

Decision No. R16-0778

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 15A-0816CP

IN THE MATTER OF THE APPLICATION OF GREEN TAXI CORPORATION,  
1484 S. RICHFIELD WAY, AURORA, COLORADO 80017, FOR A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON  
CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING APPLICATION; DENYING MOTIONS  
TO DISMISS; GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
SUBJECT TO CONDITIONS; GRANTING  
MOTION TO STRIKE; AND STRIKING PORTION  
OF APPLICANT’S STATEMENT OF POSITION**

Mailed Date: August 22, 2016

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**I. STATEMENT**

1. On October 15, 2015, Green Taxi Corporation (Green Taxi, Company, or Applicant) filed an Application for Permanent Authority.<sup>1</sup> That filing commenced this Proceeding.

2. On October 19, 2015, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5); established an intervention period; and established a procedural schedule. On December 8, 2015, Decision No. R15-1303-I vacated that procedural schedule.

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<sup>1</sup> A copy of Green Taxi’s Application for Permanent Authority as filed on October 15, 2015 is Hearing Exhibit No. 1.

3. The following intervened as of right and oppose the relief sought by Applicant: Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Colorado Springs Transportation LLC, doing business as Yellow Cab Company of Colorado Springs (CS Transportation); Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO (Shamrock Taxi); and MKBS, LLC, doing business as Metro Taxi (Metro Taxi).

4. Colorado Cab, CS Transportation, Shamrock Taxi, and Metro Taxi, collectively, are the Intervenors; each individually is an Intervenor. Applicant and Intervenors, collectively, are the Parties; each individually is a Party. Each Party is represented by legal counsel in this Proceeding.

5. On November 3, 2015, Green Taxi filed an Amendment to the October 15, 2015 filing. Green Taxi seeks authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers in taxi service

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, State of Colorado.

Decision No. R16-0147-I<sup>2</sup> at Ordering Paragraph No. 2.

6. Unless the context indicates otherwise, reference in this Decision to the Application is to the October 15, 2015 filing as amended on November 3, 2015.

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<sup>2</sup> That Interim Decision was issued on February 25, 2016 in this Proceeding.

7. On November 25, 2015, by Minute Order, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S. Applicant waived § 40-6-109.5, C.R.S., in this Proceeding.

8. On November 25, 2015, by Minute Order, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition.

9. On December 17, 2015, Decision No. R15-1335-I scheduled a March 16 and 17, 2016 evidentiary hearing in, and established the procedural schedule for, this Proceeding. On February 10, 2016, Decision No. R16-0099-I modified the procedural schedule established in Decision No. R15-1335-I.

10. On January 15, 2016, Applicant filed its Summary of Witness Testimony and Exhibits. On January 19, 2016, Applicant filed its (Corrected) Summary of Witness Testimony and Exhibits. On January 27, 2016, Applicant filed its Supplement to Summary of Witness Testimony and Exhibits (First Supplement).

11. On February 12, 2016, Intervenors Colorado Cab, CS Transportation, and Shamrock Taxi filed (in one document) their Witness and Exhibit List.

12. On February 12, 2016, Intervenor Metro Taxi filed its Witness and Exhibit Lists.

13. On February 26, 2016, Applicant filed its Supplement of Witness Testimony and Exhibits (Second Supplement).

14. On March 2, 2016, Metro Taxi filed a Motion to Strike Applicant Green Taxi Corporation's [Second] Supplement to Summary of Witness Testimony and Exhibits Submitted by Applicant (Motion to Strike). On March 4, 2016, Intervenors Colorado Cab, CS Transportation, and Shamrock Taxi filed a response in support of the Motion to Strike.

15. On March 2, 2016, Applicant filed (in one document) a Motion for Leave to File Designation of Witness and Supplemental Exhibits [Motion for Leave to File] and Response to Motion to Strike (in its entirety, Applicant's March 2 Filing). A Supplement to Summary of Witness Testimony and Exhibits Submitted by Applicant (Third Supplement) accompanied Applicant's March 2 Filing. On March 4, 2016, Metro Taxi filed its Response in opposition to the Motion for Leave to File.

16. For the reasons stated in Decision No. R16-0215-I,<sup>3</sup> the ALJ granted, subject to conditions, the Motion for Leave to File; permitted Applicant to file the Third Supplement; and denied as moot the Motion to Strike. By that Interim Decision, the ALJ also vacated the March 16 and 17, 2016 evidentiary hearing and the remaining procedural schedule established in Decision No. R15-1335-I, as modified by Decision No. R16-0099-I.

17. On March 21, 2016, by Decision No. R16-0235-I, the ALJ scheduled a May 18 and 19, 2016 evidentiary hearing and established a procedural schedule in this Proceeding.

18. At the scheduled time and place, the ALJ convened the evidentiary hearing in this Proceeding. All parties were present, were represented by legal counsel, and participated.

19. The evidentiary record consists of the oral testimony presented and the exhibits admitted during the evidentiary hearing.<sup>4</sup> The ALJ heard the testimony of four witnesses sponsored by Applicant. No Intervenor sponsored a witness.

20. Twenty-one documents were marked as exhibits for identification. Of these, the following were admitted into evidence: Hearing Exhibits No. 1, No. 2, No. 4, No. 5, No. 7A

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<sup>3</sup> That Interim Decision was issued in this Proceeding on March 14, 2016.

<sup>4</sup> No transcript of the evidentiary hearing has been filed in this Proceeding.

through and including No. 14A, No. 16, No. 17, and No. 20.<sup>5</sup> Hearing Exhibits No. 7A, No. 12A, No. 13A, and No. 14A are Confidential Hearing Exhibits.

21. At the close of Applicant's direct case, Metro Taxi made an oral Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 41(b)(1) motion to dismiss the Application. Colorado Cab, CS Transportation, and Shamrock Taxi joined in that oral motion. At the close of Applicant's direct case, Colorado Cab, CS Transportation, and Shamrock Taxi made an oral Colo.R.Civ.P. 41(b)(1) motion to dismiss the Application insofar as it seeks authority to operate in Boulder County. The ALJ took these two motions under advisement and requested that the Parties address the motions in their statements of position. These motions are discussed *infra*.

22. No Intervenor presented a case in response to Applicant's direct case.

23. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took the Proceeding under advisement.

24. Green Taxi filed a Post Hearing Statement of Position (Applicant SOP). This document was filed under seal as it contains confidential information.

25. Colorado Cab, Metro Taxi, and Shamrock filed a Joint Statement of Position (Intervenors SOP). This document was filed under seal as it contains confidential information.

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<sup>5</sup> Hearing Exhibits for Identification No. 3 and No. 19A were offered but were not admitted. Hearing Exhibits for Identification No. 6, No. 15A, No. 18A, and No. 21 were marked but were not offered.

26. In the confidential version of this Decision, information that is confidential is highlighted.<sup>6</sup> In the public version of this Decision, information that is confidential is redacted.

**A. Motions to Dismiss.**

27. Applicant seeks authority to provide taxicab service in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties. As a result, reference in this Decision to taxicab service or taxi service is to that type of transportation service provided in this seven-county geographic area, which is sometimes referred to in this Decision as the Denver Metropolitan Area, the Denver Metro Area, or the Denver Metropolitan Area Counties.

**1. Motion to Dismiss Entire Application.**

28. At the close of Applicant's direct case, Metro Taxi made an oral Colo.R.Civ.P. 41(b)(1) motion to dismiss the entire Application (First Motion to Dismiss). Colorado Cab, CS Transportation, and Shamrock Taxi joined in the First Motion to Dismiss. The ALJ took this motion under advisement and requested that the Parties address the motion in their statements of position.

29. In support of, and as good cause to grant, the First Motion to Dismiss, Intervenors assert: (a) § 40-10.1-203(2)(b)(II)(C), C.R.S., requires an applicant that seeks authority to provide taxi service in the Denver Metropolitan Area to establish its financial and operational

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<sup>6</sup> At the beginning of the evidentiary hearing, the ALJ advised all counsel to inform her when confidential information was to be discussed or elicited so that appropriate action could be taken to protect the confidential information. Information in confidential exhibits was discussed, without objection from Applicant and by Applicant's witnesses, in non-confidential (*i.e.*, public session) testimony given during the evidentiary hearing. Particularly in light of the ALJ's advisement at the beginning of the hearing, Applicant's failure to take action during the evidentiary hearing to protect information that Applicant asserted is confidential constituted a knowing waiver of the claim of confidentiality. In this Decision, and notwithstanding that the information is contained in confidential exhibits, the ALJ treats as non-confidential all information provided in testimony given in non-confidential sessions.

fitness; (b) in Decision No. C11-0992,<sup>7</sup> the Commission provided general guidelines with respect to metrics to be used to determine an applicant's financial and operational fitness to provide taxicab service;<sup>8</sup> (c) in its direct case, Applicant did not establish its *financial fitness* because it failed to provide any evidence with respect to some of the metrics (*e.g.*, existence of bank accounts, existence of line of credit, creditworthiness), provided no documentary evidence as to other metrics (*e.g.*, existence of signed agreements between Applicant and individuals who wish to be owner-drivers), and provided only testimony (some of which was conflicting or unsubstantiated) as to other metrics (*e.g.*, bases for Applicant's *pro forma* financial statements for the first three years of operation); and (d) in its direct case, Applicant did not establish its *operational fitness* because it failed to provide any evidence with respect to some of the metrics (*e.g.*, office space and maintenance facilities), provided no documentary evidence as to other metrics (*e.g.*, availability of vehicles appropriate for taxicab service), and provided only testimony (some of which was conflicting or unsubstantiated) as to other metrics.

30. In sum, Intervenors ask the ALJ to grant the First Motion to Dismiss because Applicant did not provide persuasive evidence to address the Commission-identified metrics. According to Intervenors, "[t]he limited evidence presented by Green Taxi cannot satisfy its burden of proving both financial and operational fitness by a preponderance of the evidence; therefore, the Application should be denied." Intervenors SOP at 9.

31. Applicant opposes the First Motion to Dismiss and argues that its direct case addressed the two elements specified in § 40-10.1-203(2)(b)(II)(C), C.R.S.: Applicant's financial

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<sup>7</sup> That Decision was issued on September 16, 2011, in Consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP. In each of the four Proceedings, the applicant either sought a certificate of public and necessity (CPCN) to provide taxi service or sought to extend an existing CPCN that authorized taxi service.

<sup>8</sup> The ALJ discusses these metrics below in this Decision.



fitness and Applicant's operational fitness. Applicant asserts that, as to each required element, it met its burden of proof in this Proceeding.

