

Decision No. R16-0213

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING APPLICATION IN PART
AND DENYING APPLICATION IN PART**

Mailed Date: March 11, 2016

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I. STATEMENT

1. On August 5, 2015, Green Taxi Cooperative (Applicant or Green Taxi) filed its Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire.

2. The Commission gave notice of the application on August 10, 2015. As originally noticed, the application sought the following authority to:

operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand taxi service

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

3. The matter was deemed complete and referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held September 23, 2015.

4. Valera Lea Holtorf, doing business as Dashabout Shuttle Co. &/or Roadrunner Express and Dashabout Town Taxi, LLC (collectively Dashabout); Colorado Springs Shuttle, LLC (Colorado Springs Shuttle); Colorado Cab Company LLC, doing business as Denver Yellow Cab (Denver Yellow Cab), and Boulder Yellow Cab (Boulder Yellow Cab); Colorado Springs Transportation LLC, doing business as Yellow Cab Company of Colorado Springs (Colorado Springs Transportation); and MKBS, LLC, doing business as Metro Taxi (Metro Taxi) timely intervened of right.

5. On December 24, 2015, Denver Yellow Cab, Boulder Yellow Cab, and Colorado Springs Transportation, withdrew their intervention.

6. By Decision No. R15-1046-I issued September 24, 2015, Green Taxi's request to strike interventions of right by Colorado Springs Shuttle, Dashabout, and Metro Taxi was denied and a procedural schedule was established.

7. By Decision No. R15-1065-I issued September 29, 2015, the procedural schedule was modified and the hearing was rescheduled to December 7 through 10, 2015.

8. At the scheduled time and place, a hearing was convened regarding the application. All parties appeared and participated through counsel. Abdellah Chajari, Abdi A. Buni, and Samama Muhammad testified on behalf of Green Taxi. Kyle Brown testified on behalf of Metro Taxi. Hearing Exhibits 101 through 137, 401 through 407, 501, and 502 were identified, offered, and admitted into evidence.¹

9. Hearing Exhibits 107C, 108C, 109C, 111C, 114C, 124C, 125C, 128C, 129C, 131C through 135C and 137C were identified, offered, and admitted into evidence during the hearing in this matter and were designated with a "C" (*i.e.*, 107C) as confidential exhibits subject to protections, in accordance with the Commission's Rules of Practice and Procedure.

10. On January 20, 2016, Green Taxi filed its Motion to Set Aside, and Alternative Motion to Stay Oral Interim Decision Granting Motion to Dismiss Application as Relating to El Paso County, and Motion to Terminate with Prejudice Intervention of Intervenor Colorado Springs Shuttle, LLC, Valera Lea Holtorf d/b/a Dashabout Shuttle Co. &/or Roadrunner Express and Dashabout Town Taxi, LLC. Colorado Springs Shuttle and Dashabout filed their response on January 29, 2016.

¹ Hearing Exhibit 501 identifies pre-filed electronic hearing exhibits numbered less than 501. The identified electronic records were admitted into evidence by administrative notice without objection. Rule 1501(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, is waived as to hearing exhibits numbered less than 501.

11. By Decision No. R16-0194-I issued March 8, 2016, after the hearing conducted pursuant to Decision No. R16-0148-I issued February 25, 2016, the applicable statutory period in this matter was extended an additional 90 days.

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

13. 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. APPLICABLE LAW

14. Applicant has applied for a certificate of public convenience and necessity (CPCN) to operate as a common carrier by motor vehicle for hire, which would subject Applicant to Commission regulation. *See* § 40-10.1-101 *et. seq.*, C.R.S. It is necessary to obtain a certificate declaring that the present or future public convenience and necessity requires or will require common carrier operations. § 40-10.1-201, C.R.S.

15. Green Taxi bears the burden of proof with respect to the relief sought. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1500 of the Commission's Rules of Practice and Procedure.

16. The burden of proof applicable to Green Taxi's application is set forth in § 40-10.1-203, 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 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.

Section 40-10.1-203(2)(b)(II)(C), C.R.S.

17. Under the Commission's currently policy, "operational and financial fitness of an applicant must be evaluated on a case-by-case basis upon unique circumstances of each applicant and the proposed service." Decision No. C09-0207 at 118.²

18. In Proceeding No. 08A-241CP, the Commission referred a matter to an Administrative Law Judge for preparation of an initial Commission decision. With that referral, the Commission enumerated a non-exhaustive list of criteria indicative of the applicant's financial and operational fitness in that proceeding. *See* Decision No. C08-0933, mailed September 4, 2008, at ¶7. In subsequent proceedings, it has been found reasonable to employ these standards to determine fitness of other applicants. *See e.g.* Decision No. R10-0745, Proceeding No. 08A-407CP issued July 20, 2010.

19. Upon a showing of operational and financial fitness, the Commission "may attach to the exercise of the rights granted by the certificate such terms and conditions as, in the commission's judgment, the public convenience and necessity may require." § 40-10.1-203(1), C.R.S.

20. Any party advocating that conditions should be imposed on a CPCN would bear the burden of proof with respect to its advocated position. Decision No. R14-1405, issued November 25, 2014 in Proceeding No. 14A-0287E.

² Decision No. C09-0207 was issued on February 27, 2009 in consolidated Proceeding Nos. 08A-241CP, 08A-283CP, 08A-284CP-Extension, and 08A-300CP.

III. FINDINGS, DISCUSSION, AND CONCLUSIONS

21. Green Taxi's application requests 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 and between the eight-county area, including: Adams County, Boulder County, Broomfield County, Arapahoe County, Denver County, Douglas County, El Paso County, and Jefferson County. Green Taxi's application is restricted: (1) to the use of vehicles with a seating capacity of seven passengers or less, not including the driver; and (2) to the use of a maximum of eight hundred (800) vehicles.³ A copy of Green Taxi's application was admitted as Hearing Exhibit 101.

22. Green Taxi was incorporated as a Colorado cooperative on April 27, 2015. The cooperative has 800 members, each of whom is identified in Hearing Exhibit 135C. At the time of hearing, there were approximately 150 individuals on a waiting list wishing to purchase a membership in the cooperative.⁴

23. While preparations for operations have begun, Green Taxi does not yet have authority to operate.

24. Mr. Abdi A. Buni is the President and a member of Green Taxi. He currently also owns ABC Shuttle, which has 38 drivers on staff. Tr. 33, ll. 17-23; Tr.48, ll. 8-9; Hearing Exhibit 124C, at 12; and Hearing Exhibit 104, at 2.

³ Many findings of fact proposed in Green Taxi's Statement of Position at pages 4 through 15 are adopted in substance without individual citation.

