

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1008CP

IN THE MATTER OF THE APPLICATION OF NASH PILLSBURY DOING BUSINESS AS
RIDE TAXI TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING APPLICATION**

Mailed Date: April 24, 2015

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I. STATEMENT

1. On October 7, 2014, Nash Pillsbury, doing business as Ride Taxi (Ride Taxi or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On October 20, 2014, the Commission issued its Notice of Application Filed (Notice) in this proceeding by publishing a summary of the same in its Notice as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers

between all points within a 30-mile radius of the intersection of Hurd Lane and Avon Road, Avon, Colorado, and from said points, on the one hand, to all points in the state of Colorado, on the other hand.

3. On October 24, 2014, Ride Taxi filed an amendment to the Application, as amended the authority will read:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand taxi service

originating within a 30 mile radius from the intersection of Hurd Ln. and Avon Rd., Avon, CO; service terminating at all points in Colorado

4. On October 24, 2014, Hy-Mountain Transportation, Inc., doing business as Hy-Mountain Taxi (Hy-Mountain) filed its Entry of Appearance and Notice of Intervention through counsel. This filing attached Commission Authority No. 14114 held by Hy-Mountain.

5. On October 29, 2014, Fresh Tracks Transportation, LLC (Fresh Tracks), filed its Entry of Appearance and Notice of Intervention. The Fresh Tracks filing identified Commission Authority No. 55753 as the basis of its intervention, and included a copy of the same.

In addition, the Fresh Tracks filing included a preliminary disclosure of witnesses and exhibits it intends to present at the hearing in this matter.

6. On November 12, 2014, Rainbows, Inc., doing business as 453-Taxi (453-Taxi) filed an Entry of Appearance and Notice of Intervention and Protest as a matter of Right through counsel. The 453-Taxi filing identified Commission Authority No. 54842 as the basis of its intervention and included a copy of the same.

7. On December 3, 2014, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition.

8. By Decision No. R14-1479-I, issued December 12, 2014, a prehearing conference was scheduled for January 22, 2015 at 9:00 a.m. Parties were allowed to appear via telephone or in person. Fresh Tracks was also required to make a filing concerning representation on or before January 5, 2015.

9. On January 6, 2015, one day after the deadline, Fresh Tracks made a filing concerning representation.

10. On January 22, 2015, the prehearing conference was called to order at 9:00 a.m. The Applicant was present in person, Hy-Mountain, Fresh Tracks and 453-Taxi failed to appear in person or via telephone. A recess was taken for 15 minutes to allow for additional time for parties to appear due to inclement weather. At 9:15 a.m. the prehearing conference was again called to order and Hy-Mountain, Fresh Tracks, and 453-Taxi failed to appear in person or via telephone. The prehearing conference was held and a procedural schedule was proposed.

11. On January 22, 2015, by Decision No. R15-0080-I, Hy-Mountain, Fresh Tracks and 453-Taxi were ordered to show cause why their interventions should not be dismissed. This filing was to be made by January 26, 2015.

12. On January 27, 2015, by Decision No. R15-0090-I, the intervention of Fresh Tracks was dismissed and a procedural schedule was set which included dates for the parties to pre-file exhibits and witness lists.

13. On March 12, 2015, Hy-Mountain filed its Motion *In Limine* Pursuant to 4 CCR 723-1405(k)(VI).

14. On March 13, 2015, Hy-Mountain filed its Motion *In Limine* Pursuant to CRE 802, CRE401 and CRE 403.

15. On March 19, 2015, the Applicant filed his Response to Motion *In Limine*.

16. On March 26, 2015, 453-Taxi filed its Notice of Withdrawal of Intervention.

17. By Decision No. R15-0295-I issued March 30, 2015, the Motion *In Limine* Pursuant to 4 CCR 723-1405(k)(VI) and the Motion *In Limine* Pursuant to CRE 802, CRE401 and CRE 403 were denied. The intervention of 453-Taxi was also withdrawn.

18. On April 8, 2015, an evidentiary hearing was convened in Vail, Colorado. Applicant, Nash Pilsbury, represented himself *pro se* and Hy-Mountain appeared through its counsel. Applicant offered the testimony of Mr. Jeff Forbes, Mr. Nick Allmaras, Ms. Melissa Dejourno, Ms. Chelsea Dickens, Mr. Matthew Paula, Ms. Paula Kurtz, Mr. Kelly Anders, and Mr. Brian Fleming. Hy-Mountain offered the testimony of Mr. Todd Gardner.

19. Hearing Exhibits 1 through 64, 70 through 73, 76,¹ and 80 through 86 were offered and admitted. Hearing Exhibits 65, 74, and 75 were offered but not admitted. Hearing Exhibits 67 and 68 were not offered.

¹ Pages 1-3.

20. At the conclusion of the evidence, the ALJ closed the record and took the matter under advisement.

21. On April 8, 2015, a public comment in support of the Application was filed with the Commission.

22. Statements of position were filed by the parties on April 17, 2015.

23. In reaching this Recommended Decision, the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

24. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDINGS OF FACT

25. The Applicant, Nash Pillsbury worked for Vail Valley Taxi starting in 2002. Mr. Pillsbury was hired by Hy-Mountain after Hy-Mountain purchased Vail Valley Taxi. In his time with Hy-Mountain and Vail Valley Taxi Mr. Pillsbury performed many duties including manager, dispatcher, and driver. Mr. Pillsbury was involved in almost all aspects of Hy-Mountain's operations. *Hearing Exhibit 1.*

26. The management of Hy-Mountain was pleased with Mr. Pillsbury's job performance. *Hearing Exhibit 3.*

27. Lynnea Tamsen is the wife of Nash Pillsbury and intends to be the bookkeeper for Ride. Ms. Tamsen has a Masters in Business Administration from Colorado Technical University. *Hearing Exhibit 2, p. 2*

28. Mr. Jeff Forbes is the owner of Coyote Café in Beaver Creek, Colorado. Mr. Forbes has been in the restaurant/bar business since 1988. Mr. Forbes is not a personal friend of Mr. Pillsbury. Mr. Forbes is originally from Kansas City, Missouri.

