

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-695CP

IN THE MATTER OF THE APPLICATION OF CRAIG TAXI, LLC, 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
PAUL C. GOMEZ
GRANTING APPLICATION**

Mailed Date: April 12, 2011

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I. STATEMENT

1. On September 25, 2009, Craig Taxi, LLC (Craig Taxi or Applicant) filed an application for authority to operate as common carrier by motor vehicle for hire to provide taxi service (Application).

2. On September 28, 2009, the Commission issued notice of the Application as follows:

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

passengers and their baggage in taxi service:

between all points in the County of Moffat, State of Colorado, and between said points, on the one hand, and, on the other hand: (A) the Yampa Valley Regional Airport, Hayden, Colorado; (B) all points within five miles of the Yampa Valley Medical Center, 1024 Central Park Drive, Steamboat Springs, Colorado; and (C) all points within ten miles of St. Mary's Regional Medical Center, 2635 North 7th Street, Grand Junction, Colorado.

3. Intervenors in this matter include All Around Taxi, LLC (All Around Taxi); and Alpine Taxi/Limo, Inc., doing business as Alpine and/or Go Alpine (Alpine Taxi).

4. On November 4, 2009, the Commission, at its regular weekly meeting, deemed the application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

5. A hearing was set in this matter for March 10 through 12, 2010.

6. On February 10, 2010, Applicant and Alpine Taxi filed a Stipulated Motion for Imposition of Restrictive Amendments to the Application and Conditional Withdrawal of Intervention of Alpine Taxi/Limo., doing business as Alpine and/or Go Alpine, and Request for Waiver of Response Time to the Stipulated Motion (Stipulated Motion).

7. According to the Stipulated Motion, Applicant and Alpine Taxi reached an agreement to amend the Application which would restrictively amend the proposed authority to delete all service to and/or from Routt County, Colorado, except for one-way service to the

Yampa Valley Regional Airport at Hayden, Colorado, and to the Yampa Valley Regional Medical Center complex. The proposed restrictively amended authority is as follows:

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

passengers and their baggage in taxi service:

- (I) between all points in the County of Moffat, State of Colorado;
- (II) between points in the County of Moffat, State of Colorado, on the one hand, and on the other hand, all points within 10 miles of St. Mary's Regional Medical Center, 2635 North 7th Street, Grand Junction, Colorado; and
- (III) in one way service only from points in the County of Moffat, State of Colorado to the Yampa Valley Regional Airport at Hayden, Colorado, and the Yampa Valley Regional Medical Center complex at 1024 Central Park Drive and 940 Central Park Drive in Steamboat Springs, Colorado, with no right to provide return service under the authority granted in this Part (III).

8. By Interim Order No. R10-0138-I, issued February 11, 2010, the restrictive amendment was approved and the intervention of Alpine Taxi was dismissed.

9. The matter was originally scheduled for hearing March 10 through 12, 2010; however, due to a scheduling conflict the hearing was re-scheduled for March 24 through 26, 2010.

10. At the scheduled date and time, the hearing was called to order. Appearances were entered by legal counsel for Applicant and for Intervenor All Around Taxi. Seven witnesses testified for Applicant and one witness, the owner of All Around Taxi, testified for the Intervenor. Hearing Exhibit Nos. 1 through 9 were entered into evidence.

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

II. FINDINGS OF FACT

A. Applicant

12. Applicants are Soni and Michael Vice. Mr. Vice is the brother of Sidney Brasfield, owner of Intervenor All Around Taxi and grew up in Craig. Ms. Vice has lived in Craig for ten years. The Vices currently own Lariat Liquors in Craig, which they have owned since June, 2009. They share managerial responsibilities for the liquor store including: ordering inventory; hiring and supervising employees; and handling bookkeeping functions.

13. Additionally, Mr. Vice has worked off and on in the regional oil fields since he was 18 years old. He works as a directional driller and serves as a liaison between the oil company and the drilling crew. He supervises 40 to 60 people and is required to live on the drilling rig from time-to-time. In addition to ownership of a liquor store and his oil field work, Mr. Vice also owns a ranch he spends 40 hours a week working. However, he represents that the ranch is now leased so he has no current time commitments there. In addition, Mr. Vice also offers his service as an auctioneer and is required to travel out of town for several days at a time for this service. He further represented that he is not currently working oilfield jobs and will hand over his liquor store duties to his wife to commit additional time to Craig Taxi.