⁴ Section 40-10.1-203(2)(b)(II)(C), C.R.S., provides that "[t]he commission shall not consider the applicant's corporate structure when determining whether to approve or disapprove the application for a certificate." Extensive evidence was admitted without objection regarding Green Taxi's organizational structure and selection. While some is included herein to reflect the record in the proceeding, consideration is limited to understanding the operations proposed by management.

25. From 2008 to 2010, Mr. Buni was the President and a member of Union Taxi. Union Taxi is a Colorado cooperative that was incorporated on June 9, 2008 with 262 members. Initially, Union Taxi was granted a CPCN to provide call-and-demand taxi service operating up to 220 taxicabs between all points within a 20-mile radius of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand. Tr. 38, ll. 10-14; Hearing Exhibit 104, at 2; and Decision No. C09-0207, issued February 27, 2009.

26. From 2003 to 2008, Mr. Buni was the President of ProTaxi, a non-profit organization affiliated with the Communications Workers of America, Local 7777. ProTaxi was formed to be a voice for taxi drivers in the Denver area. Mr. Buni led the organization's advocacy for legislative changes affecting the taxi industry. Tr. 37, ll. 13-22 and Hearing Exhibit 104, at 2.

27. Mr. Buni studied engineering at a university before immigrating to the United States. He began driving a taxicab in 1993 in San Diego, California. In 1996, he moved to the Denver area and has been driving a taxicab since 2000. Tr. 35, ll. 8-13 and Hearing Exhibit 104, at 2.

28. In prior positions, Mr. Buni was responsible for training drivers at Metro Taxi and Denver Yellow Cab, in addition to his work with Union Taxi. As such, he was familiar with the Commission rules and regulations governing taxi service. Tr. 36-37, ll. 9-11.

29. Before working in the transportation industry, Mr. Buni worked in the hospitality industry. He provided room service for approximately two years at the Hyatt Regency Denver Tech Center and then was manager of three room-service shifts. As manager, his responsibilities

included supervising staff, customer service, scheduling, accounting for employee overtime, and allocating tips among employees. Hearing Exhibit 104, at 2.

30. While working at Union Taxi, Mr. Buni was involved in planning business processes. Tr. 38, ll. 2-4. He testified in support of the cooperative's application for authority and was intimately involved in finding and hiring a general manager. Tr. 43, ll. 1-2. Mr. Buni applied his experience gained in the industry to consult with cooperatives in other states including Oregon, Texas, California, and Ohio. Tr. 41, ll. 9-21.

31. Mr. Abdellah Chajari is the Vice President and a member of Green Taxi. He previously owned Atlas Shuttle. Atlas Shuttle had 32 vehicles operating in south Denver before it was transferred to Englewood Shuttle. Tr. 20, ll. 17-24 and Tr. 21-22, ll. 13-3.

32. Mr. Chajari now owns Atlas Limo, which operates two limousines. Tr. 15, ll. 18-20; Tr. 20, ll. 17-24; Tr. 21-22, ll. 13-3; Hearing Exhibit 124C, at 12; and Hearing Exhibit 104, at 3. In addition to owning Atlas limousine service, Mr. Chajari drives in the Denver transportation industry. Tr. 21, ll. 10-12.

33. Mr. Chajari received a degree in Economic Sciences and Accounting in Morocco before moving to the United States. His course work included the study of economic markets, supply and demand distribution, and market changes. Mr. Chajari also received a diploma in accounting from a school in Morocco. Tr. 16-17, ll. 18-5 and Hearing Exhibit 104, at 3.

34. Mr. Chajari immigrated to the United States and settled in New Jersey for three years before moving to Cleveland, Ohio. From Cleveland, he moved to Denver in 2011 or 2012. Tr. 17, ll. 6-19.

35. Mr. Chajari has served as a volunteer in multiple civil associations and was a spokesman for the Club Horizon University Mohamadia. His work as a spokesman included

helping students solve problems and obtain a better education. Tr. 17-18, ll. 20-2 and Hearing Exhibit 104, at 3. Mr. Chajari's roles in civic associations entailed leadership responsibilities. Tr. 18, ll. 3-5.

36. Before working in the taxi industry, Mr. Chajari worked in corporate banking. As a condition of his position, Mr. Chajari was required to take and pass a series of exams. Tr. 18, ll. 8-22 and Hearing Exhibit 104, at 3. He became familiar with, and responsible for complying with, different regulatory rules and regulations. Tr. 18-19, ll. 23-3.

37. While in Cleveland, Mr. Chajari managed a small supermarket chain with five or six locations. His responsibilities included hiring and firing all employees as well as depositing and withdrawing large sums cash over \$100,000. Tr. 19, ll. 4-22.

38. Mr. Chajari also owned Whisteria, a family import and export business, during his time in Cleveland. Tr. 20, ll. 1-11. While working at Whisteria, Mr. Chajari was responsible for hiring and firing employees. Tr. 20, ll. 12-14.

39. Mr. Samama Muhammad lives in Gettysburg, Maryland. He is the Business Director of IT for IT Curves, Information Technology Company. Tr. 201, ll. 7-8.

40. Mr. Muhammad holds a Bachelor's Degree in Computer Science and five different certifications, all in computer sciences and information technology. Specifically, Mr. Muhammad holds certifications from Cisco, Dell computers, and HP computers. He is also a Certified Microsoft Engineer. Tr. 211, ll. 6-18.

41. Prior to starting at IT Curves, Mr. Muhammad worked with Market Lines, the largest shipping line in the world, as a system administrator. He also worked with Dell/Alliance as an operation manager for three years. Tr. 212, ll. 1-5.

42. Mr. Muhammad has been with IT Curves since 2010, during which time the company has grown from 7 employees to more than 30 employees. Tr. 211, ll.16-19 and Tr. 212, ll. 13-25. He presents the company's system to other transportation companies. Tr. 213, ll. 5-13.

A. Planned Operations

43. Operations undertaken by the Board of Directors of Green Taxi will be supported and funded by the investments of its 800 members, as well as any profits that the membership votes to reinvest. As each owner will have equal standing as to the cooperative, Mr. Buni opines that authority to operate 800 taxis represents the proper scope of authority that should be granted.

44. The cooperative's bylaws were admitted as Hearing Exhibit 111.

45. Green Taxi's business plan proposes initial retail rates that are similar to incumbent taxi companies. The proposed tariff that Green Taxi anticipates filing was admitted as Hearing Exhibit 126.

46. Planning for operations is underway. *See generally*, discussion beginning at Tr. 88 - 92 and Hearing Exhibits 127, 128, and 129. However, due to associated costs, plans will not be implemented until commencement of operations is nearer (*e.g.*, hiring a general manager and providing required proof of financial responsibility).