29. Mr. Nicholas Allmaras works as a fly fishing guide and as a doorman for the Westin Hotel in the Vail Valley. Mr. Allmaras has lived in Edwards, Colorado for the last three years. In his job as a doorman, Mr. Allmaras regularly arranges transportation by taxi for individuals staying at the Westin. Mr. Allmaras has written a letter in support of the Application. *Hearing Exhibit 9.*

30. Ms. Melissa Dejourno is the manager of the Dusty Boot restaurant in Beaver Creek, Colorado. The Dusty Boot is a steakhouse and burgers bar. Ms. Dejourno currently lives in Edwards, Colorado and has lived in the Vail Valley for the last 15 years. Ms. Dejourno is originally from the Chicago area. Ms. Dejourno has written a letter in support of the Application. *Hearing Exhibit 8.*

31. Ms. Chelsea Dickens is the manager of Henry's Chinese Café and also a server at Café Milano restaurant both located in Edwards, Colorado. Ms. Dickens has lived in the Vail Valley for eight years and currently lives in Edwards, Colorado. Ms. Dickens has written a letter in support of the Application. *Hearing Exhibit 5.*

32. Mr. Matthew Paula is the General Manager of the Black Diamond Bistro at The Charter Hotel in Beaver Creek. Mr. Paula has lived in the Vail Valley for 15 years and currently lives in Gypsum, Colorado. Mr. Paula worked for Hy-Mountain from 2011 until June of 2013 as a driver and a dispatcher.

33. Ms. Paula Kurtz currently works for Avis and Budget rent a car at the Eagle Airport and as sous chef during the summer months. Ms. Kurtz has lived in the Vail Valley

since 2009 and currently lives in Eagle, Colorado. From December of 2009 until April of 2012, Ms. Kurtz worked for Hy-Mountain.

34. Ms. Kurtz had a variety of duties at Hy-Mountain including call taking, driving, hiring, paperwork, training, and sales. Ms. Kurtz left Hy-Mountain due to ethical issues with how the business was run, how employees were treated, and how customers were dealt with.

35. Ms. Kurtz is originally from Pennsylvania where her family runs a motor coach transportation business. Ms. Kurtz has worked for the family business and has had limited contact with the Pennsylvania Public Utilities Commission.

36. Mr. Kelly Anders is a cook for Vail Resort Restaurant. Mr. Anders has lived in the Vail Valley for 14 years and currently lives in Avon, Colorado. Mr. Anders worked as a driver for Hy-Mountain from June 2013 until October 2014 when he was relieved of his duties.

37. Mr. Anders intends to be an owner-operator in Ride Taxi if the Application is granted. Mr. Anders has signed a letter of intent to purchase two vehicles to be utilized in Ride Taxi's fleet of vehicles. *Hearing Exhibit 71.*

38. Mr. Brian Fleming has lived in the Vail Valley for 21 years and currently lives in Edwards, Colorado. Mr. Fleming worked for Vail Valley Taxi and for Hy-Mountain as a driver and a dispatcher.

39. Mr. Fleming intends to be an owner-operator in Ride Taxi if the Application is granted. Mr. Fleming has signed a letter of intent to purchase two vehicles to be utilized in Ride Taxi's fleet of vehicles. *Hearing Exhibit 69.*

40. Ride Taxi has letters of intent from Nathan and Nancy Pillsbury, Noah Pillsbury, and Kent Tamsen for the purchase of four additional vehicles. *Hearing Exhibits 70, 72, and 73.*

41. Ride Taxi currently has a bank account with a balance in excess of \$25,000.

42. The 2010 census showed the population of Eagle County to be 52,197 individuals.

43. Hy-Mountain is a Colorado corporation currently in good standing.

Hearing Exhibit 81.

44. Hy-Mountain owns Commission Authority No. 14114 which allows for taxi service within Eagle County, Pitkin County, and Summit County. *Hearing Exhibit 80.*

45. Todd Gardner is the owner and president of Hy-Mountain.

46. Mr. Gardner purchased Vail Valley Taxi and formed Hy-Mountain in 2001.

47. Hy-Mountain has three offices. The offices are located in Aspen, Edwards, and Summit County. Hy-Mountain's vehicles are kept at the three office locations. Hy-Mountain owns between 75 and 80 vehicles. *Hearing Exhibit 82.*

48. Hy-Mountain guarantees that a driver will earn \$100 each shift.

49. Mr. Brian Kolzow is the manager for Hy-Mountain.

50. Hy-Mountain uses a system called a Mobile Data Terminal (MDT) to dispatch drivers. If the MDT system was inoperable, drivers would be dispatched via two-way radios and the trip would be entered into the MDT system later and would show up as a ride with no wait time.

51. Hy-Mountain does not own any handicapped accessible vehicles.

III. APPLICABLE LAW

A. Burden of Proof

52. Applicant, as the proponent of an order, bears the burden of proof by a preponderance of the evidence. § 13-25-127(1), C.R.S.; § 24-4-205(7), C.R.S.; Rule 1500 of the

Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. The evidence must be substantial. Substantial evidence is 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 a trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (internal citation omitted).

53. 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, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party

B. Legal Standards Governing Application

54. To qualify for the requested authority, Applicant must show: (1) that it is fit to conduct the proposed service; (2) that the public needs the proposed service; and (3) the current service in the area is substantially inadequate.