14. Ms. Vice has seven to eight years of human resource experience working for Waste Management. Part of her duties there included hiring customer service representatives for the company and setting up new service for customers. Her duties also included tracking orders through the company's data base and setting up drivers' schedules. She worked with customer service representatives, dispatchers, and drivers,

15. Ms. Vice also worked for All Around Taxi for a period of time. She worked as a driver and handled bookkeeping and supervised drivers when All Around Taxi's owner was on vacation. Her duties when substituting for All Around Taxi's owner also included forwarding the

phones from the land line to the drivers' cell phones, making sure drivers were scheduled for all shifts. At the end of the day, she took charge of the money bag containing the day's earnings, and logged the day's fares.

16. Mr. Vice also previously worked for All Around Taxi on occasion as a driver. In 2009 he drove a taxi for 3 to 4 months and approximately 10 to 15 shifts per month, mostly the evening shift. He drove the 4:00 p.m. to 10:00 p.m. shift on weekdays and the 4:00 p.m. to midnight or 2:00 a.m. shift on weekends. .

17. Mr. Vice proposes to handle the taxi company full time until it is "running smoothly." He did not define what the term "running smoothly" means. He will also initially serve as a driver for the company. He represents that the vehicles utilized for taxis will be inspected every day and drivers will inspect the cars as well.

18. Mr. Vice represents that Craig Taxi will be operated differently than All Around Taxi. For instance, he intends to utilize a dispatch system in order to have a better understanding of his customers' needs by gathering data on each customer and trip. Mr. Vice also plans to equip drivers with cell phones in order to obtain addresses and customer phone numbers through calls and text messaging. It is proposed that Craig Taxi will utilize four radios and a home base unit at a cost of \$1,000. A cell phone will be provided to drivers at a cost of \$150 per month. Craig Taxi proposes to operate and be available 24 hours a day every day, as customer need dictates.

19. Mr. Vice identified the slowest times for taxi service from January through March. Other times are busy enough to provide sufficient passengers for his proposed taxi service. He noted that the various hunting seasons bring in hunters from throughout the country, and contractors working for the power plants in the area, as well as on pipelines and the coal mines located in the vicinity are all potential riders. The hunting season is August through December

and this provides an opportunity to serve hunters who arrive at the Yampa Valley Regional Airport and need rides to hotels and to and from the airport. Other potential business opportunities include summer concerts, the local Kiwanis play and roast, river rafting, and the local “Whittle the Wood” arts festival.

20. As for drivers, Mr. Vice indicates that drivers are already lined up and they will receive hourly wages. When the Vices drive, they will also receive hourly wages. Shift wages will be \$40 per day plus tips. It is proposed that the company will begin operations with two vehicles, which is necessary especially when one vehicle is traveling out-of-town for trips for rehabilitation appointments in Steamboat Springs, Colorado. Mr. Vice will drive from 6:00 a.m. to 6:00 p.m. and Ms. Vice will serve as a back-up driver. While he is owner of a liquor store, Mr. Vice indicated he would dedicate 60 hours per week to Craig Taxi and spend 10 hours per week at the liquor store.

21. Regarding company capitalization, the Vices intend to loan start-up capital to the company with re-payment terms. The initial amount of start-up capital is proposed to be \$25,000. Mr. Vice testified that an individual investor intends to loan the company an additional \$25,000. It is anticipated that costs will include approximately \$1,000 per month for vehicle inspections and minor repairs. While funds have not been allocated for major repairs, Mr. Vice believes the initial capitalization will be enough to cover such a contingency. No *pro forma* financial statements were prepared.

22. As part of his testimony, Mr. Vice stated that he and his wife are willing to invest up to \$50,000 into the company; however, if it does not provide a sufficient return on investment, the company would be shut down. Mr. Vice provided no indication as to what a sufficient return on investment would be, nor did he indicate the amount of time he would be willing to operate the company at a loss before closing it down.

23. Applicant proposes to purchase two vehicles to utilize as taxicabs. Ms. Vice testified that two minivans have been located that are adequate to serve as taxicabs. She stated that the cost for the two minivans is approximately \$16,000 to \$17,000. Another major cost is insurance for the two vehicles which is estimated to be approximately \$3,000 to \$5,000 per year for both vehicles. As of the date of the hearing, Applicants had accrued \$5,000 in legal fees.

24. Applicants intend to run Craig Taxi out of their home. Additional costs would include office equipment and supplies. Applicants provide that they have a computer that may be used for the company and do not need an additional phone system, as it will only be necessary to add an additional phone line. Other anticipated costs listed in the Application include fuel at \$2,000 per year per vehicle; tires at \$1,000 per year per vehicle; communication costs at \$1,200 per year; advertising at \$500 per month; and miscellaneous costs of \$200 per year.