47. The cooperative was initially capitalized by owner-driver investments of [REDACTED]. Hearing Exhibit 124C and Confidential Tr. 115-116. Green Taxi had over [REDACTED] in its bank account on October 30, 2015. Hearing Exhibit 109C.

48. Green Taxi will cover all expenses through capital contributions or membership dues. Membership dues will include [REDACTED]
[REDACTED]

██████████. Hearing Exhibit 109C. Operating expenses are estimated to be equal to or less than membership dues.

49. Green Taxi has entered into a lease for an office, a maintenance and repair space, and storage space. Hearing Exhibit 116 and Confidential Tr. 95-96, ll. 22-12.

50. Initial operations will be conducted from the office space at 2840 South Vallejo Street – the same office and area that Union Taxi used to commence operations. Green Taxi will have access to up to six rooms. It is believed that up to 12 dispatchers can be accommodated. An outdoor area is also available for parking, maintenance, and inspections. *See* Exhibit 136.

51. For 2014, other taxi companies report vehicle liability insurance rates of \$174 to \$286 per month per vehicle. Hearing Exhibit 407, Rev. 2, at 8 (\$1,138,131/544/12) and Hearing Exhibit 502, at 12, 15 (\$884,254/257/12). *See also* Tr. 176 ll. 6-20.

52. Green Taxi's financial projections include estimates for workers compensation insurance.

53. Green Taxi has registered an internet domain name and is in the process of web design. The site will address customers as well as members. Customers will be able to review and book fares using either a computer or mobile device. Lost and found services will also be managed through the website, in addition to availability of telephone or e-mail requests. Mobile features will allow drivers to navigate to customers. Finally, advertising opportunities offered through the website will also facilitate an in-vehicle display of advertisements.

B. Vehicles

54. Green Taxi has approximately 275 of the 800 proposed taxicabs ready to be retrofitted. Upon a grant of authority those vehicles will be prepared and equipped to commence operations during the first month. Tr. 68 and 112.

55. Green Taxi's business plan is developed and based upon the fact that 800 drivers invested in the cooperative. Approximately one third are planning to operate upon approval of the application. All others, as a condition of membership, have vehicles that will be prepared for operations in short order. *See* Hearing Exhibit 113.

56. The same process implemented by Union Taxi will be utilized by Green Taxi. Approximately 16 cars per day will be painted by at least 8 shops. Based upon prior experience and current preparations, Mr. Buni anticipates that Green Taxi will be able to retrofit approximately 200 vehicles per month. Using existing facilities, 800 vehicles will be retrofitted for operation over a few months.

C. Drivers

57. Hearing Exhibit 114 is Green Taxi's membership agreement. *See also* Hearing Exhibit 114C for confidential portions. Member qualifications include that each member must own a vehicle and have no less than three years of operational experience "in the metro Denver area." p. 57, l. 8. It is not anticipated that vehicles will be shared with drivers that are not members because members must own their vehicle. Further, Mr. Buni testified that members are not permitted to make personal use of, or provide Transportation Network Company (TNC) service using, a Green Taxi branded vehicle.

58. Although not optimal, Mr. Buni explained how Union Taxi managed operations when the scope of authority granted permitted operation of fewer taxis than the number of members. Mr. Buni opines denying membership at this point would have a negative impact on Green Taxi financially as well as in terms of projected operations under the business plan.

59. From a driver perspective, any patronage dividends from the cooperative would be in addition to net profits from the daily operation of their taxicab.

D. Staffing

60. Management has considered appropriate staffing levels and is implementing described plans in anticipation of operations. *See* Hearing Exhibits 124C and 137C and Confidential Tr. 112, ll. 23-25.

E. Dispatch System

61. Contrary to Mr. Buni's experience when Union Taxi was started, Green Taxi proposes to implement a digital dispatch system upon commencement of operations.

62. IT Curves provides the digital dispatch currently utilized in Colorado by Union Taxi, in addition to companies in other states. Mr. Buni opines that the system will help drivers for a reasonable price and otherwise comply with Commission rules.

63. For Union Taxi, several digital dispatch systems were reviewed and evaluated. Green Taxi plans to implement IT Curves based upon Union Taxi's successful implementation. Being the second company to utilize their service offerings, Mr. Buni anticipates benefiting from IT Curves' familiarity with Colorado operations.

64. Mr. Buni undertook a demonstration of IT Curves and found it to be reliable and easy to work with. Hearing Exhibits 117 through 123 were utilized during the demonstration and provided, in part, the basis upon which he selected IT Curves. Mr. Buni opines that IT Curves comprehensively provides everything needed to run a taxi business.

65. For customers, trip information is provided. Customers can request pick-up by sending an e-mail to dispatch or submitting a request through a mobile app. IT Curves also enables multiple fare payment options for customers.

66. IT Curves' software application was developed to address internal transportation needs. However, it has grown and expanded to provide a state-of-the-art solution leveraging

technology for several transportation companies across the United States. *See generally*, Hearing Exhibits 117 through 124.

67. Since October 2014, Union Taxi has been working with IT Curves in Colorado. Mr. Muhammad is familiar with Commission rules and has experience in applying or adapting IT Curves in accordance with those rules. Mr. Muhammad described several aspects of the function and capability of IT Curves. At the time of hearing, a software solution was being tested relating to logging airport and downtown Denver activity as required by Rule 6255 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. A commercial release is anticipated by April, 2016.

68. Aspects of implementing the IT Curves system will prompt or support a comprehensive marketing effort. Based upon comparable operation of three related fleets, Mr. Muhammad anticipates approximately 30 to 35 employees would be necessary for dispatch operations (including a 24-hour call center). More precise estimates would be based upon unique preferences of Green Taxi.

69. For drivers, a record of log-ins is maintained. Mr. Buni testified that "[t]he important part is it also can automatically stop [a] driver [from] going beyond the hours of service." Tr. 74, ll. 22-24. The system will automatically log drivers out when hours of service thresholds are exceeded, such that the driver will not be available for dispatch.

70. IT Curves provides a component to assist with compliance in the face of expiring qualifications, including tracking and notification for drivers and management. It has the capability to assist the company in managing compliance with Commission rules by not allowing drivers to access the system for dispatch unless conditions are met.

71. If found to be necessary, other software solutions could be implemented to ensure compliance with Commission rules. Illustratively, "Tatems" is an application that Mr. Buni has employed in the past for tracking vehicle items such as maintenance and registration deadlines.

F. Metro Taxi

72. Kyle Brown has been the General Manager of Metro Taxi in Denver since 2004. He has held several management positions since 1996. Previously, he was a driver for two and a half years. He is responsible for overall operations of Metro Taxi and he has advocated the company's interests to address pending legislation.