32. Colo.R.Civ.P. 41(b)(1) states:

After the plaintiff, *in an action tried by the court without a jury*, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. *The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render judgment until the close of all the evidence.* If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in [Colo.R.Civ.P. 52(a)]. *Unless the court in its order for dismissal otherwise specifies, a dismissal under [Colo.R.Civ.P. 41(b)] ... operates as an adjudication upon the merits.*

(Emphasis supplied.)

33. This Proceeding is a trial to the ALJ/Commission. The Colorado Supreme Court (Court) has articulated the standard to be applied when ruling on a Colo.R.Civ.P. 41(b)(1) motion made at the close of the plaintiff's (here, applicant's) direct case in a trial to the court (here, ALJ/Commission):

when the trial is to the court, as it was here, the trial court is the finder of the fact and may make its findings and render judgment against the plaintiffs at the close of the plaintiffs' case. ... The question on review of such action is ... whether a judgment in favor of the defendant was justified on the plaintiffs' evidence. If reasonable men could differ in the inferences and conclusions to be drawn from the evidence as it stood at the close of the plaintiffs' case, then we cannot interfere with the findings and conclusions of the trial court.

*Teodonno v. Bachman*, 158 Colo. 1, 4, 404 P.2d 284, 285 (1965) (internal citations omitted), *quoted with approval in City of Aurora v. Simpson* (In re Water Rights of Park County Sportsmen's Ranch), 105 P.3d 595, 614 (Colo. 2005) (*Simpson*).

34. The Court has stated that, when considering a Colo.R.Civ.P. 41(b)(1) motion made at the close of the plaintiff's (here, applicant's) case, the court (here, ALJ/Commission)

is not required to accept evidence as true, but may determine the facts and enter judgment against the plaintiff. ... In making its ruling, the [trial] court is afforded wide discretion, which may not be disturbed on appeal absent a showing that its findings and conclusions are so manifestly against the weight of evidence as to compel a contrary result. ...

*Simpson*, 105 P.3d at 614 (internal citations omitted).

35. In ruling on the First Motion to Dismiss, the ALJ applies the standard and the principles articulated by the Court.

36. The ALJ will deny the First Motion to Dismiss (*i.e.*, the motion to dismiss the *entire* Application with prejudice). Given the evidence at the close of Applicant's direct case, the ALJ: (a) finds that Applicant had met its burden of proof with respect to the Application for a Certificate of Public Convenience and Necessity (CPCN) to provide taxicab service; and (b) concludes that a judgment in Intervenor's favor was not justified given Applicant's evidence.

## **2. Motion to Dismiss Application with Respect to Providing Taxi Service in Boulder County**

37. At the close of Applicant's direct case, Colorado Cab, CS Transportation, and Shamrock Taxi made an oral Colo.R.Civ.P. 41(b)(1) motion to dismiss the Application insofar as it seeks authority to operate in Boulder County (Second Motion to Dismiss). The ALJ took this motion under advisement and requested that the Parties address the motion in their statements of position.

38. In support of, and as good cause to grant, the Second Motion to Dismiss, Intervenor's assert: (a) § 40-10.1-203(2)(b)(II)(C), C.R.S., requires an applicant that seeks authority to provide taxicab service in Boulder County to establish its financial and operational

fitness; (b) in Decision No. C11-0992, the Commission provided general guidelines with respect to metrics to be used to determine an applicant's financial and operational fitness to provide taxicab service;<sup>9</sup> and (c) in its direct case, Applicant

failed to introduce evidence sufficient to demonstrate fitness to operate in Boulder County.

[Applicant witness] Desta testified that [Applicant's] drivers will be located primarily in the Aurora area. There is no evidence that [A]pplicant will place drivers in Boulder County so that they are ready[,] willing[,] and able to serve Boulder customers. Nor is there any evidence that Applicant will have facilities in Boulder. [Hearing Exhibit No. 20] demonstrates that it is about 30 miles to Boulder and that it takes thirty-three minutes to get there with no traffic.

Applicant has the burden to demonstrate that it can provide adequate service throughout its vast proposed service area. Since there is no evidence as to how Green Taxi will serve Boulder County, a territory distant from the core Aurora area, should the Commission grant the [A]pplication, it should exclude Boulder County. There is no proof that Green Taxi can serve Boulder which is quite far from Aurora.

Intervenor SOP at 8-9.

39. Applicant did not respond directly to the Second Motion to Dismiss. Rather, Applicant appears to rely on the arguments it made in opposition to the First Motion to Dismiss.

40. The standard and principles to be applied when ruling on a Colo.R.Civ.P. 41(b)(1) motion made at the close of Applicant's direct case are discussed above. The ALJ applies those standard and principles in ruling on the Second Motion to Dismiss.

41. The ALJ will deny the Second Motion to Dismiss, which asks the Commission to dismiss the request for authority to provide taxicab service in Boulder County, for the same reasons as those discussed with respect to the First Motion to Dismiss.

42. As to Intervenor's arguments, the ALJ finds them unpersuasive.

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<sup>9</sup> The ALJ discusses these metrics below in this Decision.

43. First, the Boulder County-related arguments also apply to areas in other Denver Metropolitan Area Counties that Applicant seeks to serve. Intervenors fail to explain what differentiates taxi service to Boulder County in its entirety from other areas that Applicant seeks to serve that may be “distant from the core Aurora area” (Intervenors SOP at 8) and in which Applicant does not have facilities. Taken as a whole, the record evidence does not support such a differentiation (that is, the singling-out of Boulder County).

44. Second, Hearing Exhibit No. 20 is a Google Maps print-out that shows the travel distance and travel time if one travels one route from Denver, Colorado to the City of Boulder, Colorado: U.S. 36W. Because there are many locations within Boulder County that are closer to Applicant’s central business location in Aurora and because there are routes to Boulder County other than US 36W, the ALJ does not view the travel distance and travel time from Denver to one location (*i.e.*, the City of Boulder) within Boulder County by one route to be persuasive with respect to travel distance and travel time to Boulder County *in toto*.

45. Third, a travel time of 33 minutes or more from Denver to the City of Boulder does not persuade the ALJ that Green Taxi is operationally unfit to provide taxicab service in Boulder County. This travel time violates no Rule of which the ALJ is aware. Indeed, the applicable rules allow for a travel time that exceeds 30 minutes: Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6253(c)<sup>10</sup> establishes a 30-minute window within which a taxicab must arrive at the customer-designated pickup location, but that “time restriction is limited to pickup locations within a 25-mile radius of the taxicab carrier’s dispatch center” and, in all events, the taxi company’s tariff may specify a different time restriction.

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<sup>10</sup> This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723 (Transportation Rules).

46. Fourth, insofar as the ALJ is aware, no Transportation Rule and no fitness metric requires a taxicab carrier to have facilities in each of the counties that it serves. In any event, whether an applicant has facilities is simply one fitness metric among many.

47. Fifth and finally, in 2015 the General Assembly found, determined, and declared that enactment of § 40-10.1-203(2)(b)(II)(C), C.R.S.,

may open the door to multiple taxicab companies entering the taxicab service market within the metropolitan areas of Colorado and will lead to free market competition, expanded consumer choice, and improved quality of service.

Section 40-10.1-203(2)(b)(II)(A), C.R.S. Denying the Second Motion to Dismiss and granting Green Taxi authority to provide taxicab service in Boulder County meets the General Assembly's stated objectives. The ability to select from among a number of taxicab carriers is the essence of both free market competition and customer choice. If Green Taxi cannot -- or does not -- arrive at a customer-designated pickup location (whether in Boulder County or elsewhere in Green Taxi's service territory) within a period of time that *the customer* deems to be reasonable, then *the customer* has the option of selecting another cab company and, in that event, Green Taxi will lose that customer's business. As it feels the effect of customer choice over time, Green Taxi may decide that it will no longer serve Boulder County. Given the record evidence *in toto*, the Commission should not deny Green Taxi the opportunity to provide service in Boulder County.

48. For the stated reasons, the ALJ will deny both motions to dismiss.

**B. Joint Motion to Strike.**

49. On June 6, 2016, Intervenors filed a Joint Motion to Strike (Joint Motion). In that filing, Intervenors seek to strike, from the last paragraph on page 6 of the Applicant SOP, this language: "it has already received [REDACTED] from some of them, and". As good cause to strike the quoted language, Intervenors assert: (a) "[t]he statement ... improperly attempts to

introduce evidence that is not a part of the record” (Joint Motion at ¶ 3); (b) “there was no testimony or exhibits introduced [into the evidentiary record] with respect to the [REDACTED] figure” (*id.*); and (c) “[b]ecause the [REDACTED] figure] ... was not properly introduced into evidence during the evidentiary hearing, Intervenors did not have an opportunity to cross-examine or otherwise test the veracity of this representation” (*id.* at ¶ 4).

50. On June 7, 2016, Applicant filed its Response to the Joint Motion. In that filing, Applicant opposes the Joint Motion because the [REDACTED] figure

is supported by [Applicant’s] witnesses and Exhibit 15, [Applicant’s] bank statement. Applicant does not have the transcript of the record. Intervenors could have cross-examined concerning the Applicant’s funds referred to here.

Response to Joint Motion at 1.

51. For the following reasons, the ALJ will grant the Joint Motion and will strike the quoted language from page 6 of the Applicant SOP.

52. Confidential Hearing Exhibit No. 15A was marked for identification, was not offered into evidence during the evidentiary hearing in this Proceeding, and was not admitted into evidence. The document is in the *administrative* record of this Proceeding because it was marked for identification, but it is *not* in the *evidentiary* record in this matter. Consistent with the well-known limitations on what it may consider when deciding an adjudicatory proceeding, the Commission may rely only on the evidentiary record when deciding this case. Section 40-6-113(6), C.R.S.; *see also* §§ 24-4-105(8) and 24-4-105(14)(a), C.R.S. *Cf. Colorado Energy Advocacy Office v. Public Service Company of Colorado*, 704 P.2d 298, 304-05 (Colo. 1985) (Commission must give parties notice of, and an opportunity to comment on, facts determined by the Commission as a result of its own investigation). Because Confidential Hearing Exhibit No. 15A for identification is not in the evidentiary record,

Applicant's reliance on that document as the evidentiary source of the [REDACTED] figure is misplaced.