55. Applicant carries the burden to establish its "fitness," both financially and operationally, to conduct the service it proposes. Although the Commission has never promulgated rules or regulations quantifying a financial fitness standard, it is generally agreed that the applicant must make some showing, however minimal, that it either has or has access to financial resources that will enable it to implement the proposed service. Fitness must be evaluated on a case-by-case basis upon the unique circumstances of each applicant and the proposed service. *See e.g.*, Decision No. C09-0207, issued February 27, 2009, Consolidated Proceeding Nos. 08A-241CP, 08A-283CP, 08A-284CP-Extension, and 08A-300CP issued February 27, 2009.

56. In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, facilities, and the managerial experience to conduct for-hire passenger carrier operations. Whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of fitness. *See, Thacker Brothers Transportation v Public Utilities Commission*, 543 P.2d 719, 721 (Colo. 1975). The Commission has provided the following guidelines for the evidentiary factors that are relevant to the fitness inquiry:

- 1) 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;
- 2) credit worthiness and access to capital;
- 3) credit history and assessment of financial health over the near future;
- 4) capital structure and current cash balances;
- 5) managerial competence and experience;
- 6) fixed physical facilities such as office space and maintenance garages, as appropriate;
- 7) appropriate licenses and equipment necessary to operate a radio dispatch system; and
- 8) vehicles of appropriate type.

Decision No. C08-0933, at ¶ 7, issued September 4, 2008 in Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP (Union Taxi Cooperative).

57. The number of witnesses testifying for a given proposition does not force the Commission to reach a particular result on that issue. *RAM Broadcasting v. Pub. Utils. Comm'n*, 702 P.2d 746, 750 (Colo. 1985)

58. The doctrine of regulated monopoly controls in determining whether to grant a certificate to operate the taxicab service requested here. § 40-10.1-203(2), C.R.S. (2012);

Yellow Cab Cooperative Association v. Pub. Utils. Comm'n, 869 P.2d 545, 548 (Colo. 1994); *Colorado Transportation Co. v. Pub. Utils. Comm'n*, 405 P.2d 682, 685 (Colo. 1965). Regulated monopoly is based on the principle that fewer carriers who can make a reasonable return will give the public safe, efficient, and more economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public. *See Archibald v. Commission*, 171 P.2d 421, 423 (Colo. 1946); *see e.g., Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061, 1066-67 (Colo. 1981). This principle is the guiding force behind the protections given to existing carriers; an incumbent carrier is only entitled to protection from new competition if it provides adequate service to the public. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 380 P.2d 228, 231 (Colo. 1963).

59. Under the doctrine of regulated monopoly, an applicant for common carrier authority carries a heavy burden to prove both that:

The present or future public convenience and necessity requires or will require its service. § 40-10-104, C.R.S.; *see*, § 40-10-105(1), C.R.S., and *Denver and Rio Grande Western Railroad v. Pub. Utils. Comm'n*, 351 P.2d 278, 280 (Colo. 1960); and

The service of existing certified carriers within the proposed service area is substantially inadequate. *RAM Broadcasting v. Pub. Utils Comm'n*, 702 P.2d 746, 750 (Colo. 1985); *Rocky Mountain Airways, Inc. v. Pub. Utils. Comm'n*, 509 P.2d 804, 805 (Colo. 1973).

60. These two elements are closely related. Indeed, the adequacy of the incumbent's service is integral to the question of whether the public needs the proposed additional service. *Ephraim*, at 231. If the existing service is adequate, the Commission cannot find that the public convenience and necessity requires the addition of a carrier. *Yellow Cab Cooperative Association v. Pub. Utils. Comm'n*, 869 P.2d 545, 548-49 (Colo. 1994).

61. Whether the incumbent carrier's service is substantially inadequate is a question of fact that the Commission must determine. *RAM Broadcasting*, at 751; *Durango Transportation, Inc. v. Pub. Utils. Comm'n.*, 122 P.3d 244, 247 (Colo. 2005). Thus, the question necessarily must be answered on a case-by-case basis upon the unique facts of the given case. Substantially inadequate service is shown by evidence of "a general pattern of inadequate service" on the part of the incumbent carrier. *Durango Transportation*, at 247-48; *Ephraim*, at 232. Substantial inadequacy can also be demonstrated with evidence that the incumbent carrier is not ready, willing, and able at all times to provide the requested service. *Durango Transportation*, at 247-48. However, the incumbent carrier is not held to a standard of perfection. *Ephraim* at 232. Indeed, legitimate complaints are expected to arise against any common carrier that provides service to a large number of customers. *RAM Broadcasting*, at 750.

62. Substantial inadequacy requires more than a showing that there is enough business to warrant more than one certified carrier. *Ephraim*, at 231. Likewise, substantial inadequacy is not shown through "expressions of mere opinion, preference, and desire and willingness to use the services of [the applicant] over the services of" an incumbent carrier. *Pub. Utils. Comm'n. v. Weicker Transfer & Storage Co.*, 451 P.2d 448, 449 (Colo. 1969).

63. If the applicant's evidence tends to prove the incumbent carrier's substantial inadequacy, the incumbent carrier must rebut this evidence. *Ephraim*, at 231-32.

IV. DISCUSSION AND CONCLUSIONS

A. Financial Fitness

64. Through the testimony of Mr. Pillsbury and Hearing Exhibit 74 it was shown that Ride Taxi currently has a bank account in excess of \$25,000. In addition, Ride Taxi submitted

five letters of intent from individuals who intend on purchasing vehicles and becoming owner operators in Ride Taxi's operations.

65. Testimony was received from Mr. Anders concerning his ability to fulfill the letter of intent. When asked if he was financially capable of meeting a commitment to purchase two vehicles he stated, "I am definitely." *Hearing Transcript p. 112, l. 14-18.*

66. Mr. Anders did not weaken this position upon cross-examination by Hy-Mountain and questioning by the undersigned ALJ.

67. Mr. Fleming also testified to his ability to purchase two vehicles for the Ride Taxi fleet. *Hearing Transcript p. 131, l. 5-7.*

68. Mr. Fleming did not weaken this position upon cross-examination by Hy-Mountain and questioning by the undersigned ALJ.