73. Mr. Brown regularly communicates through an advisory board to Denver International Airport (DIA) as well as Denver Taxi & Limo Council meetings. One aspect of his responsibilities is to maintain general awareness of issues affecting the marketplace.

74. In Mr. Brown's opinion, if Green Taxi's 800-vehicle fleet becomes operational, it will be difficult for drivers to make money. He opines that taxi service is analogous to a pie and adding 800 additional taxicabs will negatively impact all drivers trying to serve smaller portions of that pie. He further opines that drivers will seek to serve the downtown area and the airport as the most lucrative opportunities. When drivers struggle financially, he is concerned that incentives to overcharge and reduce short trips will prevail, causing public harm.

75. Mr. Brown describes overcrowding of taxis at the airport and DIA's response of limiting access to holding lots. While circumstances initially improved, recent expansion of the number of vehicles accessing the restricted facilities has led to some backsliding.

76. Mr. Brown testified that taxi companies, including Applicant if granted, are required to service all areas, 24/7, 365 days a year, throughout all weather conditions, regardless

of neighborhood location or income level. While TNCs have expanded, he opines that they effectively cream skim and are not required to meet the same requirements as taxi companies.

77. Based upon his observations and knowledge of Metro Taxi's existing operations, Mr. Brown does not believe there is sufficient demand for taxi services to support an increase of Metro Taxi's existing fleet to 800 taxicabs, much less a market expansion of 800 taxicabs. He cannot opine as to what will happen with such a large expansion, but he believes "no one would make money." Tr. 265, l. 21.

78. On cross-examination, Mr. Brown admitted that he has not reviewed Green Taxi's financial projections or business plan and his testimony would be the same as to any other applicant requesting the same authority. In effect, his testimony is that no applicant can be fit to operate 800 cabs in Denver based upon his knowledge of the business and marketplace.

79. Some observations were made regarding traffic based upon specific company annual reports. However, no relevance was shown due to a total lack of evidence as to causation. Therefore, that evidence will not be addressed further.

G. Discussion

80. Green Taxi argues the evidence demonstrates that the cooperative is operationally and financially fit to provide its proposed service. Based thereupon, a CPCN must be granted.

81. Metro Taxi challenges aspects of fitness and argues that the Application should not be granted.

82. After Green Taxi rested its direct case, counsel for Colorado Springs Shuttle and Dashabout moved to dismiss the application as to transportation in El Paso County. It was argued that no evidence showed that any taxicabs would be based or operated out of El Paso County. Further, candid testimony on both direct and cross-examination made clear that

operations would be conducted in the seven Denver metropolitan counties comprised of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties (Denver metropolitan area counties).

83. Green Taxi opposed the motion:

And the grounds for such opposition are that the application is framed, in its totality.

The testimony offered by, both orally today and by stipulated admission of documentary evidence, supports the intent of the operational and financial fitness of the applicant to serve the entirety of the geographic area, at or above the minimum efficient scale. And we believe that applicant has sustained the evidentiary burden with respect to the motion made.

Tr. 279-280.

84. Applying § 40-10.1-203, C.R.S., it was held that Green Taxi had the burden of proof to show operational and financial fitness to provide the proposed service in El Paso County. Thus, the proposed service is a necessary and material foundation for determining operational and financial fitness.

85. Fitness is necessarily dependent upon the scope of undertaking. Is one physically fit to run a 100-yard dash, a mile, or a marathon? Is one fit to climb 10, 20, or 50 flights of stairs? The Commission's historical determination of fitness is more akin to physical fitness than precise objective measurement. Fitness is an entrance standard. § 40-10.1-203(2)(b)(II), C.R.S. The Colorado Legislature (Legislature) has chosen to measure fitness in the context of the Applicant's proposed operation. Green Taxi must provide evidence to demonstrate 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.

86. It was found and concluded that Green Taxi addressed operations in the seven Denver metropolitan area counties, but failed to demonstrate any proposed operations in El Paso

County. To the extent any evidence addressed operations in El Paso County at all, it was found insufficient to support any determination of operational or financial fitness to serve El Paso County. Based thereupon, it was concluded that Green Taxi failed to meet the required burden of proof as to authority requested to serve in El Paso County. The motion to dismiss was granted. The proceeding continued as to the remaining request for authority to serve in the Denver metropolitan area counties.

87. The evidence shows a thorough and comprehensive undertaking by Green Taxi to provide taxi service in the Denver metropolitan area utilizing 800 vehicles owned by the cooperative's 800 members.

88. Each member will be an owner-driver for Green Taxi. Approximately 275 members currently own cars that will be used in taxi service by Green Taxi. The remaining members know that as a prerequisite to membership, they are required to buy cars. Tr. 68-69.

89. Through its officers, Green Taxi provided evidence as to the formation of the cooperative, the recruitment of members, and proposed operations, including internal support for those operations.

90. Management is experienced and well educated. Mr. Buni and Mr. Chajari currently own and operate transportation companies regulated by this Commission. Both have been involved in the management of regulated transportation providers in addition to management experience in other industries. Their experience demonstrates an understanding of, and ability to comply with, rules regulating the proposed operations.

91. Mr. Chajari is highly educated in fields related to the proposed operations. He holds three diplomas including one in accounting and one in "economie science."

92. In addition to general experience in the industry, Mr. Buni was integrally involved in the organization and early operations of Union Taxi, another cooperative that operates comparably to the proposed operations.

93. Green Taxi's business plan was developed, at least in part, by officers having broad and diverse experience in the transportation industry, specifically including experience in the taxi industry. In several aspects (*e.g.*, leased space), Green Taxi follows the path utilized by Union Taxi to commence operations.

94. Business plan projections were based upon proposed initial retail rates within a reasonable range of incumbent taxi providers. Some preliminary financial obligations undertaken are now certain. However, for many anticipated expenses, the plan reasonably relies upon estimates obtained from prospective vendors, as informed by Mr. Buni's past experience.

95. Mr. Buni testified that Green Taxi anticipates all initial capital requirements will be met by the capital contributions of the membership. *See generally*, Tr. 55. Green Taxi's Board of Directors, in accordance with the Membership Agreement and the bylaws has the power to change the periodic membership dues. It can also raise additional capital if needed. *See* Hearing Exhibits 111C and 114C.

96. Based upon the vehicle liability insurance estimate received and Mr. Buni's knowledge of the market, he contends that Green Taxi will be able to secure required insurance coverages. Tr. 90-91. *See also* Confidential Tr. 176, ll. 6-20 and Hearing Exhibit 129C.