53. In addition, Applicant fails to identify the Applicant witness or witnesses who testified as to the [REDACTED] figure. Because the evidentiary basis of the [REDACTED] figure is challenged and no exhibit contains that figure, it is incumbent on Applicant to identify each witness who testified about this amount. The general and unspecific assertion that "the reference is supported by [Applicant's] witnesses" (Response to Joint Motion at 1) is inadequate and unpersuasive. This is particularly the case when, as here, there is no transcript of the evidentiary hearing. The ALJ does not recall any testimony concerning the [REDACTED] figure.

54. Moreover, contrary to Applicant's assertion that they could have -- and by implication should have -- cross-examined on the amount in question, Intervenors are under no obligation to cross-examine Applicant's witnesses about information (here, the [REDACTED] figure) that is not in the evidentiary record.

55. Finally, the ALJ agrees with Intervenors that allowing the statement to remain in the Applicant SOP deprives Intervenors of their opportunity to cross-examine or to test the [REDACTED] figure and gives the appearance that the [REDACTED] figure is supported by the evidentiary record.

56. For these reasons, the ALJ will grant the Joint Motion and will strike this language from the last paragraph on page 6 of the Applicant SOP: "has already received [REDACTED] from some of them, and". The sentence now reads: "It will receive \$2,500 from each of the others at or before the time they begin operations."

57. The ALJ has identified another reference in the Applicant SOP that must be addressed. The ALJ *sua sponte* will strike the last sentence of the last paragraph on page 6 of the

Applicant SOP: “At the hearing, Applicant made available its agreements with the owners, showing the owner-driver obligations to make those payments.” The ALJ strikes this sentence for these reasons: (a) it misrepresents the record in this Proceeding because the phrase “made available” creates the impression that the referenced documents are part of the evidentiary record when, in fact, the documents were not marked as Hearing Exhibits for identification, were not offered, and were not admitted into evidence; (b) the referenced documents’ *presence* in the hearing room is irrelevant to the issue of Applicant’s fitness because the documents were not admitted into evidence; and (c) the sentence confuses the record by referring to, and relying on, documents that are in neither the administrative record nor the evidentiary record.

58. For these reasons, the ALJ will strike this language from the last paragraph on page 6 of the Applicant SOP: “At the hearing, Applicant made available its agreements with the owners, showing the owner-driver obligations to make those payments.”

59. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this Proceeding along with a written recommended decision.

## II. FINDINGS OF FACT

60. Green Taxi seeks new permanent authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers, in taxi service, between all points within Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties.

### A. **Parties.**

61. Applicant Green Taxi is a Colorado for-profit corporation formed on October 16, 2014.<sup>11</sup> It is in good standing.<sup>12</sup>

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<sup>11</sup> Green Taxi’s Articles of Incorporation are Hearing Exhibit No. 2.

<sup>12</sup> Green Taxi’s Certificate of Fact of Good Standing, dated January 13, 2016, is Hearing Exhibit No. 4.



62. Intervenor Colorado Cab is a limited liability company that operates and provides taxicab service in the Denver Metro Area under two trade names: Denver Yellow Cab and Boulder Yellow Cab. Colorado Cab provides transportation service under CPCN PUC No. 150 and CPCN PUC No. 2378.

63. Intervenor CS Transportation is a limited liability company that operates and provides taxicab service in the Denver Metro Area under the trade name Yellow Cab Company of Colorado Springs. CS Transportation provides transportation service under CPCN PUC No. 109.

64. Intervenor Metro Taxi is a limited liability company that provides taxicab service in the Denver Metro Area under four trade names: Metro Taxi, Taxis Fiesta, South Suburban Taxi, and Northwest Suburban Taxi. Metro Taxi provides transportation service under CPCN PUC No. 1481.

65. Intervenor Shamrock Taxi is a corporation that provides taxicab service in the Denver Metro Area under two trade names: Yellow Cab of Northern Colorado and Yellow Cab NOCO. Shamrock Taxi provides transportation service under CPCN PUC No. 13043.

**B. Witnesses.**

66. Mr. Haileyesus A. Desta is the Vice Chairperson of Green Taxi; he has held this position for two years. He has a national diploma from a Nigerian polytechnic institute. He came to the United States approximately ten years ago. Prior to coming to the United States, Mr. Desta's work experience included working as a supervisor for a construction company and working as head of general services (*e.g.*, security, purchasing, transportation) for the Ethiopian embassy in Lagos, Nigeria. After arriving in the United States, he lived in Washington, D.C., for two years before moving to Colorado. For the past five years, Mr. Desta and his business partner

have owned and operated United Express Transportation, which provides luxury limousine service in Colorado pursuant to a Commission-issued authority.

67. Mr. Teklewold Ejigu is a member of Applicant's Board of Directors. He came to the United States in 1993. After arriving in the United States, he lived in California for three years, during which time he graduated from the Merrick Medical College nursing program. Since moving to Colorado in 1996, he has worked in a number of jobs, including nurse, bus driver, restaurant manager, and convenience store manager. In addition, he has worked as a taxi cab driver for Metro Taxi and for Colorado Cab in the Denver Metro Area; the length of time he worked as a cab driver is not in the record. Finally, for the past three years he has owned and operated a luxury limousine business in the Denver Metro Area. Mr. Ejigu has received a safe driver award and a customer care service award; the particulars of those awards are not in the record. If the Application is granted, Mr. Ejigu will be responsible for Applicant's safety program (including driver training) and for customer service.

68. Messrs. Desta and Ejigu have been affiliated with Applicant since its inception. They testified concerning Applicant's origin, its proposed operations, its business plan, and its management.

69. Mr. Tryfon Hristopoulos is a Certified Public Accountant (CPA) licensed in Colorado. He has been a CPA since 1994, holds a Masters of Taxation from the University of Denver, and has been in private practice for over 20 years. He prepared, and testified concerning, Applicant's Projected Financial Statements (Confidential Hearing Exhibit No. 7A).

70. Ms. Arian Shahabi is a product manager for PathFinder™, which is the dispatch system (developed and sold by Digital Dispatch Systems Inc. (DDS)<sup>13</sup>) that Applicant intends to use if the CPCN for taxicab authority is granted. She has held this position for approximately four years. Prior to that, Ms. Shahabi was employed for 13 years by DDS as a software developer. She testified concerning the PathFinder™ dispatch system, its components, its functionalities, and its capabilities.

71. The ALJ finds the witnesses to be credible and relies on their testimony in reaching the Decision in this Proceeding.

**C. Planned Operations.**

72. The individuals who first envisioned Green Taxi in approximately 2014 saw an opportunity to make a decent and family-supporting living while, in Applicant witness Desta's words, "provid[ing] a needed service to the community." They observed the population growth in the Denver Metropolitan Area Counties (*see, e.g.*, Hearing Exhibits No. 16 (webpage from Metro Denver Economic Development Corporation regarding demographics) and No. 17 (webpage from Metro Denver Economic Development Corporation regarding population)) and the increase in tourism in Denver and Colorado. In addition, these individuals observed some transportation needs that were not served (*see, e.g.*, Hearing Exhibit No. 8 (three letters of support)). Based on their research and their personal experiences, they concluded that the

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<sup>13</sup> In Confidential Hearing Exhibits No. 13A (System Service Agreement for the dispatch system) and No. 14A (Purchase of Taxi Dispatch System Terms and Conditions of Sale), the selling party is Digital Dispatch Limited Partnership. Digital Dispatch Systems Inc. is the general partner in Digital Dispatch Limited Partnership.

During the evidentiary hearing and in filings in this Proceeding, the Parties refer to the entity that is selling and maintaining the dispatch system as Digital Dispatch Systems or DDS. For consistency and clarity, this Decision refers to the company as Digital Dispatch Systems or DDS.

Denver Metropolitan Area could support another taxicab company<sup>14</sup> and that, if given the chance, they could provide that service.

73. Green Taxi has a nine-member Board of Directors and will have corporate officers as permitted by the corporate by-laws. Its by-laws are Hearing Exhibit No. 5.

74. Green Taxi is a start-up company. At present, Green Taxi has no authority to operate as, and is not operating as, a taxicab service in Colorado. Consequently, it has no history of operation.

75. Green Taxi has a business plan for its taxicab operations and has taken preliminary steps toward implementation of its business plan. Due to the associated cost and contractual commitments (*e.g.*, office space lease), Green Taxi will not implement its business plan and will not complete the necessary work for providing taxicab service until the CPCN is granted.

76. Green Taxi will be comprised of 250 individuals who are both member-owners of, and drivers for, Green Taxi (owner-drivers). A majority of these individuals have lived in the Denver Metropolitan Area, principally in the Aurora, Colorado area, for a significant period of time (*i.e.*, over 20 years). In addition, many, if not most, of these individuals have driven for existing taxicab companies or for transportation network companies (TNCs),<sup>15</sup> or for both. Finally, many, if not most, of these individuals either now own and operate or have owned and operated a luxury limousine service, as defined in § 40-10.1-301(8), C.R.S.

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<sup>14</sup> Applicant is not required to prove that the Denver Metropolitan Area can support or needs an additional taxicab company. The ALJ states these facts pertaining to *Applicant's* view of the Denver taxicab market to put the formation of Green Taxi in context. The statements *are not* evidentiary findings, and are not intended to be evidentiary findings, with respect to the state of the Denver Metropolitan Area taxicab market.

<sup>15</sup> Section 40-10.1-602(3), C.R.S., defines TNC. Uber and Lyft are examples of TNCs.

77. The individuals who are owner-drivers will hold the shares of Green Taxi. Each owner-driver will own one share of Green Taxi common stock and, thus, will have an ownership interest in Green Taxi.

78. To become an owner-driver, an individual: (a) must own a vehicle that will be used exclusively as a Green Taxi taxicab; (b) must contribute \$ 2,500<sup>16</sup> to provide funds for Green Taxi's initial capitalization; (c) must agree to abide by Green Taxi's by-laws, its code of conduct, and its rules; (d) must state that s/he does not own shares in an existing taxicab company; and (e) must sign an agreement. Applicant witness Desta generally described the agreement's provisions pertaining to becoming an owner-driver, but the agreement is not in the evidentiary record of this Proceeding.

79. An owner-driver may withdraw from Green Taxi. In that event, Green Taxi will seek to replace that individual. In Green Taxi's opinion, it will be successful in that replacement effort because being a Green Taxi owner-driver has these advantages over being a driver for other taxi companies: (a) an ownership interest in Green Taxi; and (b) lower weekly fees.

80. Green Taxi plans to support and to fund its taxicab operation by the initial investments made by its 250 members, the weekly fees paid on a per-vehicle basis, and the revenues from its taxi business. In Green Taxi's opinion, it will be able to cover its expenses using these funding sources.