69. Hy-Mountain argues that the Applicant fails to show financial fitness due to a failure to show that the proposed owner-operators have sufficient funds to purchase insurance, maintain their vehicles, or pay for fuel. In addition, Hy-Mountain argues that the Applicant failed to show that he has any lines of credit or other revenue to support his business².

70. The evidence shows over \$25,000 in a bank account for the proposed service and commitments from five other sources to purchase vehicles. *Hearing Exhibits 69-74.*

71. The undersigned ALJ finds the testimony of Mr. Anders and Mr. Fleming credible in relation to their ability to fulfill their obligations under the letter of intent, which includes costs for maintenance and insurance obligations. Mr. Fleming and Mr. Anders directly stated

² Hy-Mountain makes many arguments but does not cite them as specifically as arguments against financial, managerial or operational fitness. These are the arguments that appear to be directly against financial fitness.

they would purchase and maintain two vehicles per the statutes of the PUC. *Hearing Transcript p. 112, l.8-18 and Hearing Transcript p. 130, l.22-25.*

72. The evidence of financial fitness does not need to be overwhelming. The undersigned ALJ finds that the Applicant has met his burden to show that he has the financial fitness.

B. Managerial/Operational Fitness

73. The Applicant provided evidence to show that he has extensive experience in a transportation business. Mr. Pillsbury has 12 years of experience in the operation of a taxi business. During that time he has been responsible for almost every aspect of the business. *Hearing Exhibit 1.*

74. In addition, Mr. Pillsbury's transportation experience is with running a taxi service in the same area the Application intends to serve.

75. Testimony from numerous co-workers spoke to his qualities to run a taxi business.

76. Mr. Paula stated, "[H]e was a good manager and a good leader. He knew how to do the job correct." *Hearing Transcript p. 69, l.21-23.*

77. Mr. Fleming described Mr. Pillsbury's management of Hy-Mountain as "excellent" *Hearing Transcript p. 129, l.4.*

78. Mr. Anders described Mr. Pillsbury's management of Hy-Mountain as "very good." *Hearing Transcript p. 111, l.5.*

79. Especially credible and influential is the testimony of Ms. Kurtz. Unlike other witnesses who worked under the direction of Mr. Pillsbury, Ms. Kurtz worked together with Mr. Pillsbury in the management of Hy-Mountain. She described Mr. Pillsbury's management of Hy-Mountain the following way:

I think that you did a fantastic job, within the policies and guidelines that were set up. We had our differences. I don't think either of us would deny that, but we got the job done.

Hearing Transcript p. 90, l.2-5.

80. Finally, both Brian Kolzow and Todd Gardner speak in a positive manner to Mr. Pillsbury's ability for "any position he may be applying." *Exhibit 3 and Hearing Transcript pp. 285-86, l.24-1.*

81. Hy-Mountain does not appear to contest the managerial fitness of the Applicant.

82. The Applicant has met his burden to show managerial fitness.

83. The Applicant has declined to share a full business plan out of fears that some ideas will be stolen by potential competitors. Also included within the documents withheld by the Applicant are additional letters of intent due to a fear of retribution by the signer's current employer.

84. There was testimony presented that the owners of Hy-Mountain may have retaliated against drivers who had signed the petition to support the Applicant.³

85. While full details of a business plan were not disclosed, certain facts about how Ride Taxi will operate, and a basic outline were given.

³ See *Hearing Transcript p. 109, l. 14-16 and p. 284, l.1-17.*

86. It is instructive to look at the factors the Commission has determined is helpful in determining operational fitness.⁴

87. It is difficult to determine the minimum efficient scale for a taxi business at inception. A fleet of 15 vehicles would appear to address the scale of the business. It also appears that the business is set up to adjust as need is shown. The Applicant has shown a minimum efficient scale for the proposed taxi service.

88. The Applicant did not provide evidence regarding fixed physical facilities, office space, or a radio dispatch system.

89. The Applicant will employ 15 vehicles, all will be Dodge Caravans or similar vehicles. These vehicles would be of an appropriate type.

90. The insurance costs for the vehicles will be split 60/40 between Mr. Pillsbury and the owner-operators.

91. The Applicant has plans to procure appropriate vehicles for the proposed services.

92. Hy-Mountain presents a list of numerous other parts of what is best described as a business plan that were not presented. *Intervenor Statement of Position p. 21.*

93. While it would be helpful for the Commission to determine operational fitness with the inclusion of an entire business plan, it is not necessary.

94. The Applicant is intimately familiar with the operations of Hy-Mountain. Many aspects of the business plan if discovered by Hy-Mountain could hinder the potential success of the Applicant if granted a CPCN.

⁴ Factors for financial and managerial fitness need not be examined.

95. There is credible evidence of retaliation against employees of Hy-Mountain that have supported the Applicant. Based upon the acts of retaliation or perceived retaliation and the Applicant's intimate knowledge of Hy-Mountain, it is understandable that the Applicant would be hesitant to detail an entire business plan.

96. While additional details could have been presented, when the factors the Commission should consider for fitness are examined by a preponderance of evidence, the Applicant is financially fit, managerially fit, and operationally fit.

C. Adequacy of Present Service/Pubic Need

97. The Applicant presented substantial evidence of the inadequacy of the present service in the proposed service area and the public need for an additional service. The evidence consisted of testimony from business witnesses, testimony from former employees of Hy-Mountain, and petitions and support letters from the general public. The weight, credibility, and persuasiveness of each of these sources/witnesses shall be examined.

1. Business Witness Testimony and Support Letters

98. The first business owner testimony was from Mr. Forbes who owns the Coyote Café in Beaver Creek. His testimony was at worst neutral to Hy-Mountain's adequacy of service. Mr. Forbes has not used a taxi service for "a while" *Hearing Transcript p. 23, l. 23*. But he did state that "it seems like taxis can take a long time to get there and sometimes ... like they are there right away." *Hearing Transcript p. 23 24, l. 25-1*. Much of Mr. Forbes's testimony was concerned with the cost of taxi service and the belief in competition.