97. Green Taxi identifies several expenses as conservatively budgeted and contends that any unaccounted for or underestimated expense items will be covered with the cushion in the *pro forma* operating budget resulting from the first year reserves, membership dues, and

operating surplus from overestimated expenses. *See also* Confidential FY2016 Income Statement Projection.

98. The evidence shows that management is clearly aware of the Commission's rules regulating the proposed service and demonstrated understanding thereof, specifically including Rules 6254 and 6255. Mr. Buni led a review of dispatch alternatives and thoroughly considered and anticipates implementing IT Curves' digital dispatch solution. IT Curves' system is currently in use in Colorado by Union Taxi and is incorporated into Green Taxi's business plan.

99. Notably, fitness does not require a showing as to every element historically evaluated by the Commission nor does it require perfection in projections and assumptions upon which operations are planned. Although some potential inaccuracies and shortcomings were shown through cross-examination, the evidence is found sufficient to tip the evidentiary scale more to the favor of Green Taxi's fitness as an entity than not.

H. Minimum Efficient Scale

100. Minimum efficient scale of operations represents the minimum threshold of fitness in terms of both operational and financial fitness. First, in order to permit entry into the marketplace, Green Taxi must show that management is capable of implementing operations (focusing upon entry as opposed necessarily to long-term viability), more probable than not, in compliance with obligations undertaken pursuant to Colorado law and Commission rule. Green Taxi must also demonstrate access to, or availability of, financial resources to implement the plan. Once Green Taxi demonstrates sufficient operational and financial fitness for the proposed operation in compliance with Commission rules and Colorado law, the burden of proof is met.

101. Any applicant attempting to demonstrate fitness faces a "chicken or egg" dilemma in several aspects of preparation to commence operation and incurring costs in absence of a grant

of authority. Green Taxi demonstrated a reasonable approach in preparing for operations, while minimizing unnecessary costs, to give credibility to management assertions and the business plan.

102. In many aspects, incumbents (including Metro Taxi in this proceeding, in part), contest the demonstration of fitness based upon their own operations and observations. However, there is no basis demonstrated for an assumption that an incumbent's experience is the threshold standard for determining the fitness of an applicant.

103. After entry into the market, the Commission regulates aspects of the operations of common carriers largely focused on safety of the traveling public, just and reasonable rates, and quality of service. Outside of minimum obligations undertaken as a matter of statute or rule, the Doctrine of Regulated Competition allows competitors to compete. Purely for illustration, IT Curves opines as to the number of persons required to manage dispatch. Metro Taxi challenges that Green Taxi has not anticipated sufficient resources that will be necessary to manage dispatch. However, the bases for these opinions are not demonstrated. It would also seem hypothetically possible to propose operations in such a manner to dramatically impact the required number of necessary personnel. Acceptable times for those waiting on the telephone to request service is currently not limited by rule. Thus, one carrier might utilize more personnel to provide superior customer service while another might utilize fewer personnel preferring to divert more resources to a user friendly customer electronic environment for requesting service.

104. It is found and concluded based upon the discussion and findings above, that Green Taxi's proposed operations in the Denver metropolitan area counties meet or exceed a minimally efficient scale. Green Taxi demonstrated capability to implement a credible rigorous business plan to provide the proposed taxi service in the Denver Metro area.

105. Green Taxi has demonstrated that it more likely than not has access to additional capital as well as availability of existing capital to fund initial operations.

I. Doctrine of Regulated Competition

106. Section 40-10.1-203(2)(b)(II)(C), C.R.S., establishes the burdens applicable to an application for a CPCN to provide taxi service in the area at issue in this application.

107. In its Statement of Position, Metro Taxi argues that the Doctrine of Regulated Competition applies in the Denver metropolitan area counties. Although not a controlling determinant, Metro Taxi contends that the Commission must consider adequacy of existing service in the exercise of regulatory control over the motor carrier industry pursuant to the doctrine. Metro Taxi argues that public need remains paramount and a valid consideration when determining whether an applicant is operationally and financially fit to provide its proposed service under subsection (2)(b)(II)(C). Section 40-10.1-203(1), C.R.S., is cited as supportive of this interpretation. Finally, it is argued that this application of the doctrine of regulated competition is not inconsistent with subsection (2)(b)(II)(A) and House Bill (HB) 15-1316.

108. The undersigned declines to adopt the interpretation advocated by Metro Taxi. Fitness is a determination as to the applicant's provision of proposed service, not the market in which the applicant requests to compete. Metro Taxi places heavy reliance upon the phrase that "doctrine of regulated competition applies" in § 40-10.1-203(2)(b)(1), C.R.S. That reliance is misplaced. Most importantly as to this proceeding, the statement is entirely qualified by the introductory phrase "[e]xcept as otherwise provided in subparagraph (II) of this paragraph (b)."

109. The Commission's powers have remained substantially similar for years despite the fact that the meaning and context has changed. Section 40-10.1-203 C.R.S., establishes the Commission's authority to license and regulate motor vehicle passenger carriers.

110. Section 40-10.1-203(1), C.R.S. now provides:

The commission has the power to issue a certificate to a common carrier or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in the commission's judgment, the public convenience and necessity may require.

111. The predecessor, as far back as §115-9-5 C.R.S. (1953), stated:

The commission shall have power, under such rules of procedure governing the application therefor as it may prescribe, to issue a certificate of public convenience and necessity to a motor vehicle carrier or to issue it for the partial exercise only of the privilege sought; and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

112. The public policy for granting a CPCN changed materially in 1967, yet the general statement of Commission powers remains largely unaffected. Senate Bill 208 was enacted to change the public policy for issuing CPCNs in a specific geographic area from “regulated monopoly” to “regulated competition”, providing:

113. Interpreting a predecessor statute similar to §40-10.1-203 C.R.S., the Supreme Court recognized: “[t]his statute authorizes the PUC to grant limited authority to a motor vehicle carrier to provide service in a particular area by imposing conditions on the carrier's conduct. However, limitations may be included in a PUC certificate pursuant to section 40-10-105(1) only if determined by the PUC to be required for the public convenience and necessity.” *Yellow Cab Coop. Ass'n v. Public Utils. Comm'n*, 869 P.2d 545, 549 (Colo. 1994).⁵

114. Interpreting § 40-10.1-203 C.R.S., as in effect prior to the enactment of HB15-1316, the Supreme Court found that the Legislature singled out counties having a population over 70,000 for special treatment in the application process. *Mile High Taxi Cab, Inc.*

⁵ Section 40-10.1-203 C.R.S. is similar to § 40-10-105 C.R.S. as it existed prior to the 2011 reorganization of the motor carrier statutes.

v. *Colo. PUC*, 302 P.3d 241, 245 (Colo. 2013). The Supreme Court interpreted that special treatment:

The legislative allocation of the burden of proof in section 40-10-105(2)(b)(II), therefore, prescribes that once an applicant has shown it to be more probable than not that it is operationally and financially fit to provide the service, that applicant is entitled to a Certificate of Public Convenience and Necessity unless those opposing issuance demonstrate that it is nevertheless more probable than not that the public convenience and necessity do not require granting the application and that it is more probable than not that doing so will actually be detrimental to the public interest.