25. Applicants have not projected initial gross revenue during the start-up years of operation, but anticipate that they will provide 300 rides per month for the first three months of operation at a rate of approximately \$6.50 per trip. Proposed fares would include local fares in and around Craig at \$7.00 per trip; use of pre-purchased punch cards at \$6.00 per ride; senior fares at \$5.00 per ride; airport service at \$30.00 for adults, \$15.00 for children, and \$25.00 for seniors. Fares to Steamboat Springs would be set at double the fares to the airport. However, Mr. Vice stated that these fares are subject to change.

26. Applicants represented that they intend to require all drivers to fill out job applications prior to hiring and provide fingerprints for background checks. References will also be required and will be checked. Potential drivers will be subjected to Department of Transportation physicals.

27. Taxicabs will be subject to regular inspections and maintenance logs will be kept on the vehicles. Mr. Vice indicated he will be in charge of maintenance and ensuring it is done on a regular schedule.

28. Applicants testified they have identified a need for additional taxi service in the Craig, Colorado area and Applicants intend to advertise to attract riders not aware that taxi service exists in the area. In addition, Applicants believe a market exists for taxi service to outlying subdivisions located approximately five miles from the town center.

29. Additionally, Applicants have contacted local hotels and motels and spoken with managers regarding the need for additional taxi service. Two letters of support for Applicants were attached to the Application. One was a letter from Ms. Brandy Hernandez, manager of the Bear Valley Inn which stated that she has called All Around Taxi on several occasions and either no one answers the phone or it takes an inordinate amount of time for a taxi to arrive. Mr. Frank Moe, manager of the Best Western Deer Park Inn & Suites also provided a letter of support for the new service. Mr. Moe believes there is ample need for another taxi service in Craig. He also indicates that the current taxi service is slow and is more expensive than its guests wish to pay. Applicants propose providing a package with hotel reservations so guests know they will have transportation upon arriving at the airport.

30. As indicated previously, hunting is a large part of the local economy drawing numerous hunters to the area during the appropriate seasons. According to Ms. Vice, All Around Taxi has failed to reach out to hunters and outfitters to provide needed taxi service. She stated that there are numerous opportunities to provide transportation service to hunters.

31. In addition to these opportunities, Applicants also believe there is a need for service on weekends when the bars close. The Application also included support letters regarding the need for rides from bars. Mr. Michael Mathers, owner of Mather's Bar states that

he is dissatisfied with the current taxi service regarding availability, pricing, drivers, and condition of vehicles. He supports Applicants' attempt to start a new taxi service. Mr. Jeremy Browning also provided a letter of support for the proposed taxi service. Mr. Browning indicates that there is a need for additional taxi service, especially when bars close.

32. Other letters of support attached to the Application included a letter from Ms. Alice Long who feels that Craig can support two taxi companies. She stated that the current service seems to be very busy because it is difficult to contact them. She also feels that fares would be more reasonable and the service better if there were two taxi companies in town.

33. Mr. Jeremy Browning, owner and operator of ChaosInk, a design and screen printing company also submitted a letter of support. Mr. Browning identifies a need for additional taxi service to provide transportation when bars close at night. He also notes that Craig Taxi proposes to provide courier service as well, which he feels would be quite helpful as there is a sizeable local demand for business-to-business deliveries within Craig and between Craig and Steamboat Springs.

34. Ms. Vice testified that based on her experience with All Around Taxi there is a need for additional taxi service. She stated that while working for All Around Taxi, Thursday through Saturday nights were the busiest times and it was not possible to respond to all calls received during that time. Bar patrons who need a ride home typically have to wait a long time for a taxi to arrive due to the lack of taxis and high demand at that time. Ms. Vice noted that at least three local bars are open until 2:00 a.m. including Mather's Bar, the Popular, and Cassidy's Bar at the Holiday Inn.

35. Hearing Exhibit No. 1, admitted through Mr. Vice, purports to be a petition which was located on the counter in the Vice's liquor store which asks if you are dissatisfied with the

current taxi service in Craig and would support an additional taxi, to sign the petition. The petition contains 102 signatures; however, it is not known if the persons signing the petition have ever utilized All Around Taxi, have any specific issue with its service, or reside in the Craig area.