99. The testimony of Mr. Forbes is credible yet fails to provide much support to the inadequacy of the service of Hy-Mountain. While Mr. Forbes may believe that the cost of taxi

service is too high, that is not persuasive in finding that the present service is inadequate or that the proposed service is necessary.

100. The second business witness to testify was Mr. Allmaras who works as a fishing guide and as a doorman at the Westin Hotel. Mr. Allmaras testified to encountering guests at the Westin who were frustrated with taxi service on a daily basis. *Hearing Transcript p. 29, l. 7-22*. Mr. Allmaras also testified to inability to reach Hy-Mountain via the telephone which leads to Mr. Allmaras driving hotel guests. *Hearing Transcript p. 30, l.14-20*. The inability to contact Hy-Mountain has been manifested by busy signals or the phone never being answered. *Hearing Transcript p. 37-38, l.20-3*.

101. Mr. Allmaras also testified to the necessity and the benefit of an additional carrier. Mr. Allmaras stated that in his personal experience an additional carrier is required due to Hy-Mountain's inability to keep up with the demand. *Hearing Transcript p. 31, l.4-24*.

102. Mr. Allmaras also wrote a personally signed letter to the Commission in support of the Applicant. The letter reiterates much of the testimony presented at the hearing, but also adds the fact that due to inadequate service, Mr. Allmaras has been forced to call more expensive limousine carriers to transport hotel guests. *Hearing Exhibit 9*.

103. Hy-Mountain points out that Mr. Allmaras is an acquaintance of the Applicant and characterizes his testimony as embellishing the issues and that these factors undermine his credibility. *Hy-Mountain Statement of Position p. 4*.

104. The undersigned ALJ disagrees with Hy-Mountain and finds the testimony of Mr. Allmaras is credible and persuasive. It is not surprising that witnesses may be familiar with the Respondent. The proposed service area is small and the Respondent has been involved in the

transportation business in the area for many years. Being an acquaintance of the Applicant does not in itself make testimony incredible.

105. In addition, upon questioning by the ALJ to clarify Mr. Allmaras's testimony, rather than embellish the difficulties in reaching Hy-Mountain via the telephone, Mr. Allmaras gave exact hours when he experienced difficulties. *Hearing Transcript p. 39, l.2-1.2*. Rather than "embellish" he honestly clarified the hours he had his difficulties with Hy-Mountain lending credibility to his testimony.

106. The testimony of Mr. Allmaras provides persuasive support to the inadequacy of the service of Hy-Mountain and the public need for an additional carrier in the area. Mr. Allmaras has an occupation in which he directly contacts Hy-Mountain in order to provide transportation for hotel guests. The testimony is credible that every day he seeks the services of Hy-Mountain. On cross-examination this was not challenged.⁵

107. The third business owner to testify was Ms. DeJournio who is a manager at the Dusty Boot restaurant in Beaver Creek. Her testimony during the hearing mainly concerned her personal issues as opposed to the Dusty Boot's customers. It is unclear as to when the last time Ms. DeJournio utilized a taxi service in the proposed area. Her testimony was that she has not gone out as much due to the poor taxi service over the last five or seven years. *Hearing Transcript p. 46, l. 19-25*. It was not that she has not utilized a taxi service in the last five to seven years.

108. Ms. DeJournio also wrote a letter to the Commission in support of the Application. In the letter Ms. DeJournio states that she has witnessed customers of the Dusty Boot calling for

⁵ The contrary evidence presented during Hy-Mountain's case is discussed later in this Decision. This statement only refers to the cross-examination of Mr. Allmaras.

cabs and it “will take a long time to even get through to the taxi dispatcher to request a cab... and then, when a cab is finally dispatched, it takes an even longer time to get to our establishment.” In the letter Ms. Dejournio states that “the current cab company is not always adequate in serving our customers calls.” *Hearing Exhibit 8*.

109. The testimony of Ms. Dejournio is credible but limited in its persuasive value. Hearing Exhibit 8 presents issues with the adequacy of service, but it is unclear if the inadequacy is substantial or merely sporadic. The testimony of Ms. Dejournio, through Hearing Exhibit 8, is persuasive that at the Dusty Boot the current taxi service is inadequate at least part of the time.

110. The fourth business witness was Ms. Dickens who is a manager at Henry’s Chinese Café and a Server at Café Miliano, both located in the proposed service area. Ms. Dickens testified to long wait times when attempting to call a taxi for herself and patrons at the establishments where she works. Ms. Dickens also testified to the phone just ringing or being put on hold for long periods of time. *Hearing Transcript p. 51, l. 1-10*.

111. Ms. Dickens also wrote a letter to the Commission in support of the Application. In the letter Ms. Dickens directly addresses the service of the current taxi provider and supports the need for an additional service. *Hearing Exhibit 5*.

112. Upon questioning by the ALJ, Ms. Dickens stated that the long ring time and wait times occurred eight out of ten times and on any day of the week. *Hearing Transcript p. 56, l. 1-15*.

113. The testimony of Ms. Dickens was credible and persuasive. The testimony concerning customers and Hearing Exhibit 5 support a finding that the current provider is substantially inadequate. This testimony was not presented as an occasional or sporadic problem, but one that is more the norm than the exception.

114. The fifth business witness was Mr. Paula⁶ the General Manager at the Black Diamond Bistro at the Charter⁷ of Beaver Creek. Mr. Paula testified to difficulty in contacting Hy-Mountain in the past few weeks and of customers having waiting long periods for a taxi. Mr. Paula described long waits as pretty common. *Hearing Transcript p. 59, l. 1-17*

115. Hy Mountain attacks Mr. Paula's testimony as being biased due to his being a friend of the Applicant.

116. Being an acquaintance of the Applicant does not in itself make the testimony incredible. The testimony of Mr. Paula in relationship to his current occupation as the General Manager at Black Diamond Bistro, while limited, is credible and persuasive concerning the inadequacy of the current provider's service and the public need for the proposed service.