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<sup>16</sup> Applicant witness Desta testified to this dollar amount, which is greater than the amount of the owner-driver initial contribution to Green Taxi's initial capitalization (*i.e.*, \$ 2,000) shown in Confidential Hearing Exhibit No. 7A at 12.

81. With respect to the weekly fees, the weekly fee will be \$ 225 from each owner-driver on a per-vehicle basis.<sup>17</sup> With respect to the weekly fees, Green Taxi's

[m]anagement has determined that the member fee [will] be based on the number of drivers/[taxis] the company anticipates to have operating on the first month of business. ... This fee includes items that are reimbursements to the company such as [REDACTED].

Green Taxi Corporation Projected Financial Statements (Confidential Hearing Exhibit No. 7A<sup>18</sup>) at 12.<sup>19</sup> The business plan presumes that the weekly fees will be a significant source of the revenue stream necessary to cover Green Taxi's recurring expenses.<sup>20</sup>

82. Using the PathFinder<sup>TM</sup> dispatch system, Green Taxi will accept cash, debit card, and credit card payments.<sup>21</sup>

83. At this time, Green Taxi's intended initial rates for the taxicab service are \$0.22 per mile and \$0.25 per minute. The final rates, which may change from these stated amounts, will be contained in Green Taxi's tariffs.

84. Under Green Taxi's business plan, the owner-drivers will be responsible for vehicle maintenance and for paying their own fuel expenses.

85. Green Taxi will obtain insurance coverage for the taxicab vehicles, will pay the insurance premiums, and will obtain reimbursement for the insurance premiums from the

<sup>17</sup> Applicant witness Desta testified to this dollar amount, which is less than the amount of the owner-driver weekly fee (*i.e.*, \$ [REDACTED]) shown in Confidential Hearing Exhibit No. 7A at 12. [REDACTED]

<sup>18</sup> This document is dated [REDACTED] and, for each of Green Taxi's first three years of operation, contains a projected balance sheet, a projected income statement, and a projected cash flow statement.

<sup>19</sup> The Denver AVI fee is discussed below in this Decision.

<sup>20</sup> Some of these recurring expenses are shown in Confidential Hearing Exhibit No. 7A.

<sup>21</sup> [REDACTED]

owner-drivers. Green Taxi has contacted an insurance broker with respect to obtaining insurance coverage for the taxicab vehicles. As discussed above, Green Taxi will not implement its business plan until it receives the requested CPCN. Consistent with this approach, Green Taxi has not received an insurance quote and has not entered into a contract for coverage. Green Taxi nonetheless provided liability insurance cost estimates for inclusion in the projected financial statements (Confidential Hearing Exhibit No. 7A); these estimates are based on Green Taxi's owner-drivers' insurance coverage experience with their luxury limousine services.

86. Green Taxi has a website, will have telephone lines, and will have a digital dispatch system that includes a downloadable app.<sup>22</sup> Customers will be able to contact Green Taxi using any of these methods.

87. Green Taxi will advertise its taxicab service using the Internet, billboards, mailings, and posters, among other methods.

88. Green Taxi will investigate the Transportation Rules applicable to common carriers in general and to taxicab service in particular and will operate in compliance with those Rules.

89. Green Taxi will operate 7 days a week, 24 hours each day.

90. Additional aspects of Green Taxi's business plan are discussed below in this Decision.

**D. Equipment.**

91. Green Taxi will obtain the office and other equipment necessary to operate its business.

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<sup>22</sup> The dispatch system is discussed below.

92. In this Decision, because she views them as significant, the ALJ focuses on Green Taxi's taxicab vehicles and dispatch system.

**1. Vehicles.**

93. Owner-drivers will supply the 250 vehicles that Green Taxi will use in its initial taxicab operation. The taxicab vehicles will remain the property of the owner-drivers.

94. A large number, if not the majority, of the vehicles that Green Taxi initially will use to provide taxicab service are luxury limousines that are used in the owner-drivers' luxury limousine businesses.

95. Green Taxi's business plan assumes that 250 owner-drivers will invest in the corporation. As conditions of membership: (a) each owner-driver must provide at least one vehicle to be used exclusively as a Green Taxi taxicab; (b) each owner-driver must pay the cost of having her/his taxicab vehicle outfitted as a taxicab and painted in the Green Taxi colors with the Green Taxi logo; and (c) each owner-driver must agree that, once a vehicle is outfitted as a Green Taxi taxicab, the vehicle will not be used as a personal vehicle, will not be used to provide service for any other transportation company, and will not be used to provide service for a TNC.

96. Green Taxi's long-term objective is to have a taxicab fleet comprised of environmentally-friendly and fuel-efficient vehicles.

**2. Dispatch System.**

97. Green Taxi has signed a contract to purchase a taxicab dispatch system from DDS. Purchase of Taxi Dispatch System Terms and Conditions of Sale (Confidential Hearing Exhibit No. 14A) (Purchase Agreement). In addition, Green Taxi has entered into a System Service Agreement with DDS for maintenance of the purchased dispatch system (Confidential



Hearing Exhibits No. 13A) (Service Agreement). These two agreements are dated February 24, 2016 but will not take effect until Green Taxi obtains the requested taxicab CPCN.

98. PathFinder<sup>TM</sup> (system) is the dispatch system that Green Taxi has purchased from DDS.<sup>23</sup> [REDACTED]

[REDACTED] Green Taxi chose this system because the system can provide customers with what Green Taxi views as the best response time to a request for taxicab service and because Green Taxi sees the system as the best fit for Green Taxi with respect to dispatching taxicabs.

99. Customers may request service by telephone, through the Green Taxi website, or through the Green Taxi application that is downloaded onto the customer's telephone (Green Taxi app).<sup>24</sup> The PathFinder<sup>TM</sup> system permits customers to book appointments with specific requirements, such as: (a) a future pick-up time and location; (b) a request for a specific driver; and (c) a recurring request for pick-up service at the same time and location.

100. The system can provide the individual requesting taxicab service with information about the estimated time of the taxi's arrival and the taxi's car license number.

101. Each Green Taxi taxicab will have a PathFinder<sup>TM</sup> data mobile terminal. Using this terminal, a driver must sign into the system in order to receive dispatched requests for taxi service. When a driver signs into the system, there is an automatic safety check (e.g., brakes, tires, oil level) that the driver must certify as acceptable for each listed item. Once the driver is

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<sup>23</sup> The features, functionalities, and hardware components of the PathFinder<sup>TM</sup> system are described in the document entitled Green Taxi Colorado PathFinder<sup>TM</sup> Computerized Taxi Dispatch and mSlate Mobile Date Terminal (Confidential Hearing Exhibit No. 12A).

<sup>24</sup> This feature is part of the PathFinder<sup>TM</sup> system.

signed in and has completed the automatic safety check, the system will dispatch requests for service to the driver.

102. PathFinder™ requires a driver to enter the vehicle's odometer reading when the driver signs into the system. The system notifies the driver when the vehicle is due for maintenance.

103. The PathFinder™ system keeps track of a driver's log-in and log-out times, the number of hours the driver has driven, the trips a driver has done, the number of hours the driver has available to drive before the driver must be out-of-service (*i.e.*, cannot continue to drive a taxicab without taking a break). When a driver signs into the system, the system informs the driver of how many hours the driver may work before a break is required and informs the driver of the required length of the break; according to DDS, these times are based on requirements in the applicable Transportation Rules. The system permits a driver to log-in, to log-out for a period of time on the same day (*e.g.*, one hour for lunch), and then to log back in; and the time the driver is logged-out is not counted as in-service time and the driver will not receive dispatches during the time s/he is logged-out. As a driver nears the maximum number of hours that s/he may be in-service, the system notifies the driver. PathFinder™ automatically locks a driver out of the system when the driver has exhausted the driver's available in-service hours.

104. At present, the PathFinder™ system does not have a feature that automatically logs a driver as on-duty when the taxicab vehicle is within 500 feet of a known taxi stand or is within 2 miles of Denver International Airport (DIA). Rule 4 CCR 723-6-6255(a)(IV). DDS testified that it can add this functionality and can adapt the system as necessary to comply with existing Transportation Rules and future rule changes.

105. PathFinder™ generates reports for Green Taxi. These reports, for example, allow supervisors to identify the drivers who are signed into the system; to know the hours a driver has driven and the number of remaining hours the driver may drive before a break is required; and to know the maintenance status of the taxicab vehicles.

106. PathFinder™ has a GPS feature that locates the taxicab nearest to the individual requesting a taxi and directs the request for service to that taxicab, that informs Green Taxi when the customer is picked up and dropped off, and that allows Green Taxi to know the location of drivers who are signed into the system. In addition, through the data mobile terminal, the GPS feature is available to drivers to assist them in locating pick-up and drop-off points.

107. [REDACTED]

108. Green Taxi has signed a long-term Service Agreement with DDS and anticipates no issue with respect to reliable operation of the PathFinder™ system

**E. Drivers.**

109. Green Taxi plans to operate with 250 owner-drivers.

110. Green Taxi knows who these individuals are because they either have signed agreements with Green Taxi or have had discussions with Green Taxi about becoming an owner-driver. Many, if not most, of these individuals have driven for existing taxicab companies, for TNCs, or for both. In addition, many of these individuals either now own and operate or have owned and operated a luxury limousine service, as defined in § 40-10.1-301(8), C.R.S.

111. With respect to owner-drivers who own and operate a luxury limousine service, Green Taxi believes that at least some of these individuals will continue to operate their luxury limousine services until Green Taxi begins to generate revenue.

112. Green Taxi will not permit owner-drivers to make personal use of, or to provide TNC service using, a Green Taxi-branded vehicle.

113. At present, Green Taxi has no rule or requirement that prohibits an owner-driver from: (a) driving a luxury limousine when off-duty as a Green Taxi driver (*i.e.*, when not signed into the PathFinder™ system); (b) driving for a TNC when off-duty as a Green Taxi driver, provided the owner-driver uses a vehicle other than a Green Taxi taxicab; or (c) driving for another taxicab company when off-duty as a Green Taxi driver, provided the owner-driver uses a vehicle other than a Green Taxi taxicab.

114. The majority of Green Taxi's owner-drivers reside in Aurora and Denver.

115. [REDACTED]

**F. Training.**

116. Green Taxi will provide its owner-drivers with safety and driver training. Green Taxi anticipates that its in-house safety manager will provide this training. To the extent that additional training is necessary, Green Taxi will contract with individuals or companies to provide safety training, including safe driver training, to its owner-drivers.