Mile High Taxi Cab, Inc. v. Colo. PUC, 2013 CO 26, P14, 302 P.3d 241, 246, 2013 Colo. LEXIS 289, *16, 2013 WL 1715473 (Colo. 2013).

115. The Supreme Court went on to find that the “Commission was statutorily obligated to issue the certificate” applying the Legislature’s express allocation of burdens in § 40-10-105(2)(b)(II), C.R.S., unless the Commission found it more probable than not that issuing the CPCN “**was not** required by the public convenience and necessity, and that doing so actually **would be** detrimental to the public interest.” *Mile High Taxi Cab, Inc. v. Colo. PUC*, 302 P.3d 241, 247-248 (Colo. 2013) (emphasis in original). The Supreme Court found the obligation without specifically addressing, the Commission’s discretion under § 40-10.1-203(1), C.R.S.

116. Following the Supreme Court decision in *Mile High Taxi Cab*, the Legislature expanded the special treatment in the application process in 2015. Statutory findings regarding the taxi market now include that the law “will lead to free market competition.” § 40-10.1-203(2)(b)(II)(A), C.R.S. The entirety of the prior statutory burden-shifting mechanism and general public necessity and public interest elements considered in an application were eliminated from subparagraph (2)(b)(II); however, § 40-10.1-203(1) C.R.S. was not amended.

“The granting of any certificate of public convenience and necessity to operate a motor vehicle for hire for the transportation of property shall not be deemed to be

an exclusive grant or monopoly, *and the doctrine of regulated competition shall prevail*. The commission has authority to grant more than one certificate of public convenience and necessity to operate motor vehicles for the transportation of property over the same route or a part thereof or within the same territory or part thereof if the commission finds that the present or future public convenience and necessity requires or will require such operation.' Section 40-10-105(2), C.R.S. 1973 (emphasis added).

Under the doctrine of "regulated monopoly," the controlling consideration in granting a new certificate was whether the existing service was adequate or inadequate. Under the policy of "regulated competition," the controlling consideration is the public need. While adequacy of existing service is a factor to be considered, it is no longer the controlling determinant. *Miller Bros., Inc. v. P.U.C., supra*.

Morey v. Public Utilities Com., 196 Colo. 153, 156 (Colo. 1978).

117. Section 40-10.1-203(2) C.R.S. provides:

(a) The granting of a certificate to operate a taxicab service within and between counties with a population of less than seventy thousand, based on the most recent available federal census figures, is governed by the doctrine of regulated monopoly.

(b)

(I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the granting of a certificate to operate a taxicab service within and between counties with a population of seventy thousand or greater, based on the most recent available federal census figures, is not an exclusive grant or monopoly, and the doctrine of regulated competition applies.

(II)

(A) The general assembly hereby finds, determines, and declares that House Bill 15-1316 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.

(B) The general assembly further finds, determines, and declares that nothing in this subparagraph (II) requires or prohibits a taxicab company applying for a certificate to form a labor union nor requires any taxicab driver to join a labor union.

(C) 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.

§ 40-10.1-203(2) C.R.S.

118. Except as to determination of applications requesting authority in the eight-county area specified by § 40-10.1-203(2)(b)(II), § 40-10.1-203(2)(b)(I) makes clear that a CPCN to provide taxi service within and between counties with a population of seventy thousand or greater remains subject to the doctrine of regulated competition.

119. The doctrines of regulated monopoly and regulated competition remain today as the only two regulatory doctrines applicable to taxi service in Colorado. The applicable regulatory doctrine has meaning far beyond determination of an application for a CPCN. The regulatory doctrine determines the scope and extent of authorized operations and authority owned (if applicable) as well as the rights and obligations undertaken. The nature of the authority also defines the relation to the public, the Commission, and competitors. Illustratively, a common carrier under the doctrine of regulated monopoly is required to meet public demand, where under the doctrine of regulated competition capability of an individual carrier need not be available to meet demand for the entire market.

120. Metro Taxi argues that Green Taxi must demonstrate fitness to provide the proposed service that is in turn dependent upon public need. This interpretation is not adopted.

Rather the statute eliminated consideration of public need in the determination of applications and measures fitness in terms of proposed operation.

121. Likely the most substantive weakness of Metro Taxi's reliance is the fact that it would render the legislative enactment of HB15-1316 largely meaningless. Although the Legislature struck the elements of public need in the application, Metro Taxi argues the lack of public need for additional service must still be considered to avoid destructive competition to incumbent competitors.

122. Intervenor's attempt to revive historical elements of the doctrine of regulated competition removed from consideration of applications in (b)(II) cannot be permitted to conflict with the new statutory mandate. By the elimination of public need from consideration in a CPCN application, a reasonable inference is that public policy as to the public convenience and necessity has changed and the associated regulatory tools (*e.g.*, avoidance of destructive competition) previously considered in applications is removed. It is inconsistent with the expressions of Legislative intent that the doctrine remains to frustrate and conflict with the statutory mandate. The obligation found by the Supreme Court in *Mile High Taxi Cabs* is equally applicable following amendment by HB15-1316. No basis is demonstrated or apparent that public need must be shown in application proceedings in specified counties. Correspondingly, the finding that legislation will lead to free market competition is contrary to avoidance of destructive competition under historical operation of the doctrine.

123. Competitive markets have low barriers of entry. Competitors fail over time. A competitive market exerts no preference or control among incumbents and new entrants. Destructive competition was a tool under prior law to protect and preserve incumbent carriers from free market competition, particularly where there is inadequate demand to support all

competitors. By enacting HB15-1316, the Legislature has given preference to customer forces of market competition over regulatory structures intended to ensure adequate and available service.

J. Scope of Authority

124. Green Taxi's statement of the requested authority based upon the number of taxicabs in its Statement of Position is adopted. The condition conforms to the evidence presented at hearing. Aside from Green Taxi's statement, the undersigned feels compelled to note that the public interest would have required imposition of the same condition in any event based upon the proposed operations. Critically throughout this Decision, fitness is measured in terms of proposed operations. Imposing a condition upon the grant of a CPCN based upon the fitness demonstrated protects the public interest. Illustratively, the Commission would not grant a CPCN without conditions where an applicant demonstrates fitness to operate a small number of taxicabs in a small geographic area, only to then permit operations of unlimited taxicabs within a larger area.