117. The Applicant presented Hearing Exhibits 4, 6, and 7 which were support letters from individuals in the business community not called to testify. All of the letters were personally signed by the writer of the letter and contain an attestation to the accuracy of the statements contained within the letter.

118. The first letter was written by Kimberly Herner, Guest Services Manager at the Westin Hotel. Ms. Herner has personally seen difficulties in contacting the current carrier by telephone and long wait times after contact. These difficulties have frustrated guests at the hotel. She has found the current provider to be inadequate to meeting the Westin's guests' needs. She also believes there is public need for an additional taxi service. *Hearing Exhibit 4.*

⁶ Mr. Paula is also a former employee of Hy-Mountain. His testimony shall also be viewed from that perspective.

⁷ The Charter is a hotel.

119. The second letter is from Mr. Jeffery Cole. It is not apparent from the letter where Mr. Cole is employed, other than in the health care field. The letter attests to the need of a taxi service with handicapped accessible vehicles. It does not speak to any deficiencies with the current provider other than a lack of handicapped accessible vehicles. *Hearing Exhibit 6*.

120. The third letter was written by Kate Allen. Ms. Allen is the concierge at the Four Seasons Hotel in Vail. Her letter speaks of her personal experience in being unable to contact the current carrier by telephone and long wait times after contact. She has found the current provider to be inadequate to meeting the Four Seasons' guests' needs. She also believes there is public need for an additional taxi service.

121. These letters, while not of the same weight as the testimony of the business witnesses, are consistent with the business witness testimony. The letter of Ms. Herner is especially persuasive since it directly supports the testimony of Mr. Allmaras.

2. Former Hy-Mountain Employees Testimony

122. Mr. Paula in addition to his current position at the Black Diamond Bistro is a former employee of Hy-Mountain. The majority of his testimony concerned his time with Hy-Mountain.

123. Mr. Paula testified that as a driver there often would be situations where people were not picked up and that this happened in the winter and summer. *Hearing Transcript pp. 60, 61, l.25-9*. Mr. Paula also testified to the average wait time being 45 minutes to an hour. *Id at l. 19-22*. Mr. Paula also testified to a policy of Hy-Mountain to not answer phone calls during busy times. *Hearing Transcript pp. 62, 63, l.25-2*. During busy times he testified that the wait times ranged from 1 hour and 30 minutes to 2 hours and 30 minutes. *Hearing Transcript p. 62, l. 2-5*.

124. Mr. Paula described the MDT used in Hy-Mountain's taxis for dispatch and to later show wait times. Mr. Paula testified that the MDT would go down "all the time" during busy periods. *Hearing Transcript p. 65, l.3-10.* If the MDT went down all trips would be entered and show no wait time. *Id at l. 17-25.*

125. Mr. Paula also testified to a Hy-Mountain policy of sending drivers to the Eagle airport which he believed left the rest of Hy-Mountain's service area insufficiently served. *Hearing Transcript p. 66, l. 16-20.* Mr. Paula also testified to the Towns of Eagle and Gypsum not being serviced by Hy-Mountain. *Hearing Transcript p. 67, l. 19-20*

126. Finally, Mr. Paula testified to the policies of Hy-Mountain being dictated by Brian Kolzow. *Hearing Transcript p. 68, l. 17-25.*

127. Hy-Mountain again attempts to discredit the testimony of Mr. Paula by pointing out that he is a friend of the Applicant and has exaggerated the issues. *Intervenor Statement of Position p. 5.*

128. The testimony of Mr. Paula is credible and persuasive. As a driver he has intimate knowledge as to the policies of Hy-Mountain, the time it took to pick up customers, and the ability of the MDT system to work. While Hy-Mountain argues that Mr. Paula exaggerates the amount of time the MDT system went down, Hy-Mountain fails to show how or why this is an exaggeration.

129. The Second former Hy-Mountain employee to testify was Ms. Kurtz who worked for Hy-Mountain from December of 2009 until April of 2012. Ms. Kurtz was involved in a variety of duties at Hy-Mountain including dispatch, call taking, driver, hiring employees, paperwork, and training.

130. Ms. Kurtz testified that long wait times were “very regular during busy times.” *Hearing Transcript p. 78, l. 2-7.* She also testified to a policy of not answering phones and failures of the MDT during busy periods. *Hearing Transcript pp. 81-82, l.25-25.* During the 27 months that she worked for Hy-Mountain she estimated the MDT system was down 20 to 24 times from hours to days. *Hearing Transcript pp. 96-97, l.12-9.*

131. Ms. Kurtz also identified Brian Kolzow as the person who set policies for Hy-Mountain’s operations in the Vail Valley. *Hearing Transcript p. 89, l.14-16.* Among the policies set by Mr. Kolzow were ones to discourage potential customers from the Towns of Eagle and Gypsum to cancel or not take trips. *Hearing Transcript pp. 86-87, l.13-5.* She also sees the need for an additional taxi service in the Vail Valley. *Hearing Transcript p. 90, l.10-13.*

132. The testimony of Ms. Kurtz was credible and pervasive. Ms. Kurtz has intimate knowledge of how Hy-Mountain has been run and the quality of the service. She also has a family background in the transportation business. Her testimony carries great weight to the inadequacy of the current provider and to the public need for an additional carrier.