117. Using an in-house person who has been trained by DDS, Green Taxi will provide its owner-drivers with training on the PathFinder™ system. To the extent that more extensive training proves necessary, Green Taxi will make arrangements with DDS to provide that training.

**G. Staffing.**

118. Green Taxi will hire a general manager to supervise its day-to-day operations. Green Taxi will hire clerical personnel and experienced dispatchers. Green Taxi estimates that, when fully staffed, it will have approximately 20 employees.

119. Green Taxi will have an individual<sup>25</sup> whose principal duty and responsibility will be to oversee: (a) vehicle safety; (b) driver safety, including safe driving; and (c) customer service. This individual will have primary responsibility for providing owner-driver training in the areas of safety and the PathFinder™ system.

120. Green Taxi will retain outside counsel and an outside accountant.

**H. Fixed Physical Facilities.**

121. At present, Green Taxi has no office space.

122. After the CPCN is granted, Green Taxi will rent, in Aurora, Colorado, approximately 3,000 square feet of office space. Based on its preliminary investigation, Green Taxi has estimated the monthly rent for each of its first three years of operation. Green Taxi Projected Financial Statements (Confidential Hearing Exhibit No. 7A).

123. As part of the office space rental, Green Taxi plans to find a location that has an adjacent or nearby parking lot with sufficient space to accommodate the taxicab vehicles when they are not in service and to allow vehicle inspections.

124. The owner-drivers will be responsible for the maintenance of their taxicab vehicles. Thus, at this time, Green Taxi has no plans to have a maintenance garage or body shop.

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<sup>25</sup> Initially, this individual will be Applicant witness Ejigu, who is a member of Green Taxi's Board of Directors and who has experience providing instruction in the areas of driver safety and safe driving.

**I. Capital Structure, Access to Capital, and Assessment of Financial Health in the Near Future.**

125. The Green Taxi Corporation Projected Financial Statements (Confidential Hearing Exhibit No. 7A) contain, for each of Green Taxi's first three years of operation, a projected balance sheet, a projected income statement, and a projected cash flow statement.<sup>26</sup> The second year's and third year's figures contain a cost of living adjustment to the previous year's numbers.

126. As pertinent here, the financial statements were prepared

in accordance with attestation standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of projection information that is the representation of management and does not include evaluation of the support for the assumptions underlying the projection. [The Projected Financial Statements' preparers] have not examined the projection and, accordingly, do not express an opinion or any other form of assurance on the accompanying statements or assumptions. Furthermore, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. [The Projected Financial Statements' preparers] have no responsibility to update this report for events and circumstances occurring after the date of this report.

Confidential Hearing Exhibit No. 7A at 2. "[T]he projection reflects [Green Taxi] management's judgement as of January 13, 2016, the date of this projection, of the expected conditions and its expected course of action." *Id.* at 12. When he prepared the Green Taxi Corporation Projected Financial Statements (Confidential Hearing Exhibit No. 7A) Applicant witness Hristopoulos did no independent evaluation or analysis of the Green Taxi-provided information that forms the basis of the financial statements.

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<sup>26</sup> The projected financials for Year One are found at Confidential Hearing Exhibit No. 7A at 3-5, for Year Two at *id.* at 6-8, and for Year Three at *id.* at 9-11.

127. [REDACTED]

[REDACTED]

[REDACTED] in Green

Taxi's opinion, the projected expenses figures provided to Applicant witness Hristopoulos to prepare the financial statements are on the high side of the range of reasonable estimates of the individual costs listed in Confidential Hearing Exhibit No. 7A.

128. The Notes to Projected Financial Statements state that Green Taxi

plans to authorize 300 shares of common stock at no par value. Management projects that 250 individuals will contribute \$2,000 each to the capital of the company to capitalize it with \$500,000 in exchange for one share of common stock each.

Confidential Hearing Exhibit No. 7A at 12. That Green Taxi will amend its Articles of Incorporation (Hearing Exhibit No. 2) to authorize issuance of 300 shares of common stock is a basic assumption in the Projected Financial Statements.

129. Since the preparation of the Projected Financial Statements (Confidential Hearing Exhibit No. 7A), Green Taxi has determined that the initial contribution from each owner-driver will be \$ 2,500. Assuming 250 owner-drivers, Green Taxi's capitalization will be \$ 625,000.

130. The System Service Agreement (Confidential Hearing Exhibit No. 13A) at Schedule A, as pertinent here, shows the PathFinder™ system price<sup>27</sup> and the Monthly Extended Service Price.<sup>28</sup> For the first [REDACTED] months, the total payment that Green Taxi must make for the system and the maintenance agreement is \$ [REDACTED]

<sup>27</sup> The total system price is \$ [REDACTED], which includes a down-payment of \$ [REDACTED] and a financed amount of \$ [REDACTED]; the monthly payment for the PathFinder™ system is \$ [REDACTED] for [REDACTED] months.

<sup>28</sup> The Monthly Extended Service Price is \$ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

131. For a Green Taxi taxicab to operate at DIA, Green Taxi must obtain an AVI tag for that taxicab.<sup>29</sup> To obtain the AVI tag, Green Taxi must post with DIA a bond of \$ 500 per vehicle and must pay an AVI tag deposit of \$ 50 per vehicle. These costs are not shown as line item expenses in the *pro forma* Green Taxi Corporation Financial Statements (Confidential Hearing Exhibit No. 7A). Because the AVI requirements apply to luxury limousine service, Green Taxi is aware of these costs and intends to collect them from the owner-drivers through their initial \$ 2,500 contribution and weekly fees.

132. The assessment of Green Taxi's financial health in the near future is discussed below.

**J. Managerial Competence and Experience.**

133. Green Taxi will operate under the general direction of its nine-member Board of Directors. Many of these individuals own and operate, or have owned and operated, luxury limousine services and, thus, have experience with operating a transportation service that is subject to Commission rules.

134. After the CPCN is granted, Green Taxi will hire a general manager who has experience in the transportation sector to run the day-to-day operations. Green Taxi has not identified that individual.

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<sup>29</sup> As relevant here, the AVI tag allows a taxicab to enter the area at DIA designated for taxicabs to pick up passengers. In addition, the AVI tag identifies each taxicab that enters DIA and allows DIA to assess to the appropriate taxicab company a fee for its taxicabs entering DIA.



135. After the CPCN is granted, Green Taxi will retain an outside accountant and will retain outside legal counsel.

136. Green Taxi has available to it the experience of its owner-drivers. Many, if not most, of these individuals own and operate, or have owned and operated, a luxury limousine service. In addition, an unknown number of these individuals have managerial experience with taxicab companies or non-transportation businesses, or both. Thus, Green Taxi has available and can rely on the knowledge of individuals who have experience running businesses in general and who have experience operating transportation businesses that are subject to the Transportation Rules in particular.

### III. APPLICABLE LAW

137. To operate in intrastate commerce as a common carrier by motor vehicle for hire, Applicant must obtain a CPCN that declares that the present or future public convenience and necessity requires or will require the common carrier operations. Section 40-10.1-201(1), C.R.S.

138. In this Proceeding, Applicant seeks a CPCN to operate a taxicab service, which is a service provided by a common carrier by motor vehicle for hire in intrastate commerce. Rules 4 CCR 723-6-6201(c) (definition of call-and-demand service), 723-6-6201(f) (definition of common carrier), and 723-6-6201(r) (definition of taxicab service). *See also* § 40-10.1-101(19), C.R.S. (definition of taxicab service). If the CPCN is granted, Applicant will be subject to Commission regulation pursuant to title 40, article 10.1, part 1 and part 2, C.R.S., and applicable Transportation Rules.

#### A. **Burden of Proof and Related Issues: Generally.**

139. As the Party that seeks authorization to provide taxicab service, Applicant has the burden of proof with respect to the Application; and its burden of proof is 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.<sup>30</sup> “The evidence underlying the agency’s decision must be adequate to support a reasonable conclusion.” *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)). In addition, 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.

*Id.* 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 the preponderance of the evidence burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

140. If an Intervenor advocates that the Commission place a condition on the CPCN, that Party must meet the same preponderance of the evidence burden of proof with respect to its advocated position.

141. In addition, the Commission has stated that “it is legally permissible for the finder-of-fact to draw reasonable inferences from the evidence presented.” Decision No. C07-0669<sup>31</sup> at ¶ 7. Assuming the facts warrant, the ALJ may draw reasonable inferences from the evidence and may base a finding on those reasonable inferences.

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<sup>30</sup> This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

<sup>31</sup> Decision No. C07-0669 was issued on August 7, 2007 in Proceeding No. 07G-092CP, *Colorado Public Utilities Commission v. Michael McMechen, Doing Business as A Better Move*.

142. Moreover, the ALJ is not “bound to accept even the uncontradicted testimony as the gospel truth. ... A court [here, the ALJ/Commission], acting as fact finder, is not bound to accept a statement as true because there is no direct testimony contradicting it.” *Pioneer Construction Company v. Richardson*, 176 Colo. 254, 259, 490 P.2d 71, 74 (1971) (internal citation omitted).

143. Finally, whether Applicant met its burden of proof so that a CPCN should issue and, if it did, whether conditions should be attached to the CPCN are matters of public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Parties’ proposals. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, is consistent with controlling law, and is in the public interest, provided the record supports the result and provided the reasons for the choices made are stated.

144. There is no dispute that these legal principles apply in this Proceeding.

145. The ALJ is mindful of, and applies, these principles in reaching her decision in this Proceeding.

**B. Burden of Proof and Related Issues: § 40-10.1-203(2)(b)(II), C.R.S.**

146. Applicant seeks to provide taxicab service in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties.

147. The elements that Applicant must prove in this Proceeding to obtain the requested CPCN are contained in § 40-10.1-203(2)(b)(II)(C), C.R.S.:

*In an application for a certificate to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the applicant has the burden of proving that it is operationally and financially fit to provide the proposed service. The commission shall not consider the applicant's corporate structure when determining whether to approve or disapprove the application for a certificate. The applicant need not prove the inadequacy of existing taxicab service, if any, within the applicant's proposed geographic area of operation. If the commission determines that the applicant has proved its operational and financial fitness, the commission shall grant the applicant a certificate.*

(Emphasis supplied.)