125. Green Taxi demonstrated operational and financial fitness to provide the proposed service in the seven-county Denver metropolitan area. While the undersigned finds that jurisdiction remains to impose a condition upon a grant of a CPCN, Metro Taxi carries the burden of proof to show that the public convenience and necessity requires any condition advocated. It failed to meet that burden.

126. In Proceeding No. 08A-407CP, the Commission denied exceptions to the Hearing Commissioner's conclusion that the intervenor failed to show that granting the authority would be detrimental to the public interest. *See* Decision Nos. C14-0304 and R13-1518 at 12. The Hearing Commissioner did not reopen the determination of fitness originally made in Decision No. R10-0745 and addressed evidence introduced by intervenors in light of the Supreme Court's

clarification that, under HB08-1227, the Commission was *obligated* to issue a certificate unless those opposing the application are able to prove both that the public convenience and necessity did not require its issuance and that issuance of the certificate would be detrimental to the public interest. *Mile High Taxi*, 302 P.3d at 245.

127. Similar to considerations of the Hearing Commissioner in Proceeding No. 08A-407CP, evidence regarding drivers' ability to operate profitably and airport operations at DIA is not sufficient to prove that the public convenience and necessity requires additional conditions pursuant to § 40-10.1-203(1) C.R.S.

128. The remainder of the Application not previously dismissed will be granted without additional conditions.

K. Post Hearing Motions

129. On January 20, 2016, Green Taxi filed its Motion to Set Aside and Alternative Motion to Stay Oral Interim Decision Granting Motion to Dismiss Application as Relating to El Paso County, and Motion to Terminate with Prejudice Intervention of Intervenor Colorado Springs Shuttle, LLC, Valera Lea Holtorf d/b/a Dashabout Shuttle Co. &/or Roadrunner Express and Dashabout Town Taxi, LLC (Motion). Colorado Springs Shuttle and Dashabout filed their response to Applicant's Motion on January 29, 2016.

130. "[W]here the court is the trier of fact and a party brings a Rule 41(b)(1) motion to dismiss, the standard is not whether the plaintiff established a *prima facie* case, but whether judgment in favor of defendant is justified on the evidence presented. *Teodonno*, 158 Colo. at 4, 404 P.2d at 285; *Rowe v. Bowers*, 160 Colo. 379, 381, 417 P.2d 503, 505 (1966)." *City of Aurora v. Simpson* (In re Water Rights of Park County Sportsmen's Ranch), 105 P.3d 595, 614 (Colo. 2005); *Campbell v. Commercial Credit Plan, Inc.* 670 P.2d 813 (Colo. App. 1983).

131. "It is true that when reviewing a dismissal entered at the conclusion of the plaintiffs' evidence in a jury trial, the rule urged by the plaintiffs that the evidence must be viewed in the light most favorable to the plaintiffs is applicable. *Eberle v. Hungerford*, 130 Colo. 167, 274 P.2d 93; *Huddleston v. Ingersoll Co.*, 109 Colo. 134, 123 P.2d 1016. But 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. Rule 41(b)(1), Colorado Rule of Civil Procedure (C.R.C.P.). The question on review of such action is not whether the plaintiffs made a prima facie case, but 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. *Blair v. Blair*, 144 Colo. 442, 357 P.2d 84; *Niernberg v. Gavin*, 123 Colo. 1, 224 P.2d 215." *Teodonna v. Bachman*, 158 Colo. 1, 4 (Colo. 1965).

132. C.R.C.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 Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this section (b) and any dismissal not provided for in this Rule, other than a dismissal for failure to prosecute, for lack of jurisdiction, for failure to file a complaint under Rule 3, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

133. In sum, the motion to dismiss was granted based upon Green Taxi's failure to show El Paso County operations upon which any fitness determination might be made.

However, the undersigned erred orally announcing the ruling partially dismissing the Application by referring to the failure to make a *prima facie* case. The undersigned improperly used the term in ruling based upon the evidence as it stood that Green Taxi failed to show it was entitled to relief as to a portion of the Application. The proper standard was applied to reach the proper conclusion (*i.e.*, not giving all reasonable inferences to Green Taxi). Referring to a *prima facie* case gave meaning not intended. Applicant is not entitled to favorable inferences and must meet the applicable burden of proof for the application to proceed.

134. Counsel for Green Taxi argues that he “was not given sufficient time as required by Commission Rules of Practice and Procedure to research and brief a full response to the motion to dismiss reluctantly gave an extemporaneous response on the record.”

135. Rule 1400(a) requires: “[e]xcept for oral motions made during hearing, ... any motion involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion.” Counsel fails to site any authority for the contention that Commission rules require additional time for response. None exists. To the contrary, response time is only specified to written motions. Rule 1400(b), 4 CCR 723-1. To permit extensive time for response to every oral motion presented would be disastrous to the hearing process.

136. Aside from the lack of specific response time in the rule, counsel responded to the motion. He did not request additional time to respond to the oral motion presented during hearing. Further, although not relevant, the stated characterization of reluctance to respond was not apparent and is not of record. *See* Tr. 279-280.

137. Following partial dismissal of the application, counsel for Colorado Springs Shuttle and Dashabout asked to be excused. Counsel for Green Taxi contends that “counsel to CSS/Dashabout asked to be excused from the *proceeding*.” (Emphasis in original. Motion at 3.)

Counsel for Colorado Springs Shuttle and Dashabout disputes any suggestion that he was withdrawing his appearance or constituted withdrawal of himself and/or his clients in the subject case.

138. Green Taxi's counsel presents a baseless interpretation of events that does not comport with the record. The transcript reflects:

MR. KIMBALL: Thank you, Your Honor. That's the extent of my client's interest. May I be excused?

Tr. 011216 at 4, ll. 14-16.

139. As reflected in the record, and is customary to trial practice, counsel requested to be excused from the hearing. He was permitted to do so at his peril for what events might later occur during hearing. No indication was given whatsoever that counsel intended to withdraw his appearance or to withdraw the intervention of his client. No reasonable basis whatsoever has been shown for the conclusion to which counsel jumps.

140. The Motion to Terminate with Prejudice Intervention of Intervenor Colorado Springs Shuttle, LLC, Valera Lea Holtorf d/b/a Dashabout Shuttle Co. &/or Roadrunner Express and Dashabout Town Taxi, LLC will be denied.