133. The third former employee of Hy-Mountain to testify was Mr. Anders. Mr. Anders was a driver for Hy-Mountain from June 2013 until October 2014. Mr. Anders described long wait times as occurring “daily.” He testified that during non-busy times the waits would range from 20 minutes to 2 hours and in busy times the wait would average between 1 hour and 1 hour and a half. *Hearing Transcript p. 104, l.2-12.*

134. Mr. Anders also testified to a policy of not answering telephones at busy times and numerous issues with the MDT system. *Hearing Transcript p. 105, l.8-24.* Mr. Anders also named Mr. Kolzow as the individual who set policy for Hy-Mountain *Hearing Transcript*

pp. 110-111, l.25-2. Mr. Anders also testified that during his time at Hy-Mountain that the Towns of Eagle and Gypsum were not provided service. *Hearing Transcript p. 109, l.5-8.*

135. The testimony of Mr. Anders is credible and persuasive. His testimony is in harmony with other former employees of Hy-Mountain. The testimony is persuasive to the inadequacy of the service of Hy-Mountain and to the public need for an additional carrier.

136. The final former Hy-Mountain employee to Testify was Mr. Fleming. Mr. Fleming has worked as a driver for Vail Valley Taxi and then for Hy-Mountain from 2008 until signing a petition for the Applicant.

137. His testimony was consistent with the other former employees of Hy-Mountain. He testified to long wait times 30 percent or 40 percent of the time (*Hearing Transcript p. 120, l.7-12*), a policy of not answering calls (*Hearing Transcript p. 122, l.7-11*), the MDT system being down 50 percent of the time (*Hearing Transcript p. 124, l.3-10*), not covering the Towns of Eagle and Gypsum (*Hearing Transcript p. 126, l.9-12*), and the policies of Hy-Mountain being set by Brain Kolzow (*Hearing Transcript p. 128, l11-13*).

138. The testimony of Mr. Fleming is credible and persuasive. His testimony is in harmony with other former employees of Hy-Mountain. The testimony is persuasive to inadequacy of the service of Hy-Mountain and to the public need for an additional carrier.

3. General Public Support Letters/Petitions

139. The Applicant presented 53 support letters from the community.⁸ *Hearing Exhibits 10 through 62.*

⁸ Ms. Dickens also provided a specific and a general letter of support.

140. Each of these form letters contained the following four reasons for an additional taxi service in the Vail Valley:

- inadequate service of the current carrier;
- monopolization of the market;
- increasing the service area; and
- the need for handicapped-accessible vehicles

141. Each of the letters is addressed to the Commission, is dated, the name of the signer is printed, contains an address for each signer, and is signed. Each letter also provided an additional sheet for any additional comments the signer wished to share with the Commission.

142. Mr. Pillsbury or a friend contacted each signer personally, asked if they had any experience with the current carrier then asked if they would read the letter and if they agreed, would they would sign. He also provided a sheet for any additional comments.

143. All 53 letters are from residents located in the service area and 40 (75 percent) of the 53 contained an additional sheet with comments.

144. Of the 40 letters which contained additional comments, 24 (60 percent) stated that the wait times are too long or related a personal experience of waiting too long for a taxi.

145. Of the 40 letters which contained comments, 7⁹ (18 percent) complained of being unable to reach the current provider on the telephone.

146. Of the 40 letters which contained comments, 2 (5 percent) complained of a lack of service in Eagle or Gypsum.

147. The remaining letters 11 (28 percent) complained about prices or monopolies.

⁹ Four of the additional comments complained about long wait times and an inability to reach the current provider on the telephone.

148. The Applicant also submitted a change.org petition which was signed by 318 individuals. These individuals are from Colorado and other states.

149. The comments contained in the petition all support an additional taxi service and most complain of either poor service or high prices of the current provider.

D. Evidence of Hy-Mountain

150. Hy-Mountain called one witness, Todd Gardner the owner of Hy-Mountain, to counter the arguments of the Applicant.

151. Hy-Mountain also offered and had admitted Hearing Exhibits 80-86.

152. Mr. Gardner gave at times, incoherent testimony,¹⁰ and defended the business practices of Hy-Mountain.

153. Mr. Gardner did not contest that a wait time for the Towns of Eagle and Gypsum could be over one hour or that it is not being serviced. *Hearing Transcript pp. 274-275, l. 6-4.*

154. Mr. Gardner denied that Hy-Mountain at times has a policy to not answer the telephone, but in the same answer contradicted himself. When asked by the ALJ if employees were told at certain times not to answer the phone Mr. Gardner stated:

That did not sound true one bit. We have, on occasion, which is Halloween, New Year's Eve, slowed down answering the calls. You can take them much faster than you can service them. So, you may take a break, five minutes, of answering calls, so you can get some of these trips. You keep the train moving.

Hearing Transcript p. 282, l. 5-16.

155. Although Mr. Gardner denied this policy, and was presented as someone who runs Hy-Mountain, based upon his testimony and the testimony of the former employees, it is unclear just how much time Mr. Gardner spends working for Hy-Mountain. When asked if he agreed

¹⁰ The answer to the question "What are some of the issues that Hy-Mountain Taxi faces in terms of hiring actual drivers?" takes up almost five pages of transcript. *Hearing Transcript p. 224-229.*

with a letter complimentary toward Mr. Pillsbury, written by Brian Kozlow, Mr. Gardner had the following response:

Again, I don't know Nash that well, but if Brian says that, I take Brian's word that that's the case.

Hearing Transcript p. 286-286, l. 17-1.

This is an odd answer if Mr., Gardner spent a significant amount of time at Hy-Mountain's offices. Mr. Pillsbury worked for Hy-Mountain for six years and his duties included managing the drivers and office staff (*see Hearing Exhibit 3*). For Mr. Gardner to not be very familiar with an employee who not only worked for him for many years, but was put in an important role, brings into question his actual time spent in the day-to day operations of Hy-Mountain.

156. Throughout the Applicant's presentation Mr. Kozlow, not Mr. Gardner,¹¹ was presented as the person who was behind the policies that resulted in Hy Mountain's substantially inadequate service, yet Mr. Kozlow, was not called as a witness and therefore failed to deny these allegations. While Mr. Gardner generally denied these allegations, the denial carries very little weight.