148. The Commission has not promulgated rules governing applications for CPCNs to provide taxicab service but, rather, has chosen to provide guidance with respect to the factors (or metrics) to be used when evaluating such applications. The Commission has stated that the

*operational and financial fitness of an applicant must be evaluated on a case-by-case basis based upon unique circumstances of each applicant and the proposed service.*

In issuing guidelines to the ALJ [who would hold the evidentiary hearing and prepare an initial Commission Decision] regarding the scope of the testimony and record to be developed at the hearing, the Commission stated that:

The ALJ should endeavor to compile a record regarding each applicant's financial and operational fitness. In doing so, the ALJ should, without limitation, solicit evidence and develop findings of fact on the following topics with respect to each applicant: (a) minimum efficient scale, that is, whether a minimum size of operation is required and, if such a minimum does exist, conceptually what is the approximate magnitude for markets at issue in this docket; (b) credit worthiness; (c) access to capital; (d) capital structure; (e) current cash balances; (f) credit history and assessment of financial health over the near future; (g) managerial competence and experience; (h) fixed physical facilities such as office space and maintenance garages, as appropriate; (i) appropriate licenses and equipment necessary to operate a radio dispatch system; (j) vehicles of appropriate type; and (k) other metrics that may be appropriate.

The Commission also issued a guideline to the ALJ to hear testimony and to develop a record on whether [an applicant cooperative] is operationally and financially fit as a whole, not whether its individual members are fit.

Decision No. C09-0207<sup>32</sup> at ¶¶ 454-56 (footnote omitted) (italics and bolding supplied). The Commission later clarified that specific findings need not be made on each of the enumerated factors (or metrics)

because the Commission evaluates fitness on a case-by-case basis, in light of the scope of the authority sought, so all of the metrics may not be relevant in all cases. ... Further, metrics other than those [enumerated above] may also be relevant.

Decision No. C11-0339<sup>33</sup> at ¶ 15 (internal citation omitted).

149. Business plans, particularly for start-up businesses, can provide information on, and insight into, various parts of the Commission-identified factors (or metrics). Addressing the examination of a business plan in the context of an application for a CPCN to provide taxicab service, ALJ Paul C. Gomez wrote:

[An intervenor] also takes issue with the fluidity of [the applicant's] *pro forma* financial statements and business plan. However, the speculative nature inherent in all business plans cannot be overlooked. A business plan (and the *pro forma* financial projections contained therein) is a basic blueprint for a business which reflects the major points of the company's ideas, strategies, and management team. However, a business plan is not expected to be static, but instead is a fluid document that will change and adapt as the business evolves to meet the demands of reality. As such, projections and estimates made in a business plan must be analyzed from the point of view that they are inherently inaccurate and subject to change as the company moves forward. Nonetheless, **a business plan must also be analyzed to determine whether management understands the realities of the industry in which it is attempting to compete**

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<sup>32</sup> That Decision was issued on February 27, 2009, in Consolidated Proceedings No. 08A-241CP, No. 08A-283CP, No. 08A-284CP-Extension, and No. 08A-300CP. In each of the four Proceedings, the applicant either sought a CPCN to provide taxi service or sought to extend an existing CPCN that authorized taxi service.

<sup>33</sup> That Decision was issued on March 30, 2011 in Proceeding No. 09A-258CP, *In the Matter of the Application of K2 Taxi, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. In that Decision, the Commission granted, in part, an Application for Rehearing, Reargument, or Reconsideration of Decision No. C11-0081 (see note 34, *infra*) with respect to limitations on the scope of the CPCN awarded in Proceeding No. 09A-258CP.

**and whether the projections and milestones contained in the plan in some way reflect those realities.**

While [the applicant's] business plan may contain apparent flaws, it is nonetheless useful to determine the company's managerial, operational, and financial fitness. As the Commission noted in the Union Taxi Order, the test of fitness is not perfection. The structure of [the applicant] has not been thoroughly vetted, that is clear. However, this uncertainty is not fatal to a determination of fitness. It is found that [the applicant] has met its burden of proving its operational and financial fitness to provide the proposed service.

Decision No. R10-1225<sup>34</sup> at ¶¶ 81-82 (italics in original; bolding supplied) (footnote omitted).

The undersigned finds Judge Gomez's reasoning to be sound and persuasive and, thus, adopts this approach in considering the Application in the instant Proceeding.

150. In short, when evaluating an application for a CPCN to provide taxicab service, "consideration certainly should be given to the financial status of the applicant as well as the applicant's ability to render the service in an efficient and reliable manner." Decision No. C11-0805<sup>35</sup> at ¶ 21 (internal citations and quotation omitted). When examining these issues, however, one must remember that

[w]hether or not a particular amount of capital is sufficient for an applicant to be found financially fit may depend, *inter alia*, on the exact size and demographics of proposed service territory, fleet size, or whether it plans to provide any specialized services. Likewise, the minimum efficient scale also may depend on exact size and demographics of a proposed service area. The same is true regarding the adequacy of dispatch, vehicles, managerial experience, and fixed physical facilities.

Decision No. C11-0992 at ¶ 8.

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<sup>34</sup> That Decision was issued on November 12, 2010 in Proceeding No. 09A-258CP, *In the Matter of the Application of K2 Taxi, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. In Decision No. C11-0081, issued in Proceeding No. 09A-258CP on February 8, 2011, the Commission found the ALJ's findings and conclusions regarding the fitness of the applicant in that Proceeding to be supported by the evidentiary record and, on that basis, denied exceptions addressed to the issue of that applicant's fitness.

<sup>35</sup> That Decision was issued on July 28, 2011, in Consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP. In each of the four Proceedings, the applicant either sought a CPCN to provide taxi service or sought to extend an existing CPCN that authorized taxi service.

151. Moreover, in § 40-10.1-203(2)(b)(II)(A), C.R.S., the General Assembly found, determined, and declared that enactment of § 40-10.1-203(2)(b)(II)(C), C.R.S.,

may open the door to multiple taxicab companies entering the taxicab service market within the metropolitan areas of Colorado and will lead to free market competition, expanded consumer choice, and improved quality of service.

Addressing the impact of § 40-10.1-203(2)(b)(II)(C), C.R.S., on evaluation of an application for a CPCN to provide taxicab service and being mindful of the legislative findings and conclusions in § 40-10.1-203(2)(b)(II)(A), C.R.S., Chief ALJ G. Harris Adams wrote:

Competitive markets have low barriers of entry. Competitors fail over time. A competitive market exerts no preference or control among incumbents and new entrants. ... By enacting [§ 40-10.1-203(2)(b)(II)(C), C.R.S.], the Legislature has given preference to customer forces of market competition over regulatory structures intended to ensure adequate and available service.

Decision No. R16-0213<sup>36</sup> at ¶ 123. The Commission adopted that Decision as a Decision of the Commission. Like the Commission, the undersigned ALJ finds Judge Adams's reasoning sound and persuasive and adopts this approach in considering the Application in the instant Proceeding.

152. Lastly, when evaluating whether an applicant is operationally and financially fit to provide taxicab service, it is critical to remember: "The test of fitness is not perfection." Decision No. C09-0207 at ¶ 471.

153. Upon a showing of an applicant's operational and financial fitness to provide taxicab service, the Commission

has the power to issue a [CPCN] to a common carrier or to issue [a CPCN] for the partial exercise only of the privilege sought, and may attach to the exercise of the

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<sup>36</sup> That Decision was issued on March 11, 2016 in Proceeding No. 15A-0648CP, *In the Matter of the Application of Green Taxi Cooperative for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. On June 3, 2016, by Decision No. C16-0476 at Ordering Paragraph No. 2, the Commission adopted "Recommended Decision No. R16-0213 as a Decision of the Commission without modification."

rights granted by the [CPCN] such terms and conditions as, in the commission's judgment, the public convenience and necessity may require.

Section 40-10.1-203(1), C.R.S. The Commission recently affirmed this authority in Decision No. C16-0476.

154. There is no dispute that these legal principles apply in this Proceeding.

155. The ALJ is mindful of, and applies, these principles in reaching her decision in this Proceeding.

#### **IV. DISCUSSION AND CONCLUSIONS**

156. In reaching this Decision, the ALJ considered all arguments presented by the Parties, including arguments not specifically addressed in this Decision. In addition, the ALJ considered all evidence presented at the hearing, including evidence not specifically addressed in this Decision.

157. No Intervenor offered a witness at the evidentiary hearing. No Intervenor offered documentary evidence that persuasively rebutted Applicant's testimony and documents on the issues of its financial and operational fitness.<sup>37</sup> Rather than present witnesses of their own, the Intervenors rely on their cross-examination of Applicant's witnesses to show that Applicant lacked financial fitness or operational fitness, or both. As a result, Applicant's evidence in support of its operational and financial fitness is un rebutted.

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<sup>37</sup> As discussed above, Intervenors offered documentary evidence that went to the question of Applicant's ability to provide taxicab service in Boulder County. This is a sub-issue within the broader question of Applicant's financial and operational fitness to provide taxicab service throughout its proposed Denver Metro Area Counties service territory.



**A. Green Taxi's Operational and Financial Fitness.**

158. Green Taxi argues that the evidence demonstrates that it is operationally and financially fit to provide the proposed service and that, based on the evidence, the Commission must grant the requested CPCN for taxicab service.

159. Intervenors challenge aspects of Applicant's operational and financial fitness and argue that, because Applicant has not met its burden of proof, the Application should be denied.

160. As discussed above, whether an applicant is financially and operationally fit depends on the scope of the proposed undertaking and, necessarily, is assessed on a case-by-case basis. Importantly, as stated by Judge Adams:

the proposed service is a necessary and material foundation for determining operational and financial fitness.

... The Commission's historical determination of fitness is more akin to physical fitness than precise objective measurement. Fitness [to obtain a CPCN to provide taxi service] is an entrance standard. § 40-10.1-203(2)(b)(II), C.R.S. The Colorado [General Assembly (General Assembly or Legislature)] has chosen to measure fitness in the context of [an applicant's] proposed operation. [To meet this standard,] Green Taxi must provide evidence to demonstrate [that it is] more probable than not that it has the operational and financial fitness to provide the proposed operations in compliance with Commission rules and Colorado law.

Decision No. R16-0213 at ¶¶ 84-85.

161. The record evidence establishes that Green Taxi has: (a) sufficient access to capital (through the initial payments of the owner-drivers); (b) a realistic proposed capital structure; and (c) a realistic approach to its operating revenues and capital. The record evidence shows that Green Taxi has a reasonable and sound understanding of the expenses and costs necessary to operate a taxicab company and to provide taxi service throughout the Denver Metropolitan Area Counties in accordance with the Company's business plan. *See generally* Green Taxi's Projected Financial Statements (Confidential Hearing Exhibit No. 7A) (*pro forma*

financials for Company's initial three years of operation). In addition, Green Taxi asserts that its projected expenses likely will prove to be lower than stated in the *pro forma* financials and contends that there is a sufficient cushion in the *pro forma* operating budget to cover any expense item that is either unaccounted for or underestimated. Overall, the evidence demonstrates that, over the near-term future,<sup>38</sup> Green Taxi likely will have sufficient financial health to operate as a taxicab company.<sup>39</sup>

162. Each member will be an owner-driver for Green Taxi. As a result, it is reasonable to conclude that each owner-driver will have an incentive to make Green Taxi, the company in which the driver is invested, a successful business. This factor weighs in favor of Green Taxi's overall financial and operational fitness to operate as a taxicab company.

163. Through Applicant witnesses Desta and Ejigu, who are members of its Board of Directors and are individuals familiar with the Company's business plan and history, Green Taxi provided evidence as to the formation of the corporation; the recruitment of owner-drivers; and the proposed operations as a taxicab company. This evidence shows that the Company investigated its proposed service territory (*i.e.*, the Denver Metro Area Counties), the available and potential sources of owner-drivers, and the potential sources of customers and, based on that investigation, developed its business plan. This factor weighs in favor of Green Taxi's overall financial and operational fitness as a taxicab company.

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<sup>38</sup> As used in this Decision, unless the context indicates otherwise, near-term future refers to, and means, the Company's initial three years of operation, which is the period for which Green Taxi provided its *pro forma* financials.

<sup>39</sup> To be clear: In making this and other record evidence-based assessments of Green Taxi's *likely* near-term future, the ALJ neither finds nor intimates -- and does not intend to find or to intimate -- that Green Taxi *in fact* will survive its first years of operation. Of course, whether Green Taxi in fact will survive is not the touchstone of this inquiry, which is limited to evaluation of Green Taxi's financial and operational fitness to enter the taxicab market in the Denver Metropolitan Area Counties.

164. The record evidence demonstrates that the Green Taxi Board of Directors, whose members are owner-drivers, are experienced, motivated, and educated. Members of the Green Taxi Board of Directors and many other Green Taxi owner-drivers currently own and operate transportation companies (*i.e.*, luxury limousine services) regulated by the Commission. Also, both groups have management experience with regulated transportation providers and with other industries. Their experience shows an understanding of, and ability to comply with, rules regulating the proposed taxicab operations.<sup>40</sup>

165. The Green Taxi Board of Director developed the Company's business plan. The record evidence shows that Green Taxi has elected to take a fiscally conservative and measured approach to beginning its start-up taxicab operations. For example, it has identified necessary, and expensive, resources (*e.g.*, renting office space, hiring office and dispatch personnel, and retaining a lawyer and an accountant) and has decided to delay acquiring them until the Commission has granted Green Taxi a CPCN. This careful and thoughtful approach weighs in favor of Green Taxi's overall operational (including managerial) fitness as a taxicab company. In addition, one would not expect Green Taxi to have facilities in place before it has obtained authority to operate.

166. The Green Taxi business plan contains a realistic assessment of the Company's internal resources and capabilities. The plan recognizes that Green Taxi may have to retain consultants to provide, and to help Green Taxi to develop, expertise in areas in which Green Taxi lacks experience or needs assistance. This prudent approach weighs in favor of Green Taxi's overall operational (including managerial) fitness as a taxicab company.

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<sup>40</sup> As discussed below in this Decision and notwithstanding the individuals' experience providing luxury limousine service, the ALJ finds it advisable, reasonable, and in the public interest to require Green Taxi personnel to meet with Transportation Staff to discuss taxicab service-related rules and requirements.

167. The record evidence establishes that Green Taxi is aware of, and will have the financial resources necessary to secure, required insurance coverage.

168. The record evidence shows that Green Taxi is aware of the Commission rules regulating the proposed taxicab service. Green Taxi will use the PathFinder™ system; the record evidence establishes that this system can be adjusted as necessary to comply with applicable Transportation Rules, both current and future.

169. Through cross-examination, Intervenors showed that: (a) Green Taxi's business plan contains flaws and omissions (*e.g.*, the *pro forma* financials do not include the monthly payments to DDS); (b) to some degree, the business plan rests on Green Taxi's Board of Directors' speculation; and (c) the *pro forma* financials lack independent support (*e.g.*, no documents, such as leases or signed owner-driver agreements or written insurance quotes, substantiate the projections). Against this background, Intervenors assert: (a) the record contains "no evidence about Green Taxi's *current* status, evidence that demonstrates that Green Taxi is *now* financially fit to provide taxi service twenty-four hours each day, every day, to anyone that asks" (Intervenors SOP at 4 (emphasis supplied)); and (b) Green Taxi failed to provide evidence on many of the factors or metrics identified in Decision No. C09-0207 at ¶ 455.<sup>41</sup> As a result, Intervenors argue that, because Green Taxi did not meet its evidentiary burden, the Commission should deny the Application.

170. The ALJ finds Intervenors' arguments to be unpersuasive. First, Green Taxi is a start-up taxicab company. Given this reality, Intervenors' insistence that the Commission judge Green Taxi's operational and financial fitness using Green Taxi's current status is unreasonable

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<sup>41</sup> These are identified above in this Decision. See also Decision No. C11-0992 at ¶ 6 (same).

as there is no requirement that, at the time it filed the Application, Green Taxi had to be ready, willing, and able immediately to provide taxicab. In addition, Intervenor's position is contrary to Commission decisions on this issue.<sup>42</sup> Second,

the speculative nature inherent in all business plans cannot be overlooked. A business plan (and the *pro forma* financial projections contained therein) is a basic blueprint for a business which reflects the major points of the company's ideas, strategies, and management team. However, a business plan is not expected to be static, but instead is a fluid document that will change and adapt as the business evolves to meet the demands of reality. As such, projections and estimates made in a business plan must be analyzed from the point of view that they are inherently inaccurate and subject to change as the company moves forward.

Decision No. R10-1225 at ¶ 81. Third, admittedly, the *pro forma* financials are speculative to some degree. The ALJ nonetheless finds them sufficiently reliable because Green Taxi's Board of Directors developed the business plan (including the financial projections) relying on their business (including transportation business) experience and their investigation of the marketplace (as discussed above).<sup>43</sup> Fourth and importantly, the test of fitness is not perfection. Thus, contrary to Intervenor's argument, fitness requires neither "a showing as to every element historically evaluated by the Commission nor ... perfection in projections and assumptions upon which operations are planned." Decision No. R16-0213 at ¶ 99.

171. Based on the entire evidentiary record, and taking into consideration the Intervenor-identified omissions and flaws in the business plan (including the projected

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<sup>42</sup> See section of this Decision entitled Burden of Proof and Related Issues: § 40-10.1-203(2)(b)(II), C.R.S.

<sup>43</sup> Intervenor's argue that the Commission should place little to no reliance on Applicant's financial fitness evidence because Applicant did not introduce executed owner-driver agreements to substantiate Applicant's testimony on financial fitness. In support of their argument, Intervenor's quote Decision No. C11-0992 at ¶ 20: "[N]on-binding promises to contribute money carry little weight[,] as compared to legally binding agreements, when determining financial fitness of an applicant seeking to provide taxicab services." Intervenor's SOP at 4.

There is no disagreement that each application for a taxicab CPCN is determined on a case-by-case basis, on the evidentiary record, and on its individual merits. In the present Proceeding, based on the entire evidentiary record, the ALJ finds Applicant's financial fitness evidence to be persuasive and reliable, even in the absence of the executed agreements.

financials), the ALJ finds that, on balance, the business plan shows that Green Taxi “understands the realities of the industry in which it is attempting to compete and [that] the projections and milestones contained in the plan ... reflect those realities” (Decision No. R10-1225 at ¶ 81).

172. Based on the entire evidentiary record, the ALJ concludes that Green Taxi has met its burden of proof to establish, by a preponderance of the evidence, that it is operationally and financially fit to provide taxicab service in the Denver Metro Area.

**B. Minimum Efficient Scale.**

173. By adopting Decision No. R16-0213 without modification as a Commission Decision, the Commission determined that “[m]inimum efficient scale of operations represents the minimum threshold of fitness in terms of both operational and financial fitness.” Decision No. R16-0213 at ¶ 100. The Commission also approved this two-part test for entry into the taxicab marketplace in the Denver Metro County Area: (a) an applicant must establish that, focusing on entry (as opposed to long-term viability), it is more probable than not that the applicant’s “management is capable of implementing operations ... [that are] in compliance with obligations undertaken pursuant to Colorado law and Commission rule”; and (b) an applicant “must ... demonstrate access to, or availability of, financial resources to implement the plan” *Id.* An applicant that demonstrates sufficient operational and financial fitness for the proposed taxicab operation in compliance with Commission rules and Colorado law has met its burden of proof on the issue of minimum efficient scale.

174. As discussed above in this Decision, Green Taxi has a reasoned, fiscally conservative approach to preparing for its taxicab operations that takes into account Green Taxi’s current lack of authority to provide taxi service and balances the need to take steps preparatory to

offering service against unnecessarily incurring expenses and spending money. This cautious approach lends credibility to Green Taxi's business plan and to its assertions.

175. In addition, as discussed above, Green Taxi is aware of the applicable Transmission Rules. Green Taxi's owner-drivers now conduct, or have conducted, transportation businesses that are subject to Commission regulation. Green Taxi has entered into a Purchase Agreement with DDS for the PathFinder™ system, which can be changed as necessary to comply with present and future regulatory requirements. The experience of the Green Taxi owner-drivers and the capabilities and functionalities of the PathFinder™ system demonstrate that it is more probable than not that Green Taxi is capable of operating in compliance with the applicable Transportation Rules and statutory requirements.<sup>44</sup>

176. After a taxicab company enters the market, the Commission regulates aspects of its operations to address issues such as its rates, the minimum level of its service quality, and the safety of the traveling public. Provided it meets the established regulatory requirements, a taxicab company is free to compete for customers and is not bound to replicate the approach used by another taxicab company. In fact, the basic premise of taxicab competition is that, within the boundaries established by the regulatory requirements, competition will bring innovations to the marketplace and benefits to customers as companies seek to differentiate themselves from their competitors. This is the reason that each application to provide taxicab service in the Denver Metro Area Counties is judged on a case-by-case basis.

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<sup>44</sup> By finding that Green Taxi *is capable of operating* in compliance with regulatory requirements, the ALJ does not find or suggest, and does not intend to find or to suggest, that Green Taxi *will operate* in compliance with those requirements. The only way to assess Green Taxi's compliance is to evaluate the taxicab operation after Green Taxi enters the taxicab market.

177. Based on the discussion and findings set out above in this Decision and the entire evidentiary record, the ALJ finds that Green Taxi “demonstrated [its] capability to implement a credible rigorous business plan to provide the proposed taxi service” (Decision No. R16-0213 at ¶ 104) in the Denver Metropolitan Area Counties.

178. Based on the discussion and findings set out above in this Decision and the entire evidentiary record, the ALJ finds that Green Taxi has demonstrated that, more likely than not, it has available sufficient capital and has access to additional sources of revenue and capital to fund its initial taxicab operations.

179. The ALJ finds that Green Taxi’s proposed operations in the Denver Metropolitan Area Counties meet or exceed a minimally efficient scale.

**C. Scope of Granted Authority.**

180. Green Taxi demonstrated operational and financial fitness to provide taxicab service in the Denver Metropolitan Area Counties.

181. In the Application (Hearing Exhibit No. 1) at 9 is Green Taxi’s equipment list, which states: “250 Sedans and small SUV vehicles -- driver owned.” In addition, Green Taxi witness Desta testified that, because Green Taxi intends to operate 250 vehicles (as stated in the Application), Green Taxi in this Proceeding seeks a CPCN to operate 250 taxicabs. Finally, 250 taxicab vehicles is one assumption underpinning Green Taxi’s *pro forma* financials (Confidential Hearing Exhibit No. 7A) and [REDACTED]

[REDACTED]. For these reasons, the ALJ will place this condition on the CPCN: restricted to the operation of not more than 250 taxicabs at one time.



182. In the Application, Green Taxi seeks a CPCN for taxicab service. To clarify the authority granted to Green Taxi and to be consistent with other CPCNs authorizing taxicab service, the ALJ will grant a CPCN to provide call-and-demand taxi service. The addition of call-and-demand identifies Green Taxi's authority as common carrier authority.

**D. Conditions.**

183. The ALJ finds that the public convenience and necessity require -- and the ALJ will order -- the following conditions, which are in addition to the conditions discussed above.

184. *First condition:* Green Taxi must register with the Colorado Secretary of State a trade name that does not include the phrase "Green Taxi" and must operate its taxicab service under the registered trade name. *Green Taxi Cooperative* has a CPCN to provide taxicab service in the Denver Metropolitan Area and intends to operate under the name Green Taxi.<sup>45</sup> The ALJ finds that having two taxicab companies named Green Taxi operating in the same geographic area creates a significant probability (if not virtual certainty) of customer confusion, creates difficulties for competitors, and creates difficulties for Staff of the Commission's Transportation Section. To avoid these issues, Green Taxi cannot provide taxicab service under the name Green Taxi and its taxicabs cannot have a Green Taxi logo or insignia. *The ALJ will order this condition:* (a) prior to filing its proposed tariffs with the Commission, Green Taxi must register with the Colorado Secretary of State a trade name that does not include the phrase "Green Taxi" and must make the appropriate filing with the Commission regarding change of name (*i.e.*, the addition of a trade name); and (b) Green Taxi must operate under the registered trade name, including using only the trade name on its taxicab vehicles.

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<sup>45</sup> Decisions No. C16-0476 and No. R16-0213, issued in Proceeding No. 15A-0648CP, granted Green Taxi Cooperative a CPCN to provide taxicab service in the Denver Metro Area.

185. *Second condition:* Green Taxi must amend its Articles of Incorporation. Green Taxi's Articles of Incorporation (Hearing Exhibit No. 2) at 2 state:

The corporation is authorized to issue 1 common shares that shall have unlimited voting rights and are entitled to receive the net assets of the corporation upon dissolution.

As discussed above, Green Taxi's basic business plan is: each individual who signs an agreement with Green Taxi, pays the initial contribution, and provides a taxicab vehicle will be an owner-driver and will receive one common share of Green Taxi. To accommodate the issuance of the necessary common shares, Green Taxi stated that it would amend its Articles of Incorporation "to provide for issuance of 300 shares of common stock, one share for each owner-driver and others for replacement owner-drivers, as needed" (Applicant SOP at 3). *The ALJ will order this condition:* prior to filing its proposed tariffs with the Commission, Green Taxi must amend its Articles of Incorporation to authorize the issuance of 300 shares of common stock and must file with the Commission a notice of compliance with this condition.

186. *Third condition:* Green Taxi personnel must meet with the Staff of the Commission's Transportation Section, both the Rates and Authorities Unit and the Investigations and Compliance Unit (Transportation Staff), to discuss the regulatory requirements applicable to taxicab service. Based on the evidence, the ALJ finds that Green Taxi's Board of Directors and its owner-drivers have no experience owning and operating a rate-regulated common carrier taxicab service. To protect members of the traveling public and to mitigate any possible confusion about the regulatory requirements, Green Taxi needs to have a good understanding of the applicable statutes and regulations. A meeting with Transportation Staff will assist Green Taxi to achieve that understanding by providing a venue in which Green Taxi can obtain information, and can ask questions, about its responsibilities and obligations. Understanding the

requirements will allow Green Taxi to put in place necessary procedures and practices, and to provide appropriate training to owner-drivers, before offering taxi service to the public. *The ALJ will order this condition:* prior to filing its proposed tariffs with the Commission, Green Taxi: (a) must meet with Transportation Staff to discuss all regulatory requirements applicable to taxicab service; and (b) must file with the Commission a notice of compliance with this condition. The Green Taxi representatives attending the meeting must include at least the following individuals: (a) the operations manager; (b) the safety manager; (c) the driver trainer; (d) at least one member of the Board of Directors who is neither the operations manager nor the safety manager; and (e) if the individual has been hired, the general manager. **To arrange this required meeting, Green Taxi must contact Cliff Hinson, Manager of the Investigations and Compliance Unit in the Commission's Transportation Section (telephone number: 303.894.2904).**

187. *Additional conditions:* Green Taxi must comply with the conditions contained in the Ordering Paragraphs of this Decision.

188. **Questions concerning the conditions established in this Decision (other than the required meeting) should be directed to Ms. Vanessa Condra of the Commission Staff (telephone no.: 303.894.2850).**

189. For the reasons discussed above in this Decision, the ALJ will grant the Application; will grant Applicant a CPCN as set out in Appendix A to this Decision; and will condition the CPCN as set out in the discussion above and in the Ordering Paragraphs of this Decision.

190. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

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

1. Consistent with the discussion above, the Application for Permanent Authority filed by Green Taxi Corporation (Green Taxi) on October 15, 2015, as amended on November 3, 2015, is granted.

2. Consistent with the discussion above and subject to the conditions stated in the Ordering Paragraphs below, Green Taxi is granted a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire as set out in Appendix A to this Decision. Appendix A is incorporated here as if set out in full.

3. The authority granted in Ordering Paragraph No. 2 is conditioned on Green Taxi's meeting the conditions contained in this Decision and is not effective until Green Taxi has met the conditions set out in the Ordering Paragraphs of this Decision.

4. Consistent with the discussion above, the authority granted in Ordering Paragraph No. 2 is conditioned as follows: (a) Prior to filing its proposed tariffs with the Commission, Green Taxi shall register with the Colorado Secretary of State a trade name that does not include the phrase "Green Taxi" and shall make the appropriate filing with the Commission regarding the change of name; and (b) Green Taxi shall operate under the registered trade name, including using only the trade name on its taxicab vehicles.

5. Consistent with the discussion above, the authority granted in Ordering Paragraph No. 2 is conditioned as follows: Prior to filing its proposed tariffs with the Commission, Green Taxi shall amend its Articles of Incorporation to authorize the issuance of 300 common shares and shall file with the Commission a notice of compliance with this condition.

6. Consistent with the discussion above, the authority granted in Ordering Paragraph No. 2 is conditioned as follows: Prior to filing its proposed tariffs with the Commission, Green Taxi shall meet with the Staff of the Commission's Transportation Section, both the Rates and Authorities Unit and the Investigations and Compliance Unit to discuss all regulatory requirements applicable to taxicab service and shall file with the Commission a notice of compliance with this condition. The Green Taxi representatives attending the meeting shall include at least the following individuals: (a) the operations manager; (b) the safety manager; (c) the driver trainer; (d) at least one member of the Board of Directors who is neither the operations manager nor the safety manager; and (e) if the individual has been hired, the general manager. Green Taxi shall contact the Manager of the Investigations and Compliance Unit in the Commission's Transportation Section to arrange the meeting.

7. The authority granted in Ordering Paragraph No. 2 is conditioned as follows: Green Taxi shall operate in accordance with applicable Colorado law and Commission rules.

8. Green Taxi shall not begin operation under the Certificate of Public Convenience and Necessity granted by this Decision until it has satisfied all of the following conditions:

(a) Green Taxi shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period and the entire ten-day notice period must expire prior to the proposed effective date. Green Taxi shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(b) Green Taxi shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(c) Green Taxi shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(d) For each vehicle to be operated under the authority granted by this Decision, Green Taxi shall pay to the Commission the vehicle identification fee required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of that fee and if applicable, Green Taxi shall pay to the Commission, for each vehicle to be operated under the authority granted by this Decision, the fee for those vehicles pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6402 (the Unified Carrier Registration Agreement).

(e) Green Taxi has received from the Commission a written notice that Green Taxi has complied with all conditions contained in the Ordering Paragraphs of this Decision and may begin providing transportation service under the authority granted by this Decision.

9. If Green Taxi does not comply with the requirements of the Ordering Paragraphs of this Decision within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 1 and No. 2 are void. On timely motion and for good cause shown, the Commission may grant Green Taxi additional time for compliance.

10. The right of Green Taxi to operate under the CPCN granted by this Decision shall depend upon the compliance of Green Taxi with: (a) all present and future laws applicable to Green Taxi; (b) all present and future Commission regulations applicable to Green Taxi; and (c) all present and future Commission orders applicable to Green Taxi.

11. Consistent with the discussion above, the motions to dismiss made during the evidentiary hearing at the close of Green Taxi's direct case are denied.

12. Consistent with the discussion above, the Joint Motion to Strike is granted.

13. Consistent with the discussion above, the following is stricken from the last paragraph on page 6 of the Post Hearing Statement of Position filed by Green Taxi: (a) "has already received [REDACTED] from some of them, and"; and (b) "At the hearing, Applicant made available its agreements with the owners, showing the owner-driver obligations to make those payments."

14. 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.

15. As provided by § 40-6-109, 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.

16. 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)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director