141. As counsel argues, and as is undisputed, the application filed in this proceeding included El Paso County in the geographic scope of authority requested. It is argued that the partial dismissal should be set aside largely because El Paso County was included in the application. A copy of the application was admitted as Hearing Exhibit 101. Further, counsel states that dismissing El Paso County "creates new law under § 40-10.1-203(2)(b)(II)(C) by elevating both the Applicant's burden of proof and the degree to which the Applicant must demonstrate operational and financial fitness in each county comprising its proposed service." Motion at 6. Further, it is argued that the undersigned is requiring fitness be proved as "to each

constituent subsection” of the proposed service territory, creating “new law by elevating the Applicant’s evidentiary burden in a manner not expressed in the operable statute.” Motion at 9.

142. The Legislature has retained required standards to enter the market to provide taxi service in the area at issue in this proceeding. Green Taxi’s interpretation of § 40-10.1-203, C.R.S., would permit a taxi provider to propose service in eight counties in Colorado based upon presentation of evidence that it is fit to provide service within the smallest fraction of the eight-county geographic area. This would be contrary to statute and the public interest.

143. Green Taxi next contends that dismissal was requested based upon argued insufficiency of evidence, a matter of fact which is yet to be found by the Commission, and that dismissal is unsupported by the evidence of record.

144. Colorado Springs Shuttle and Dashabout argues the motion to dismiss was properly granted as the reasonable inferences to be drawn based upon the evidence of record is that Green Taxi does not in fact propose to operate in El Paso County. In support, several facts in the record are identified and it is concluded that Green Taxi intended to operate only in the seven named Denver metropolitan counties.

145. Initially, Green Taxi’s argument that all favorable inferences should be given to its benefit is rejected. Having rested its direct case, such an inference is not proper. Inclusion of El Paso County in the application does not demonstrate proposed operations, particularly in light of conflicting more credible evidence.

146. Counsel for Green Taxi would have the undersigned ignore the evidence of record as well as counsel’s own questioning based upon the seven counties of the Denver metropolitan area, and infer that such references really meant the eight counties permitted by statute

encompassing the Denver metropolitan area and the Colorado Springs metropolitan area. The argument is contrary to the body of evidence considered as a whole and will be rejected.

147. There is little, if any, evidentiary basis that Green Taxi in fact proposed to operate in El Paso County. Illustratively, Mr. Buni's support of a bill including El Paso County that became law does not mean that Green Taxi will operate in El Paso County. To the contrary, the undersigned found other evidence to be more compelling and credible.

148. There is not a shred of evidence that Mr. Buni intended eight counties when he said seven. To the contrary, as this Decision finds, Mr. Buni is well educated and experienced in providing transportation services subject to Commission regulation. He understands obligations undertaken as well as the Commission's rules regulating operations. This is not someone that assumes seven means eight or is not capable of understanding the difference between the two. Further, even if English is not Mr. Buni's first language, there is no factual basis to assume that he does not understand and speak the English language. Again, particularly in light of the body of evidence and findings above, there is no basis in fact that Mr. Buni did not know what he was saying. If there were, it will cause the undersigned to question competency as to the entirety of Mr. Buni's testimony as presented.

149. Green Taxi argues: "[t]he Denver Metro Area clearly refers to and includes the territory represented by the eight counties called out in HB 1316." The undersigned finds this assertion without any basis. Counsel would have the Commission believe the Business Plan, Hearing Exhibit 124C, intended as such. Counsel argues the following is supportive of his position: [REDACTED]

[REDACTED]

(HT CONFIDENTIAL, January 11, 2016, at 95, 96).

150. The undersigned finds far more credible Mr. Buni's testimony in response to Mr. Kimball's questions:

Q And I think you indicated that Green Taxi operations will be in the, what I think you refer to as the seven-county metro area. That includes Boulder; is that right?

A Boulder is part of the seven, yes.

Q That's the area in which Green Taxi will operate?

A We will operate.

Tr. P. 142, LL 16 – 23.

151. Green Taxi's counsel also confirmed that Green Taxi will operate in the Denver metropolitan area in questioning Mr. Buni:

BY MR. WIENER:

[REDACTED]

Tr. Confidential at 94.

152. Several other facts support the proper conclusion reached in dismissing a portion of the application. Cooperative member qualifications include that each member must have no less than three years of operational experience "in the metro Denver area." Tr. 57, l. 8. The undersigned found it particularly persuasive that Mr. Buni only addressed Colorado Springs as having the possibility [REDACTED]

[REDACTED]. Confidential Tr. 95-96. A review of the business plan provides no reasonable basis upon which operations in El Paso County could be considered. From the beginning, the Executive Summary identifies a primary objective to [REDACTED]

Without attempting to identify every supporting fact in the evidentiary record, there is clearly substantial evidence supporting the proper conclusion announced at hearing.

153. In absence of any showing of proposed service, Green Taxi failed to demonstrate operational and financial fitness to provide such service. Notably it is not the case, as argued by Green Taxi, that the ruling necessarily requires a demonstration of fitness to provide service in each county within a proposed service territory. To the contrary, as found above, the evidence demonstrated that Green Taxi was operationally and financially fit to provide the demonstrated scope of proposed operations -- across the seven Denver metropolitan area counties as a whole.

154. Green Taxi failed to demonstrate fitness to provide proposed services in El Paso County because, at least in part, the evidence failed to show that any service would be provided in El Paso County. The remainder of the requested relief in the motion will be denied.

IV. ORDER

A. The Commission Orders That:

1. The withdrawal of intervention of Colorado Cab Company LLC, doing business as Denver Yellow Cab; Boulder Yellow Cab; and Colorado Springs Transportation LLC, doing business as Yellow Cab Company of Colorado Springs is noted.

2. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Green Taxi Cooperative (Green Taxi) on August 5, 2015, is granted in part and dismissed in part.

3. That portion of the Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire for the transportation of passengers in call-and-demand taxi service in El Paso County, State of Colorado is dismissed.

4. Green Taxi is granted a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers:

in call-and-demand taxi service

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

RESTRICTIONS: This certificate is restricted:

- (A) To the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver; and
- (B) To the use of a maximum of eight hundred (800) vehicles.

5. Green Taxi shall operate in accordance with all applicable Colorado law and Commission rules.

6. Green Taxi 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 (\$35) 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. [Green Taxi 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 (\$35).

7. If Green Taxi 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 the 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.

8. The Commission will notify Green Taxi in writing when the Commission's records demonstrate compliance with paragraph 6.

9. The Motion to Set Aside and Alternative Motion to Stay Oral Interim Decision Granting Motion to Dismiss Application as Relating to El Paso County, and Motion to Terminate with Prejudice Intervention of Intervenor Colorado Springs Shuttle, LLC, Valera Lea Holtorf d/b/a Dashabout Shuttle Co. &/or Roadrunner Express and Dashabout Town Taxi, LLC is denied.

10. Proceeding No. 15A-0648CP is closed.

11. 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.

12. 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.

13. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge