are merely part of the broader FHV industry. Mr. Daus cites San Francisco as an example where, similar to Denver, electronic hailing currently used by licensed taxicabs and licensed charter-party carriers, and the fare calculation method employed by apps, have created service and consumer overlap between the taxicab and limousine industries.

33. Mr. Daus also addresses the regulatory gaps which exist between Transportation Network Companies (TNCs) such as Uber Technologies, Inc. (Uber) and Lyft, which utilize electronic hailing apps and taxicabs. While taxicab companies are required to obtain a CPCN to provide service, Mr. Daus notes that TNCs are able to exploit a hybrid service model offering on-demand and pre-arranged service, without meeting the same regulatory standards as taxicabs, which results in TNCs not always matching the degree of safety, accessibility, and consistency of service of licensed taxicab services.

34. Consequently, it is Mr. Daus's opinion that the broad FHV market should be considered the relevant market when considering this Application. Mr. Daus further opines that by doing so, the merger of Metro Taxi and SuperTaxi will result in a reasonable market share as the market as a whole will continue to expand with TNCs.

35. Some of the positive results Mr. Daus sees from the merger include the ability to finance a potential expansion of the metro area's accessible fleet, and the increased use of hybrid vehicles and propane powered vehicles. In addition, Mr. Daus foresees that the financial resources available to Metro Taxi as a result of the merger will enhance taxi service for the public as well as increase options for drivers. Mr. Daus also predicts that through the merger, both companies' resources will be deployed to enhance operations, including improving the quality and quantity of the taxi fleet and dispatch system. Mr. Daus surmises that the merger will also provide for significant competition in the dispatch segment of the FHV market because the number of fleet vehicles accessible by a centralized Metro Taxi dispatch system will expand, which will increase scheduling options for the public and reduce wait times. Mr. Daus concludes that the proposed merger will provide a benefit to consumers by way of increased efficiencies, customer service, and accessibility.

3. Dr. Diana L. Moss on behalf of Freedom Cabs

36. Dr. Moss takes the position that the proposed transfer will result in a significant increase in concentration in the Denver taxicab market. Dr. Moss contends that the transfer will create a dominate firm – SuperTaxi – in possession of significant market power that could be wielded to adversely affect lease rates, retail fares, service quality, and innovation. As a result, Dr. Moss is of the opinion that the proposed transfer is likely to have an adverse effect on competition, consumers of taxicab services, and taxicab drivers.

37. According to Dr. Moss, the transfer of Metro Taxi's CPCN to SuperTaxi is in effect a merger. For example, Dr. Moss indicates that SuperTaxi will have control over management decision-making that directly affects how it uses its economic resources to compete in the market for taxicab services as defined by the relevant CPCNs. Consequently, Dr. Moss views the transaction as a merger of Metro Taxi and SuperTaxi, which requires heightened scrutiny in regard to a combined taxicab company's incentives to compete, and its ability to achieve operational efficiencies.

38. Although the Joint Applicants maintain that Metro Taxi will remain a separate operating entity with its own brands, general manager, local managers, taxi fleet, driver lease options, office and repair facilities, as well as its own business plans and strategies, Dr. Moss argues that this does not change the fact that the economic resources of the two former rivals will be under the ownership of a single firm and the operational control of a single decision-making authority. As a result, Dr. Moss posits that the strong incentives to exercise the substantial market power created by the transfer will reduce, if not eliminate, any incentives to engage in inter-brand competition.

39. Nor does Dr. Moss accept the Joint Applicants' representation that the two brands will continue to compete against each other, while achieving increased operational efficiencies. Dr. Moss notes that a recognized economic principle provides that the realization of significant operational efficiencies through a merger requires integration of the firm's operations, typically under centralized operational control. Dr. Moss asserts that this is the same operational control that the Joint Applicants implicitly deny in asserting that they will continue to engage in inter-brand competition after the transfer of Metro Taxi's CPCN to SuperTaxi.

40. Dr. Moss expresses concern that the proposed transfer would reverse the progress and benefits of competition achieved under the doctrine of regulated competition. Dr. Moss points to Union Taxi and Freedom Cabs as an example of sources of aggressive competitive discipline, offering quality service at lower rates than either Metro Taxi or Denver Yellow Cab. Dr. Moss indicates that new entrants into the Denver taxicab market have contributed to improving the quality, price, and availability of taxicab service, and created competitive options for taxicab drivers. In addition, those smaller rivals have redistributed the market shares in the Denver area to more equitable levels.

41. By Dr. Moss's reckoning, approval of the transfer will result in a re-concentration of the taxicab market which will be contrary to the regulatory objectives and demonstrated benefits of regulated competition. This will occur because SuperTaxi would become a dominant firm in the market which will result in incentives to engage in conduct likely to harm competition, consumers, and drivers. Dr. Moss calculates that post transfer, SuperTaxi will control 63 percent of the taxicab market (or 56 percent if Mile High actually begins operating), which will re-concentrate the market and allow Metro Taxi and Denver Yellow Cab to regain dominance as a firm combined under single ownership.

42. In defining the market in which the likely effects of the proposed transfer should be evaluated, Dr. Moss suggests that consumer responses to price increases are central to this determination. Dr. Moss defines the market as having both a geographic and a product element. The geographic element includes the market for taxicab services confined by the overlapping operating authorities of taxicab providers. Therefore, according to Dr. Moss, any taxicab providers outside the geographic scope covered by Denver Yellow Cab's and Metro Taxi's overlapping CPCNs are not effective substitutes. Dr. Moss continues that should consumers be less responsive to fare increases for taxicab services, and there are limited effective substitutes to turn to in order to avoid higher taxicab fares or lower quality service post transfer, then the market should be defined to include only taxicab services.

43. Taxicab services are a relatively distinct market, and estimates of trip demand elasticities reveal that demand is relatively inelastic, meaning that consumers are relatively insensitive to changes in fares and would not significantly reduce consumption should fares increase post transfer. Dr. Moss states that this is an important consideration in determining whether post transfer effects would be significant enough to raise concerns. Dr. Moss argues that any post-transfer fare increase would likely be profitable to SuperTaxi but harmful to consumers.

44. In considering effective substitutes for taxicab services that consumers could switch to in the event of post transfer fare increases, Dr. Moss points out that potential transportation alternatives that are significantly higher or lower in price are unlikely to be alternatives for consumers to avoid post transfer adverse effects. Uber operates in the Denver area, but charges higher prices for its app-based service. While such an alternative to taxicab service may induce some customers to use Uber as a substitute, Dr. Moss maintains that those consumers are likely to be a narrower subset of all consumers and exist in insufficient numbers

to create a switching effect that would make it unprofitable for SuperTaxi to raise fares or degrade service post transfer.