157. Hy-Mountain addressed the allegations of long wait times through a series of worksheets that were almost incomprehensible and backed up with no raw data. The charts were compiled with data from the MDT system.

158. By far the most interesting of these charts is the one concerning the Dusty Boot. According to the chart, from March 2013 to December 2014 there were 209 trips attributed to the

¹¹ In fact the only mentions of Mr. Gardner were all complimentary.

Dusty Boot.¹² The total amount of minutes of wait time for a Hy-Mountain taxi at the Dusty Boot for these trips was exactly 209 minutes. *Hearing Exhibit 83*.

159. From page 4 of Exhibit 83 it is obvious that 17 trips had a wait time in excess of seven minutes, yet the total time is the same as the number of trips. Mr. Gardner did explain that the total of 209 would include flag trips.¹³ That leaves the only conclusion that either that the remaining 192 trips were either flag trips or that the MDT system is not operational as often as the witnesses for the Applicant testified,¹⁴

160. The wait times submitted in Hearing Exhibit 83 for Hy-Mountain are incredible on their face. These charts are either worthless in determining wait times due to the large number of flag trips or support the testimony of the Applicant's witnesses that the MDT system is often not operational.

161. Hy-Mountain also presented Hearing Exhibit 84 which purports to show the average wait time by month yet is presented with no supporting data. Without any supporting data there is no way to verify a 3:46 average wait time in April of 2014, which is exactly six minutes less than the next shortest wait time. A chart with no supporting data that has large fluctuations¹⁵ carries little weight.

162. Finally, Hy-Mountain submitted their own set of letters in support of their service. None of the letter writers were called as a witness and subject to cross-examination, unlike the Applicant.

¹² It was not directly stated but it is assumed these trips originated at the Dusty Boot and did not terminate there.

¹³ Flag trips are trips when a cab is hailed from the street.

¹⁴ All witnesses stated that trips during a time when the MDT system is not operational are later added to the MDT system as flag trips with no wait time. This testimony was not disputed.

¹⁵ The average wait time in April purports to be 3:46 and the average wait time in May is 13:16.

163. Only six of the letters are from businesses that use a taxi service often.¹⁶

164. Of the 14 letters submitted by Hy-Mountain, eight of the letters are not signed by their author. None of the letters contain an attestation to the accuracy of the statements contained within the letter. *Hearing Exhibit 86*.

165. Generally, each of the letters states that Hy-Mountain has provided good to outstanding service for each of the letter writer's particular needs.

166. One letter in particular stands out among the 14. On page 4 of Hearing Exhibit 86 is an e-mail from Hedi Johnson from the Westin Hotel. The e-mail designates Ms. Johnson as Lead Marketing/Concierge.

167. It is important to note that the Applicant had two witnesses from the Westin, one who testified at the hearing, was subject to cross-examination and wrote a support letter,¹⁷ and another Westin employee that wrote a letter.¹⁸ Hy-Mountain did not present Ms. Johnson as a witness subject to cross-examination.

168. It is also very instructive to read Ms. Johnson's letter in support of Hy-Mountain. This is the entire text of her e-mail message:

The service that high Mountain Taxi provides is fine. We use the company all the time as there isn't another metered taxi in town. Guests seek out Uber in the Vail Valley due to pricing, but that is to be expected.

Some busy weekends it is difficult to reach your call center but we have no major issues and your drivers are great.

Hearing Exhibit 86 p.4.

¹⁶ Hotels and restaurants.

¹⁷ Mr. Allmaras.

¹⁸ Ms. Herner.

169. The undersigned ALJ reads Ms. Johnson's e-mail to say that the reason the Westin uses Hy-Mountain is only because they have no alternative and on busy weekends it is difficult to reach the call center. This letter is at best tepid support for Hy-Mountain and at worst falls in line with the testimony of the Applicant's witnesses from the Westin Hotel. When considering the testimony from employees of the Westin, a source used by both parties, the weight of the evidence strongly favors the Applicant.

170. The Applicant presented substantial evidence from three different perspectives; business owners, former employees, and the public at large. Evidence was consistent from all three perspectives that there are long wait times, phones that are not answered and no service in Eagle and Gypsum. From all three perspectives the evidence was substantial that the service of the existing certified carrier within the proposed service area is substantially inadequate and present or future public convenience and necessity requires or will require the Applicant's service.

171. Hy-Mountain presented only the perspective of its owner and 14 letters, the majority unsigned, to rebut this evidence. Hy-Mountain did not present testimony of current employees or from business owners, other than in the form of a letter. Hy-Mountain failed to rebut the substantial evidence of the Applicant.

172. The evidence presented by the Applicant shows a general pattern of inadequate service and that at times Hy-Mountain has put in place a policy of inadequate service. These patterns and policies show that Hy-Mountain is not ready, willing, and able at all times to provide the requested service.

173. Based upon the above, the ALJ finds that Applicant has met its burden to show by a preponderance of the evidence that service of existing certified carriers within the proposed

service area is substantially inadequate and present or future public convenience and necessity requires or will require the Applicant's service.

V. ORDER

A. The Commission Orders That:

1. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by (Applicant Nash Pillsbury, doing business as Ride Taxi) is granted.

2. Applicant is granted a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire for the transportation of passengers

In call-and-demand taxi service

originating within a 30 mile radius from the intersection of Hurd Ln. and Avon Rd., Avon, CO; service terminating at all points in Colorado.

3. Applicant shall operate in accordance with all applicable Colorado law and Commission rules.

4. Applicant shall not commence operation until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website

at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs)]; and

(d) paying the applicable issuance fee (\$5).

5. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of a CPCN shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

6. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with ordering paragraph 4.

7. Proceeding No. 14A-1008CP is closed.

8. 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.

9. 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 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 basic findings 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.

10. If exceptions to this 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director