45. Dr. Moss also argues that the proposed transfer would likely harm competition, consumers, and drivers and is contrary to the public interest for several reasons. Dr. Moss contends that the 63 percent market share SuperTaxi would hold post transfer (excluding the entry of Mile High into the market) would significantly increase the HHI by 1,854 points indicating a highly concentrated market which would result in inefficiencies. Such a highly concentrated market creates other concerns for Dr. Moss including: the ability of SuperTaxi to raise fares and degrade service; the potential for anticompetitive coordination among all firms in the market; the potential exclusion of smaller rivals by the dominant firm; and, the potential increases in lease rates and attendant adverse effects on taxicab drivers. Additionally, the potential for such adverse effects on competition would result in a barrier to entry for new firms such as Mile High.

46. Dr. Moss sees a strong incentive for SuperTaxi to raise fares after the transfer since it would retain those sales between Metro Taxi and Denver Yellow Cab. In the event of a fare increase, Dr. Moss foresees that because Metro Taxi's and Denver Yellow Cab's fares are within a few percentage points of each other, with a fare increase post transfer, a substantial portion of sales would be diverted from Metro Taxi to Denver Yellow Cab and vice versa. Dr. Moss estimates that each firm could capture approximately 40 to 50 percent of each other's sales after a fare increase.

47. Dr. Moss also expresses concern that detection of anti-consumer fare increases would require significant regulatory oversight of SuperTaxi, similar to that required by a utility

rate case. Dr. Moss surmises that the Commission would have to divert resources from other areas in order to adequately monitor SuperTaxi.

48. Another concern expressed by Dr. Moss is the potential of SuperTaxi to gain preferential access to cab stands at hotels, restaurants, and shopping centers, thus excluding smaller taxicab companies from access to such important distribution channels.

49. As stated earlier, Dr. Moss also cites the potential adverse affect on lease rates as another concern post transfer. The virtual elimination of Metro Taxi through the transfer of its operating authority would eliminate many lease choices for drivers. In addition, Dr. Moss predicts that SuperTaxi could also exercise market power over leases by raising rates and degrading terms and conditions which would reduce drivers' incomes. Such an outcome can only be ameliorated by competition, according to Dr. Moss.

4. Dr. Scott England on Behalf of Staff

50. Dr. England recommends that based on his analysis of the existing number of taxi permits and trips; the Denver taxi market and transportation market as a whole; and, the likely outcomes for existing taxi companies, taxi drivers and the general public, the transfer should only be approved if the number of taxi permits Metro Taxi may transfer to SuperTaxi is limited to 264,[5] and any overlapping geographic authorities previously granted to Metro Taxi and to Denver Yellow Cab should be cancelled. With these two conditions, it is Dr. England's assessment that these conditions will result in a more competitive market place if the transfer is approved.

[5] Dr. England derives this number by considering the 564 combined number of total permits using Denver Yellow Cab's optimization of 500 drivers for 300 permits or 1.67 drivers per permit. Extrapolating this value to Metro Taxi's 440 drivers yields 264 permits as being utilized.

51. Dr. England indicates that Metro Taxi currently has authority to operate no more than 492 taxicabs at any one time. Denver Yellow Cab is authorized to operate 300 taxicabs. Dr. England emphasizes that approving the transfer without limiting the number of taxis SuperTaxi may operate would allow it to operate 792 taxicabs of the current 1,262 authorized taxicabs permitted in the Denver metro area.[6]

52. Dr. England begins his analysis by conducting his own HHI calculations. According to his calculations, Dr. England determines that the current HHI in the Denver taxicab market is 2,781 when considering the four operating taxi companies. When Mile High is included, the HHI falls to 2,335. Dr. England concludes that these numbers indicate that the Denver taxicab market is already highly concentrated. Post transfer, Dr. England represents that the HHI would increase to 3,815.

53. Such an increase in market concentration is a concern to Dr. England due to the increased ability of both Metro Taxi and Denver Yellow Cab to exert market dominance on the Denver taxi industry as subsidiaries of SuperTaxi. As a result, Dr. England proposes limiting the total number of taxicabs to 564, which, while not eliminating his market concentration concerns, would ameliorate those concerns to some degree. Dr. England takes the position that allowing SuperTaxi to operate with a maximum of 564 taxicabs on the road at any given time could result in economic efficiencies which will provide benefits to customers such as centralized dispatch.

[6] Dr. England notes that should Mile High begin operations as authorized, the total permits would increase to 1,412.

Under this limited taxicab scenario, Dr. England calculates the resulting HHI as 3,060, a number he finds more palatable than the 3,815 result with this limit.

54. Dr. England also utilizes the number of taxi trips data derived from the most recent annual reports filed with the Commission (2008 through 2012) as an additional method to analyze the level of current market concentration, as well as to gain an understanding of the business strategies of the existing taxicab companies. Dr. England's analysis breaks down the total taxicab trips into DIA trips, non-DIA trips, and DIA trips as a percentage of total trips.

55. Dr. England's data shows that Metro Taxi and Denver Yellow Cab represent a combined total of approximately 85 percent of all trips, while Freedom Cabs and Union Taxi account for approximately 15 percent of the total. However, when considering DIA taxicab trips, which comprise approximately 10.4 percent of total taxicab trips in the Denver metro area, each of the four incumbent taxicab companies, Dr. England found that each company's percentage of DIA taxicab trips approximated each other.

56. However, upon closer analysis, Dr. England determined that Denver Yellow Cab and Metro Taxi devote fewer taxicab trips to DIA as a percentage of overall trips. Union Taxi provides the largest percentage of DIA taxicab trips at less than 15 percent of its total trips. Freedom Cabs appears to devote the highest percentage of its total fares to providing DIA taxicab trips at approximately 62 percent.

57. Analyzing the current number of trips for the Denver taxicab market to determine the HHI, the level of actual market concentration is greater than the HHI derived from the number of permitted vehicles, according to Dr. England. Utilizing the number of taxicab trips, Dr. England derived an HHI of 3,618 in comparison to an HHI of 2,781 based on the number of authorized taxicabs on the street at any one time. Dr. England states that his analysis

demonstrates the predominance of Denver Yellow Cab and Metro Taxi. Dr. England concludes that the HHI for total trips by all taxicab companies would increase to 6,854 representing an increase of 3,227 if the transfer is approved without modifications.

58. Regarding the proper characterization of the transportation market, Dr. England believes that it is inappropriate to compare other types of FHV service such as limousines, rental cars, shuttles, and public transportation as substitutes for taxicab service. According to Dr. England, these other means of transportation must be viewed from a perspective of substitutability for taxicabs, where substitutability is a function of time, preferences, and price. While conceding that these other modes of transportation may be viewed as substitutes for taxicab service, Dr. England categorizes them as imperfect substitutes.

59. Dr. England contrasts the differences between taxicabs and those other transportation options by noting that taxicabs operate as common carriers required to provide service to anyone, at any time. On the other hand, other FHV options enter into a contract with a passenger if the provision of service is agreed upon by both parties, implying pre-arranged service, atypical of the taxicab industry. Dr. England argues that oftentimes, these other FHVs, such as limousines, have higher fares and distinguish themselves as a luxury option which separates them from taxicabs. Rental cars involve long-term contracts rather than distinct point-to-point service. Shuttle services are limited and as a result, less convenient and typically involve ride sharing. Dr. England goes on to argue that public transportation options are less convenient than taxicab service due to limited routes and times that may require transfers and numerous stops. For all these reasons, Dr. England concludes that these other transportation methods are less than perfect substitutes for taxicabs, and a consumer who uses taxis for their transportation needs is unlikely to also consider those other FHV options.

60. Dr. England takes issue with the contention of Joint Applicants that the transfer is necessary without modification to enable Denver Yellow Cab and Metro Taxi to survive the growing competition from other FHVs. Dr. England counters that such representations are not grounded in economic facts. Rather, Dr. England argues that the total Denver taxicab industry has experienced annual growth in lease revenues of 4.6 percent to 10.72 percent between 2000 and 2012. In addition, total taxicab trips have increased in that same time period from 3.6 percent to 5.3 percent annually.

61. Staff's concern, as relayed by Dr. England, is that the Joint Application is more of an attempt by Metro Taxi and SuperTaxi to attempt to control competition from within the taxi market than the ability to withstand competition from non-taxi FHVs and TNCs. Staff has calculated that Metro Taxi utilizes approximately 54 percent of its total 492 authorized taxicabs on a daily basis.[7] Dr. England believes that Metro Taxi utilizes only a portion of its total authorized taxicabs due to insufficient demand. Dr. England is of the opinion that operating Denver Yellow Cab and Metro Taxi as autonomous entities will not alter this underutilization.

62. It is the opinion of Dr. England that should SuperTaxi decide post transfer, to operate the currently unused Metro Taxi taxicabs, this would represent a powerful anti-competitive weapon to dissuade additional entrants into the Denver taxicab market. In addition, Dr. England theorizes that the unused permits would enable SuperTaxi to behave predatorily by flooding the market with additional taxicabs in order to diminish brand recognition and usage of the three other taxicab companies.

[7] Staff arrives at this figure by dividing 246 by 492.

63. Dr. England recommends limiting the number of taxicabs operated under the Metro Taxi brand to 264 in order to improve efficiency in Metro Taxi's operations. Limiting the authorized number of taxicabs will also provide an opportunity for the Commission to control the total number of taxicab authorizations in the Denver metro area which could otherwise increase to 1,412 with the approval of Mile High. Dr. England maintains that limiting the number of authorized taxicabs will begin to level the competition among the incumbent taxi companies. Dr. England contends that the indirect redistribution of taxicabs by limiting the number of taxicabs of Metro Taxi will enable the market to absorb the entry of Mile High without significantly exceeding the new optimal number of taxicabs of 1,212.

64. Dr. England also expresses concern that the transfer will concentrate approximately 56 percent of the taxi driving opportunities into SuperTaxi. The remaining two taxicab companies only account for 28 percent of the additional driving opportunities, according to Dr. England.[8] This, Dr. England argues, would result in significant monopsony power regarding the supply of drivers being bestowed on SuperTaxi which is not in the public interest.

65. Dr. England recognizes that efficiencies may occur as a result of the transfer, including financial stability, more efficient vehicles, a centralized dispatch system, and the attrition of marginal drivers, which in turn could improve the overall quality of taxi service. Nonetheless, Dr. England also expresses concern that the transfer may lead to an increase in terminations for discriminatory and non-work performance reasons. Those drivers who may be wrongfully terminated may be unable to find other driving opportunities with Freedom Cabs or Mile High.

[8] Dr. England notes that as a cooperative organization, Union Taxi does not provide opportunities for drivers since each driver is also a member of the cooperative. Entry into Union Taxi as a driver would require purchasing a membership, which is controlled by the drivers themselves and are difficult to obtain.

66. As a result, Dr. England recommends that the Joint Application should only be approved with conditions that limit the concentration of the market. Those conditions include limiting the number of authorized taxicabs operated by Metro Taxi to 264 (which is not addressed in the stipulation discussed in more detail below), as well as removing any overlapping authority between Metro Taxi and Denver Yellow Cab (which is addressed in the stipulation).

III. <u>ANALYSIS</u> <u>AND</u> <u>CONCLUSIONS</u>

67. Section 40-10.1-205(1), C.R.S., requires that "[a] certificate or permit, or rights obtained under a certificate or permit, that are held, owned, or obtained by any common carrier or contract carrier may be sold, assigned, leased, encumbered or transferred as other property, subject to prior authorization by the [C]ommission." Further, 40-10.1-205(3) provides that "[a]n existing certificate or permit shall not be transferred unless the fitness of the transferee is established to the satisfaction of the [C]omission."

68. Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6205 of the Rules Regulating Transportation by Motor Vehicle governs Applications to Encumber, Transfer, Merge, Consolidate, and Acquire Control. That regulation sets out the requirements for an application seeking to, among other things, transfer or merge a regulated intrastate carrier's authorities. Rules 6205(c)(I) through (XVII) set forth the information required for an application for transfer or merger of operating authorities.

69. Of particular note, Rule 6205(c)(XIV) requires a statement from applicants that they understand that "the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction."

70. Also of particular note, Rule 6205(c)(XVI) requires:

> A statement of the facts upon which the applicants rely to show that the application should be granted. The applicants have the burden of proving:
>
> (A) that the transferor has not abandoned the authority and has not allowed the authority to become dormant;
>
> (B) that the transferor has been and is engaged in bona fide operations under its authority, or the extent to which bona fide operations have been excused because of a Commission-approved suspension;
>
> (C) that the transfer is not contrary to the public interest;
>
> (D) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and
>
> (E) that the transferee will engage in bona fide regulated intrastate carrier operations and is fit to do so, except in transfers involving foreclosures or encumbrances, executions in satisfaction of judgment or claim, or transfers pursuant to a court order.

71. As the party that seeks Commission approval or authorization, the Joint Applicants bear the burden of proof with respect to the relief sought; and the burden of proof is by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. The evidence must be "substantial evidence," which the Colorado Supreme Court has defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585

(Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

72. As indicated *supra*, the Joint Application was bifurcated into proceedings on the general public interest aspect and proceedings were directed at the overlapping or duplicate authorities issue. In this section, the public interest aspect will be analyzed. The "Public Interest" section below incorporates the burden of proof required under Rule 6205(c)(XVI)(C), while the "Overlapping/Duplicate Authorities" section will incorporate the burdens of proof under Rules 6205(c)(XVI)(A), (B), (D), and (E).

A. Public Interest

73. The term "public interest" is an amorphous concept which can assume various meanings. In this context, the public interest can be characterized as encompassing the transportation public which expects reasonably priced, comfortable, and safe ground transportation services, and to a certain extent taxicab drivers who require reasonable lease options that allow them to earn a living wage by working reasonable hours. Those public interest elements also encompass other components such as economies of scale, which are then passed on to the traveling public. However, these elements are subsumed by the overarching public interest standard which is to preserve competition in the taxicab market.

74. In order to accurately determine whether the transaction is in the public interest, it is imperative that the relevant service and geographic market in which the parties to the transaction compete are correctly defined for determining whether the transfer would be likely to impinge on competition in that market. Upon consideration of multiple factors, it can be

determined, for instance, whether there are alternative services to the service offered by the parties to the transaction to which consumers could reasonable turn if the merging parties pursue anti-competitive practices.

75. Generally, it is presumed that merger-like transactions (such as the matter at hand) in highly concentrated markets that produce more than a small increase in concentration are likely to create or enhance market power or facilitate its exercise, unless other factors, such as offsetting economies of scale, or the prospect of entry by other participants or substitutes make that unlikely.[9] Both the post transfer market concentration and the increase in concentration resulting from the transfer are analyzed through the use of the HHI.

76. The Joint Applicants offer the testimony and reports of Dr. Mundy and Mr. Daus to support the transfer as in the public interest. Dr. Mundy conceded that market concentration would increase post transfer, but he could not agree that increases in lease rates and fares, or decreases in opportunities for drivers would ensue. Rather, Dr. Mundy testified that in various taxicab markets across the country, fragmentation that occurs with many competitors actually results in service deterioration and increased lease rates.[10] Regarding SuperTaxi, Dr. Mundy offered that should the transfer be approved, it would have incentives to increase service and improving on existing service.[11]

77. SuperTaxi witnesses Mr. LaVoy and Mr. Whittle corroborated Dr. Mundy's testimony by indicating that SuperTaxi will acquire and operate the MKBS assets as it has with

[9] *See*, Hearing Exhibit No. 60, Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, Issued August 19, 2010.

[10] Hearing Transcript Vol. 1, p. 162:ll. 5-18.

[11] *Id*. at p. 164:l. 24-p. 165:l. 16.

other taxi companies in Colorado.[12] SuperTaxi avows that Metro Taxi will continue to be responsible for its own operations and profitability; however, certain parts of the operation such as physical plant, common shop and maintenance facilities, collocated dispatch services, fleet operation, and back office functions will be combined with the other operating companies under the SuperTaxi umbrella which will result in improved efficiencies for all of the companies.[13]

78. SuperTaxi represents that those efficiencies will directly benefit the public as the unrebutted evidence shows that Denver Yellow Cab has not sought a rate increase in some time, and that SuperTaxi does not foresee the need to increase rates due to the acquisition. Further, the expected efficiencies may eliminate the need for rate increases in the near future and delay the need for rate increases in the longer run, according to SuperTaxi.[14]

79. SuperTaxi also maintains that the transfer will result in more timely and efficient dispatch through a larger fleet of taxicabs at the disposal of a collocated dispatch center. SuperTaxi points out Mr. Whittle's testimony regarding the collocated dispatch system which will allow Denver Yellow Cab and Metro Taxi to share real time information in a collocated dispatch facility to serve passengers with the closest available taxi resulting in reduced wait times.[15] According to Mr. Whittle, customers who prefer Denver Yellow Cab as opposed to Metro Taxi will get a Denver Yellow Cab and vice versa.

80. SuperTaxi highlights Mr. Daus' report which supports this assessment by stating that in his experience, economies of scale in operation and especially dispatch lead directly to

[12] Hearing Transcript Vol. 2, p. 56:l. 12-p. 57:l. 23.
[13] *Id*. at p. 59:l. 13 – p. 69:l. 19 and Confidential Hearing Exhibit No. 59.
[14] *Id*. at p. 62:l. 14 – p. 63:l. 16.
[15] *Id*. at p. 69: l. 20 – p. 72: l. 7.

public and driver benefits.[16] SuperTaxi also points to Dr. Mundy's taxi geographic distribution analysis that demonstrates graphically the increased taxi availability that would result from the transfer.[17]

81. SuperTaxi makes the point that non-taxi carriers who compete with taxicab companies are not held to the same standards because non-taxi carriers do not have the same regulated service requirements as taxicab companies and therefore do not have the same financial burdens. Consequently, SuperTaxi argues that a large, stable and financially strong taxi company will be better equipped to compete in the broader transportation market and still provide regulated taxi-quality service. Providing transportation service that meets the Commission standards for driver safety, rates, service quality, and nearly every facet of a taxi trip requires significant resources according to SuperTaxi. For that reason, SuperTaxi rationalizes that a financially healthy and stable taxi company such as Denver Yellow Cab and Metro Taxi operating under the umbrella of SuperTaxi serves the public interest.

82. In support of the benefits of the proposed transfer, Dr. Mundy testified regarding the benefits of strong and stable taxi carriers in large urban areas which extend to service quality and driver opportunity. Additionally, Mr. Fred Hair offered testimony that the availability of SuperTaxi's resources resulted in improved quality for Colorado Springs Yellow Cab when SuperTaxi acquired its assets.[18]

[16] Hearing Exhibit No. 10, p. 17.
[17] Hearing Exhibit No. 12, p. 10.
[18] Transcript Vol. 4, p. 161:l. 1 – p. 165:l. 1.

83. SuperTaxi also touts the green benefits associated with the transfer. According to testimony and expert witness reports, combining Metro Taxi and Denver Yellow Cab will allow SuperTaxi to expand the fleet of hybrid vehicles both taxicab companies now operate, as well as retrofit many of the Crown Victoria vehicles operated by Metro Taxi to run on cleaner burning propane.

84. For all these reasons, the Joint Applicants urge the Commission to find that the proposed transfer is in the public interest and should be granted.

85. Staff concedes that certain aspects of the proposed transfer may benefit the public, such as the perceived economies-of-scale that would result from the transfer. Nonetheless, Staff finds that those benefits do not assuage its concerns regarding market concentration and the potential for SuperTaxi to abuse its market power. Staff takes the position that the only means to reign in any potential for market abuse is to limit the maximum number of Metro Taxi taxicabs that may be on the road at any given time should the proposed transfer be approved.

86. In determining the market which is the subject of concerns regarding market concentration, Dr. England asserts that despite arguments to the contrary by the Joint Applicants' expert witnesses, the proper market for analysis in this proceeding is the taxi market in the Denver metro area. Under that definition of "market," Dr. England concludes that post transfer, SuperTaxi would own the rights to operate 56 percent, and possibly 63 percent of the total number of cabs that could be operated at a given time in the Denver metro area.

87. Dr. England indicates that taxicab companies, including Joint Applicants, benefit from the insulating effects of Commission regulation which other FHVs in the Denver metro area do not enjoy. As a result, Dr. England on behalf of Staff, asserts that the Commission should find that as a factual matter, the regulations that apply to taxicabs are sufficient to

distinguish taxicabs from other transportation options and should consider only the Denver metro area taxi market when evaluating the public interest standard in this Joint Application.

88. Dr. England makes the case that the Joint Application would be contrary to the public interest unless Staff's proposed amendments are approved. Based on Dr. England's HHI calculations, market concentration in the Denver metro area will increase, which is an indication that the market will become highly concentrated, which creates the potential for SuperTaxi to abuse its increased market power to the detriment of the public, drivers, and other taxicab companies. Dr. England theorizes that due to increased market concentration, SuperTaxi will have fewer incentives to keep prices low or service quality high since consumers now have fewer choices and will continue to utilize SuperTaxi as the dominant company.

89. Dr. England fears that approval of the Joint Application without modifications would create a near monopsony in SuperTaxi with respect to the market for taxi drivers, enabling SuperTaxi to charge higher lease rates than either Denver Yellow Cab or Metro Taxi currently charge. Dr. England posits that lease rates will continually climb until there is a perceived shortage of willing drivers. The fear of monopsony power with regard to driver lease rates is another factor in Staff's conclusion that the Joint Application should not be approved without modifications.

90. While Staff accepts that certain economies-of-scale (as itemized previously) will potentially result from the transfer, it argues that it is unlikely that those economies-of-scale will actually result in savings for customers. Staff is convinced that those economies-of-scale would likely not lead to lower lease rates for drivers, given the monopsony power SuperTaxi would enjoy. Staff foresees that the economies-of-scale that emanate from the transfer will merely result in higher profits for SuperTaxi.

91. Union Taxi and Freedom Cabs generally agree with Dr. England's analysis. Both companies take the position that approving the Joint Application would result in an untenable level of market concentration for SuperTaxi that would be harmful to their respective companies. Union Taxi argues that the doctrine of regulated competition prevents the existence of monopolistic entities stifling competition based on the premise that such monopolies are against the public interest.

92. Union Taxi argues that while the Joint Applicants maintain that the transfer will not provide SuperTaxi with a dominant or controlling share of the taxicab market given the broad market of services offered to the public at DIA, including taxicabs and other FHVs, there is a dearth of evidence in the record regarding any competition between the four incumbent taxicab companies and other FHVs regarding transportation service to DIA.

1. Findings on Public Interest Standard

93. As stated *supra*, the threshold element in determining the public interest standard is defining the relevant market. As would be expected, the Joint Applicants seek to expand the market as broadly as possible in order that any measure of market concentration post transfer appears to be minimal. On the other hand, the intervenors advocate for a much narrower market which would include only the traditional, regulated taxicab industry as the relevant market to consider.

94. Both sides raise cogent arguments regarding market relevancy. It is evident that the regulated taxicab market is the core market for analysis. To what extent the market extends out from there to include other FHVs and still remain relevant is the critical question. Staff and the other intervenors make a persuasive argument that TNCs and other FHVs are not regulated to the extent taxicabs are and should not then be considered a part of the market. However, that

argument fails to consider the market realities that despite disparate regulatory treatment, TNCs, and to an extent other FHVs that are affiliated with TNCs, directly compete with taxicabs on the streets of metropolitan Denver.

95. But, the extent to which the Joint Applicants attempt to expand the market is untenable. Limousines, shuttles, RTD buses and light rail, Car2Go, and other rental cars are not apt substitutes for taxicabs for a myriad of reasons including the fact that busses and light rail operate on a fixed schedule and fixed routes, unlike the on-demand 24/7 function of taxicabs. Rental cars represent a significantly higher cost than a taxicab, they must be pre-arranged and picked up and returned to specific locations. Contract carriers such as shuttles also run on a fixed route and the passenger must in most circumstances agree to share a ride with several other passengers, which results in a significantly longer trip than with a taxicab. Other contract carriers such as limousines also require pre-arrangement and are significantly more expensive than taxicabs (although limousine rates are closer to taxicab rates regarding trips to DIA). The relationship between these modes of transportation and taxicabs is simply too tenuous to consider as part of the relevant market.

96. However, companies such as Uber and other TNC app providers in essence operate as a handheld dispatch system allowing a customer to access a ride based on the vehicle closest to that customer and arrange a trip throughout the Denver metro area. The Colorado Legislature in its most recent session, imposed some regulation on TNCs, albeit not to the extent that taxicabs are regulated.

97. TNCs compete directly with taxicabs for customers utilizing a fleet of private vehicles, sedans, and limousines. Any characterization of the market at issue must therefore include TNCs since they are reasonable substitutes for taxicab service. However, the extent of

the TNC fleet of vehicles is a virtual unknown. It may be comprised of a handful of vehicles or several hundred vehicles. TNCs are not required to report the number of vehicles signed up to provide transportation service and indeed, no evidence was presented which would confirm any estimate of the fleet size.

98. Each party calculated its own HHI based on its interpretation of the correct market. For example, Dr. Mundy calculated the HHI based on the number of authorized taxicabs for each taxicab company, including Mile High's 150 authorized vehicles, as well as luxury limousines, RTD Demand, and other common carriers and contract carriers. As described above, his findings were that the current HHI and a post transfer HHI indicate a fairly competitive market.

99. Dr. Moss's analysis indicated an HHI for a market including only taxicabs currently at 2,786, and a post-transfer HHI of 4,658, indicating a highly concentrated market. Dr. Moss's calculated HHI did not include Mile High.

100. Dr. England calculated several HHIs based on the number of permits and based on whether a large number of Metro Taxi's taxicabs would be considered dormant. Based on the number of authorized taxicabs, Dr. England's current HHI is 2,335, including Mile High, while the post transfer HHI without a finding of dormancy is 3,815 (or 3,060 with a finding of dormancy). Based on the number of trips reported by each taxicab company (excluding Mile High since it had not yet begun operations), the current HHI is calculated to be 3,618, while the post transfer HHI is calculated at 6,845 indicating extremely high market concentration.

101. Regarding trips excluding DIA, the current HHI by Dr. England's calculation is 3,832, while, based on the same data, a post transfer HHI is calculated at 7,273, also indicating a high market concentration.

102. All of the HHI calculations discussed above reveal that market concentration in the taxicab market in the Denver metro area will no doubt increase post transfer. However, the HHI should not be viewed as an accurate indicator of the final market outcome of the proposed transfer. (As explained above, in this case, an accurate HHI is also impossible to calculate given the need to consider TNCs in the relevant market.) Nor should the HHI be viewed as a barometer of the certain demise of the taxicab market post transfer. Rather, the HHI should be used as a tool to indicate that the increase in market concentration should be weighed against other factors to determine whether the transfer is in the public interest.

103. All parties, including the Joint Applicants agree that post transfer, market concentration will increase to some extent. However, the HHI is further influenced by another entrant into the Denver metro area market not previously mentioned in this proceeding. Decision No. R14-0513, issued May 14, 2014 in Proceeding No. 13A-1094CP-Extension approved a settlement agreement between MT Acquisitions, LLC, doing business as Mountains Taxi (Mountains Taxi) and Colorado Cab, whereby Colorado Cab agreed to not oppose extending Mountains Taxi's authority to operate an additional 30 taxicabs on the west side of the Denver metro area. While the number of taxicabs to be operated by Mountains Taxi will be limited, it nonetheless represents additional competition in the Denver taxicab market.

104. The Joint Applicants touted the economies-of-scale which will result from the proposed transfer including lower average costs, the ability to purchase assets in bulk at lower costs, including newer vehicles to replace aging taxicabs in both companies' fleets, and consolidated facilities that will reduce costs. Those have been well documented *supra*. Evidence was also provided that a larger, more financially stable taxicab company is better able to compete in the marketplace and provide quality and safe service.

105. Given the resources available through SuperTaxi, both Denver Yellow Cab and Metro Taxi will be better able to serve their authorized service areas as the transfer will result in vehicles being distributed throughout the Denver metro area by a centralized, up-to-date dispatch system. This will result in more efficiency in deployment of each company's fleet during peak demand.

106. Staff does not dispute that certain economies-of-scale will result from the transfer. However, Staff's concerns are directed at possible abuses by SuperTaxi as the dominant firm in the taxicab market post transfer. Staff argues that the transfer will create a monopsony whereby SuperTaxi will virtually control the driver market and increase lease rates until driver supply dwindles to a level which would require SuperTaxi to alter those lease strategies.

107. While there is some concern regarding drivers, it is noted that Staff recognizes that taxicabs are a distinct unit since they are highly regulated. This extensive regulation should keep any monpsonistic or dominant firm behavior in check. The statutes and rules applicable to taxicabs impose affirmative obligations on them to provide reasonable fares and predictable safe transportation, with drivers who have undergone background screenings. There is no doubt that Transportation Staff will be required to rigorously enforce statutes and laws in order to ensure that SuperTaxi keeps its word that it will not engage in competition damaging activity post-transfer. However, there is no doubt that Staff is up to the task and will vigorously but even-handedly regulate SuperTaxi.

108. It is also important to note that any economies-of-scale realized from the transaction will be of no use to the public interest unless they are passed on to consumers in the form of reasonable fares and better service. Any growth achieved through acquisition should directly benefit the public in order to find it in the public interest. Such growth should be viewed

through low fares, quality service, and safety through the constant replacement of aging taxicab fleets.

109. The undersigned ALJ is satisfied that Commission regulations and competition in the marketplace through the e other taxicab companies, as well as TNCs will keep any anti-competitive behavior on behalf of SuperTaxi in check. In addition, SuperTaxi still has much incentive to keep rates low and maintain lease options for drivers through significant regulatory enforcement. Significant competition exists in the Denver transportation market to prevent SuperTaxi from exerting anti-competitive behavior. For example, Staff, in its 2012 Taxi Industry Report, lists a number of substitutes for taxi service including: carriers with scheduled authority such as shuttles that operate at specific arrival and departure times; call-and-demand limousine/shuttle authority; contract carrier permits including non-emergency medical transportation; luxury limousines; legitimate third party brokers leveraging the authority of existing carriers to dispatch trips to customers using various methods including smart phone applications; rental car companies; and, bus and light rail service.[19] Staff goes on to state that those substitute services are part of a comprehensive transportation market and potentially limit the rates that taxi companies can charge in the retail taxi market.[20] Staff goes so far as to note the conversations of taxi drivers commenting on the fact that "luxury limousine and contract carriers are siphoning off the 'good' fares."[21]

110. As a result of the proposed transfer, SuperTaxi has implicitly agreed to more meticulously follow all regulations applicable to it because it is now under a powerful public microscope. Indeed, any manipulation of fares by SuperTaxi would be met with critical

[19] Hearing Exhibit No. 37, 2012 Taxi Industry Report, prepared by the Staff of the Commission, p. 32.
[20] *Id*.
[21] *Id*.

regulatory eye through oversight since taxicabs must seek approval from the Commission to raise or lower fares. Enough competition also exists to prevent SuperTaxi from lowering the quality of service provided by Metro Taxi or Denver Yellow Cab. It does not seem likely that SuperTaxi would risk permanent damage to its most important and lucrative brands.

111. It is also found that sufficient competition exists in the taxicab and TNC market in order to prevent SuperTaxi from exercising dominant firm power or monopsony power over its drivers. Freedom Cabs, Union Taxi, and Mile High are together authorized to operate 620 taxicabs. As stated earlier, TNCs make up a significant portion of the market, although exact figures cannot be quantified at this time. Sufficient competition remains in this market to indicate that SuperTaxi would have no incentive to exercise monopolistic or dominant firm behavior, and would do so at its own risk or peril.

112. Therefore, for all these reasons, it is found that the Joint Applicants have met their burden of proof to show that the proposed transfer is in the public interest and should be granted.

B. Dormancy

113. As noted *supra*, it is Staff's position that Metro Taxi has allowed a portion of its operating authority to become dormant by failing to operate its fully authorized fleet of 492 vehicles. Staff takes the position that the maximum number of taxis a carrier may transfer should be reflective of the number of taxis the carrier actually needs and uses during its busiest times. Much questioning and testimony occurred, especially with Metro Taxi witness Mr. Kyle Brown, in an attempt to determine the number of taxicabs Metro Taxi operates at a given time. Staff interpreted Mr. Brown's testimony that not all of Metro Taxi's 534 vehicles that were off the lot on June 29 and 30, 2013 were on the road and working at the same time and his

testimony that Metro Taxi never operates more than its authorized 492 taxicabs as a tacit admission that it in fact generally operates well below its limit of taxicabs.[22]

114. Consequently, Staff urges the Commission to find that some portion of Metro Taxi's authority has become dormant through lack of use. Staff argues that allowing Metro Taxi to transfer its full authority to operate up to 492 taxicabs at any given time, when it has not been doing so, would harm investments made by other taxi carriers and would frustrate the Commission's intent in approving Mile High's application to operate up to 150 taxicabs.

115. While Staff concedes that it would be difficult to determine how many taxicabs to allow with the transfer, Staff nonetheless asserts that if the transfer is approved, Metro Taxi should be allowed to operate some specified maximum number of vehicles which is between 264 and 395 taxicabs at any given time. Staff also makes the argument that should Metro Taxi operate all 492 taxicabs at one time and investments from SuperTaxi in Metro Taxi's fleet to ensure Metro Taxi can operate the maximum number of taxicabs, this would be an inefficient allocation of resources which would be contrary to the public interest and would likely occur at the expense of other taxi companies.

116. Staff's concern is that SuperTaxi could put all 492 taxicabs on the road which would be anticompetitive. Staff predicts that SuperTaxi will disregard the inefficiencies of operating more taxis than the market can support in order to increase its market share at the expense of other taxicab companies. Once SuperTaxi achieves market dominance or monopoly status, Staff predicts that SuperTaxi would then raise lease rates and fares, and would have fewer incentives to improve service quality.

[22] Hearing Transcript Vol. 1, Confidential, p. 31: ll. 2-14; p. 97: ll. 24-25; p. 100: ll. 19-22.

117. Metro Taxi, on the other hand, argues that it has neither abandoned its authority, nor allowed any part of its authority to become dormant. Rather, Metro Taxi maintains that the evidence of record demonstrates that Metro Taxi has actively, fully, and vigorously operated its authority providing over a million annual taxi trips through the scope of its geographic service territory as provided in its CPCN PUC No. 1481.[23] Metro Taxi further asserts that there is no record evidence that Metro Taxi has ever failed to operate its authority or to serve the public under the terms of its CPCN.

118. Metro Taxi calls attention to the fact that its operating authority authorizes it to operate "up to" 492 vehicles in service at any time.[24] Metro Taxi makes the point that no carrier's CPCN would ever include the impossible requirement that it operate all of its permits all of the time. According to Metro Taxi, such a requirement would ignore the realities of demand fluctuation, driver availability, and vehicle maintenance and that a portion of every taxi company's fleet will be off the road at any given time for various reasons.

119. Metro Taxi also refers to its 2012 annual report[25] which reports that Metro Taxi typically had 450 leased taxis off its lot and on the streets and in operation at any one time. Metro taxi cites Mr. Brown's testimony which indicates that neither the 2012 annual report nor any of Metro Taxi's annual reports in the record include its subsidiary South Suburban Taxi's 50-vehicle fleet. In addition Mr. Brown testified that there are sufficient drivers and vehicles in the Metro Taxi fleet to establish the authority is not dormant and that he believes that, on average, there were close to 492 vehicles leased during 2013.[26] Based on that testimony, and the

[23] *Citing to*, Hearing Exhibit No. 43, Report of Dr. Scott England, p. 20, Table 2.

[24] Specifically, CPCN PUC No. 1481 states in relevant part that: "[a]ll operations under this certificate shall be limited to the use of a maximum of 492 vehicles in service at any time."

[25] Hearing Exhibit No. 39.

[26] Transcript Vol. 1, p. 21; *see also*, Transcript Vol. 1 Confidential, pp. 30 and 43.

testimony of Mr. Cotter, Metro Taxi estimates that no less than 480 Metro Taxis are off the lot and on the road at any one time.

120. Metro Taxi argues that dormancy more appropriately applies where a carrier severely and chronically underutilizes its authority and as a result, fails to serve the public interest by properly utilizing its authority. In this case, Metro Taxi that the reduction in taxicabs as proposed by Staff would immediately impair taxi service in the Denver metro area.

1. Findings on Dormancy

121. The concept of dormancy is well established. However, the concept is flexible and must be considered on a case-by-case basis. In determining whether a particular authority is dormant, the nature and scope of the operating rights and the extent to which the capacity and resources of the carrier have been utilized must be considered.

122. As explicitly stated in CPCN PUC No. 1481, Metro Taxi is authorized to operate no more than 492 taxicabs at any given time. Certainly, Staff proposes an unreasonable standard for a taxicab company to meet in order to show that its authority is not dormant. As Metro Taxi pointed out, on a daily basis, drivers call in sick or go on vacation, vehicles break down and demand fluctuates. It is for these reasons that the language of a CPCN does not require a taxicab company to operate a minimum number of vehicles in order to avoid violating its operating authority.

123. Granted, a taxicab company that chronically fails to operate a significant portion of its authorized number of taxicabs on an ongoing basis certainly risks a finding of dormancy; however, there is simply no evidence here to indicate that is the situation with Metro Taxi. To be sure, Staff readily admits that its basis for making the determination of the number of taxicabs to

allow to be transferred is not based on any evidence of record, but is merely an estimate based on various fragments of information.

124. Further, Staff's own data compilations illustrate the issues that would arise should its dormancy argument be adopted. Dr. England indicates that each of the four incumbent taxicab carriers each conduct a similar number of trips to DIA with Metro Taxi and Denver Yellow Cab each operating approximately 27 percent of the trips, and Freedom Cabs and Union Taxi each operating 24 percent and 22 percent of the trips to DIA respectively. However, the percentage of non-DIA trips is not nearly as uniform. Dr. England's numbers indicate that Metro Taxi conducts approximately 49 percent of the non-DIA trips, while Denver Yellow Cab operates approximately 35 percent of non-DIA trips. On the other hand, Freedom Cab operates only 3 percent of non-DIA trips, while Union Taxi operates 13 percent of non-DIA trips.

125. This disparity in non-DIA trips, whether by design clearly illustrates that Metro Taxi and Denver Yellow Cab provide the bulk of non-DIA trips. Clearly DIA trips are attractive, high revenue trips, while non-DIA trips are typically of short duration and of limited revenue. To then limit the number of taxicabs Metro Taxi is authorized to operate at a given time as Staff suggests would create a large gap in service for the metro area. Further, there is no guarantee that Freedom Cabs or Union Taxi would be inclined to increase their non-DIA trips since those are small revenue fares which would require multiple pickups in order to make it financially viable.

126. Therefore, it is found that no portion of Metro Taxi's CPCN PUC No. 1481 will be deemed dormant and as a result, the full authority to operate a maximum of 492 taxicabs at any given time will be included in the transfer to SuperTaxi.

C. Overlapping Authorities

127. The intervenors all argue that the proposed transfer of CPCN PUC No. 1481 results in duplicating or overlapping authorities in contravention of Rule 6205(c)(XVI)(D) which requires that "applicants have the burden of proving: (D) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities …" Additionally, Rule 6205(c)(XIV) provides that applicants are to provide a statement that "the applicants understand the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction."

128. The Joint Applicants argue that whether the transfer results in unacceptable geographic overlap under Rule 6205(c)(XVI)(D) should be analyzed in the light of the public interest standard.

129. Staff and the Joint Applicants entered into a stipulation and settlement agreement (Stipulation and Settlement) On March 17, 2014 in which the Joint Applicants agreed to restrict Metro Taxi's CPCN PUC No. 1481 by limiting its geographic service area. The proposed amended CPCN PUC No. 1481 restricts Metro Taxi from operating in an area bounded generally by the borders of Boulder County, and from operating in an area south of Douglas County. According to the parties to the Stipulation, while overlap exists between CPCN PUC No. 1481 and the various taxi CPCNs held by SuperTaxi, the proposed restrictions cancels some duplicating and overlapping authority between CPCN PUC No. 1481 and CPCNs under SuperTaxi's ownership, specifically, some overlap with Denver Yellow Cab, any overlap with the operating authorities of Boulder Yellow Cab and any overlap with Colorado Springs Yellow Cab. Staff and SuperTaxi also point out that the complete cancellation of all duplicative and overlapping authorities between the CPCNs, especially between Metro Taxi and Denver Yellow's

authorities would result in substantially reduced service to DIA and within the 16-mile radius surrounding 16th and Champa Streets in the downtown area of Denver.

130. Mr. Whittle testified that the proposed restrictions represent a real and meaningful reduction in the authority SuperTaxi would acquire if the transaction is approved,[27] but one that does not harm the public interest. This is logical since the SuperTaxi companies serving these areas (Boulder Yellow Cab and Colorado Springs Yellow Cab) operate with CPCNs that include no vehicle restrictions. Eliminating the geographic overlap between the Metro CPCN and the Boulder Yellow and Colorado Springs Yellow CPCNs does not impede SuperTaxi's ability to serve these areas post-acquisition because as demand rises, fleet size may increase without restriction. The public interest is served because there will continue to be a taxi supply to meet demand.

131. Additionally, SuperTaxi argues that the stipulation does not reduce Metro Taxi's authority to operate in the Denver metro area including Adams, Arapahoe, Denver, northern Douglas, or Jefferson Counties, and the settling parties agree that this protects the public. In addition, SuperTaxi notes that in the Denver metropolitan area Metro Taxi's authority geographically overlaps Denver Yellow Cab's operating authority; however the authorities are not identical. However, Metro Taxi's authority is restricted to 492 permits. Denver Yellow Cab's authority is restricted to 300 permits. Because of these restrictions SuperTaxi argues that the authorities are different in scope, in the way they are operated, their utility to the public, and in value. SuperTaxi argues that the authorities are legally different Consequently there is no legal basis for reducing Metro Taxi's authority in the Denver metropolitan area should the application be approved.

[27] Hearing Transcript, Vol. 5, pp. 15-16.

132. Staff is satisfied that the proposed restrictions preserve existing service, especially in areas with minimal geographic overlap, and promote competition. In addition, Staff notes that the proposed restrictions contained within CPCN PUC No. 1481 provide the Commission with the flexibility to fully enforce and administer the implementation of the CPCNs under control of SuperTaxi, while recognizing that no actual transfer of CPCN PU No. 1481 has occurred, and provides Metro Taxi with the ability to maintain the day-to-day operations of taxi service as they currently exist.[28]

133. It is important to point out that Union Taxi and Freedom Cabs did not participate in the settlement negotiations regarding restrictions to CPCN PUC No. 1481. Counsel for both parties made such a representation at the March 20, 2014 hearing on the terms of the Stipulation. Neither Union Taxi nor Freedom Cabs supports the Stipulation and Settlement.

134. Good cause is found to approve the restrictions to Metro Taxi's CPCN PUC No. 1481 as proposed by Staff and SuperTaxi under the Commission's discretionary authority pursuant to Rules 6205(c)(XIV) and (XVI)(D). While overlapping authorities will exist even after adoption of the proposed restrictions, such overlap is necessary to ensure that the current level of taxi service is not diminished, which would be contrary to the public interest. Reducing the number of taxicabs Metro Taxi is authorized to operate, or improperly reducing the scope of its geographic authority would severely impair taxi service in the Denver metro area and create a major void in transportation service. Further, it is unclear whether the remaining incumbent taxicab carriers would or could fill such a void in service. Therefore, it is found that the proposed restrictions to Metro Taxi's CPCN PUC No. 1481 are in the public interest and should be approved.

[28] *See generally*, Hearing Transcript Vol 5, Testimony of Staff Witness Mr. Gabe Dusenbery.

135. In addition, based on the evidence of record, it is found that the Joint Applicants have met their burdens of proof to show: (A) that Metro Taxi has not abandoned its operating authority; (B) that Metro Taxi has been engaged in *bona fide* operations under its operating authority; (C) that the transfer is not contrary to the public interest; (D) that while the transfer may result in common control or ownership of duplicating or overlapping authorities, the public interest requires that the Commission exercise its authority under Rule 6205(XIV) to allow such limited overlap; and, (E) that SuperTaxi will engage in *bona fide* regulated intrastate carrier operations and is fit to do so.

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

IV. ORDER

A. The Commission Orders That:

1. The Joint Application of MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), and SuperTaxi, Inc. (SuperTaxi) for Authority to Transfer Control is granted consistent with the discussion above.

2. The Joint Motion of Trial Staff, Metro Taxi and SuperTaxi for approval of Stipulation is granted.

3. Certificate of Public Convenience and Necessity PUC No. 1481 of Metro Taxi shall now read as follows:

MKBS, LLC, doing business as Metro Taxi

Transportation of

passengers in taxi service:

1. Between all points with the area comprised of the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson, State of Colorado, and between said points, on the one hand, all points within an 85-mile radius of the intersection of 16th and Champa Streets in Denver, Colorado, on the other hand, including as part of the base area Denver International Airport.

2. From all points in the City and County of Denver, to all points in the State of Colorado.

RESTRICTIONS:

A. All operations under this certificate shall be limited to the use of a maximum of 492 vehicles in service at any time.

B. Item 1 is restricted against the transportation of passengers in taxi service to, from, or between all points in Douglas County, State of Colorado, that are located south of a line beginning on the Douglas/Jefferson County boundary, to a point on the Douglas/Elbert County boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

C. Item 1 is restricted against the transportation of passengers in taxi service to, from, or between all points within the following area: Beginning at the intersection of U.S. Highway 36 and Longhorn Road, Boulder Colorado; then north along U.S. Highway 36 to its intersection with Neva Road; then east along Neva Road to Niwot Road; then east along Niwot Road to its intersection with 63rd Street; then sough along 63rd Street to its intersection with Monarch Road; then east along monarch Road to its intersection with 79th Street; then south along 79th Street to its intersection with Mineral Road; then east along Mineral Road to its intersection with the Boulder/Weld County line; then south along the Boulder/Weld County line to its intersection with the Boulder/Broomfield County line, then due south along the Boulder/Broomfield County line, as extended, to the intersection of Sheridan Boulevard and West 144th Avenue, as extended; then west along 108th Avenue, as extended, to its intersection with Indiana Street; then north along Indiana Street to its intersection with Colorado Highway 128; then west along Colorado Highway 128 to its intersection with the city limits of Boulder, Colorado;

thence west and north along the Boulder city limits to the point of beginning.

D. To the extent that Items 1 and 2 contain overlapping authorities, only one operating right exists.

4. The Commission exercises its discretion under Rule 4 *Code of Colorado Regulations* 723-6-6205(XIV) to find that while the transfer may result in common control or ownership of duplicating or overlapping authorities, the public interest requires that the Commission allow such limited overlap.

5. 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.

6. As provided by § 40-6-106, 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 recommended 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 a basic finding 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 stated 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.

7. 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)

STATE OF COLORADO
THE PUBLIC UTILITIES COMMISSION
NIL SINE NUMINE

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

____
Administrative Law Judge