B. Public Witness Testimony in Support of Applicant

36. Mr. Ron Stieben, an employee of Cugino's Restaurant in Craig testified on behalf of Applicants. According to Mr. Stieben, he used All Around Taxi approximately two and half years ago to go to the airport. He was charged \$80.00 for the trip even though he was quoted a fare of \$50.00 on the phone. He also used All Around Taxi for local trips since that episode and generally has no problem with its service. However, on one occasion he was denied service to the Holiday Inn at approximately 6:00 in the evening on a weekend. That incident occurred about 18 months ago. He has since stopped using All Around Taxi due to those issues and because its fares are too expensive. Mr. Stieben's opinion is that All Around Taxi is not reliable.

37. Mr. Ryan Rowley, manager of Cugino's Restaurant also testified on behalf of Applicants. Mr. Rowley indicates that current taxi service is hit-and-miss depending on the time of day. He has used All Around Taxi about 6 times, although he claims to have attempted to use its services approximately 14 times over the last 3 years. Mr. Rowley testified that no one typically answers the phone at All Around Taxi late at night. He once called for a ride to work at 9:00 a.m. and called again at 12:15 p.m. and when a taxi still had not arrived, he had to get a ride from someone else. Mr. Rowley's biggest complaint is that All Around Taxi's service is unreliable and inconsistent.

38. Also testifying on behalf of Applicants was Mr. Joe Picanco, assistant manager of the Bear Valley Inn. According to Mr. Picanco, he has never seen his guests successfully use All Around Taxi. Guests either cannot get anyone to answer the phone or the taxi never arrives. Mr. Picanco maintains he has never had a guest arrive from the airport with All Around Taxi.

Mr. Picanco has personal experience with All Around Taxi as well. He tried to call the company for a guest but got no answer. He used All Around recently but was confronted by the owner regarding a letter he wrote that was critical of All Around Taxi. Mr. Picanco would like to see a reliable taxi company in Craig that answers the telephone when called.

39. Ms. Shannon Cromer wrote a letter in support of Applicants and also offered testimony in support of the Application. Ms. Cromer has been an outfitter in the Craig area for ten years. Prior to that she served as a Moffat County Deputy Sheriff from 2005 through 2009. As a deputy, Ms. Cromer tried to call All Around Taxi to provide a courtesy ride for intoxicated persons, domestic violence victims, and car breakdowns in the evening and after midnight on several occasions. She stated that no one answered the phone when she called. This occurred about five times. She also worked as a detention deputy at the jail, and when inmates are released from jail from midnight to 8:00 a.m. they typically need a ride. According to Ms. Cromer, it is very difficult to get a taxi at that time.

40. In her work as an outfitter, Ms. Cromer also sees a need for additional taxi service. Due to the large volume of hunting trips, it is difficult for outfitters to pick up hunters from the airport. Ms. Cromer sees the need for reliable taxi service to pick up hunters and return them to the airport. Ms. Cromer is concerned that poor taxi service reflects on Craig and may affect tourism.

41. Ms. Cromer also worked briefly for All Around Taxi as a driver in the summer of 2008. She did not fill out an application for the job, nor was she required to submit her fingerprints for a criminal background check. She did not receive any written material regarding company policies. During her time driving, she noted that business was fairly light in the morning but became busier in the afternoon and evening. As expected, Friday and Saturday nights were the busiest times for taxi service. She mostly transported people home from the bars.

Sometimes her van was completely full of passengers after bars closed and because she had to drop each of them off at their destinations (and because there was no other taxi available), other bar patrons had to wait a lengthy amount of time until she could complete the first drop offs.

42. The former drivers testifying on behalf of Applicant (Mr. and Ms. Vice and Ms. Rita Turner) also noted that they did not fill out applications to drive, were not required to submit fingerprints for background checks, or were not provided any training or company policy manuals. Those former drivers also represented that they regularly took trips to Steamboat Springs, Vail, Grand Junction, and Denver when driving for All Around Taxi, although those destinations are not in the company's authorized service territory.

C. Witnesses Opposed to Application

43. Ms. Sidney Brasfield, owner of All Around Taxi testified in opposition to the Application. Ms. Brasfield has owned and operated All Around Taxi for seven years. Hearing Exhibit No. 2 is a copy of All Around Taxi's PUC operating authority.¹ When she began operating under her PUC authority there was no other taxi company in Craig. The company is currently operated out of her home. She uses a single land line to take calls and provides drivers a cell phone. She also has a single computer and keeps all company files either on the computer or in hardcopy in her house.

44. Ms. Brasfield states that she has four employees and each person drives the taxi in addition to other duties. She pays drivers 25 percent of the fares they make during a shift as well as any tips the driver earns. Ms. Brasfield represents that she does not pay herself.

¹ That Certificate of Public Convenience and Necessity authorizes service as follows: "Transportation of passengers and their baggage in taxi service, between all points in Moffat County, State of Colorado, and between said points on the one hand, and the Hayden Airport and all points in Hayden, Colorado, on the other hand." Commission Decision No. C07-1060, Docket No. 07A-376CP-Transfer, issued December 18, 2007.

45. She also represents that on Monday and Tuesday ridership averages 2 to 4 riders for the entire day. Wednesday and Thursday ridership averages 4 to 15 riders for the day. Friday and Saturday are All Around Taxi's busiest days with approximately 22 riders a day. Sunday is a slow day, similar to Monday and Tuesday. Further, 90 percent of the rides during the week are \$8.00 fares with the remaining 10 percent made up of \$10.00 fares for transporting two or more people. Ms. Brasfield states that airport pickups typically increase during hunting season; however, this year she claims only two hunters were picked up at the airport. All Around Taxi typically averages three airport pickups a month. She also maintains that All Around Taxi can handle the volume of calls either during the day or on Friday and Saturday nights.

46. All Around Taxi is currently operating with a single vehicle, a 2000 Dodge Caravan minivan. Ms. Brasfield tried utilizing a second cab but used it very little. She claims that on a typical Friday night, only four rides were provided with the second cab.

47. Revenues for All Around Taxi are currently low according to Ms. Brasfield. She indicates that while the company used to bring in about \$250.00 on a Friday night, it now brings in approximately \$70.00. She blames the economy for the drop in ridership and revenue and claims she has had to take a second job to make ends meet. Ms. Brasfield also points to the population of Craig as a reason for limited taxi business, which she estimates to be approximately 8,000 to 10,000 residents.

48. Ms. Brasfield also admitted on cross-examination that All Around Taxi provides transportation for Homelink, which is a workers' compensation provider. Hearing Exhibit No. 4 consists of check stubs and service confirmation vouchers indicating service provided by All Around Taxi. Applicant contends that Hearing Exhibit No. 4 provides evidence that Ms. Brasfield is charging Homelink fares that exceed All Around Taxi's PUC approved rates. Additionally, Hearing Exhibit No. 5 is the signature page and credentialing application signed by

Ms. Brasfield to provide transportation service to Homelink. On cross-examination, Ms. Brasfield acknowledged that the rates she charged Homelink varied from the company's PUC approved rates; however, she contends that she contacted Homelink to let them know they were paying above the approved fare but the company nonetheless continues to send her the higher payment amounts.

49. All Around Taxi does not utilize a radio dispatch system because it is too costly to install and maintain. Ms. Brasfield feels it is more beneficial to have drivers answer forwarded calls directly through the company cell phone. Ms. Brasfield maintains a log book that tracks all pickup locations, time of pickup, destination, drop off time, number of passengers, and the amount of the fare.

50. Ms. Brasfield disputes the claims of her former drivers and represents that she has potential drivers fill out applications most of the time. She acknowledges that she did not have her brother, sister-in-law, or Ms. Cromer fill out an application. In addition, Ms. Brasfield asserts that all drivers go through a Colorado Bureau of Investigation background check and are fingerprinted at the sheriff's office. She has them provide a copy of their driving record and she makes a copy of their driver's license and social security card. Ms. Brasfield maintains that she is concerned about the health of her drivers and notes that most of the drivers for All Around Taxi have a commercial driver's license, so they were required to take a Department of Transportation physical.

51. Ms. Brasfield admits that a driver for All Around Taxi had his license suspended. Additionally, she was required to fire a driver several years ago due to driving a taxi while drinking. Three years ago she required all drivers to undergo a drug and alcohol test because of rumors around Craig that All Around Taxi drivers were intoxicated while driving. She represents that all drivers tested negative for drugs or alcohol.

52. Ms. Brasfield does not advertise All Around Taxi except for the markings on the taxicab. However, she does sometimes use her personal vehicle as a taxi, which has no markings on it other than the roof sign. She further admitted on cross-examination that she currently does not operate a taxicab with advertising on it.

53. Ms. Brasfield disputes the complaints made by the public witnesses. She states that she has never received any complaints of being overcharged for fares and customers are always taken to the airport when requested. With regard to picking up inmates released from county jail late at night, depending on the day of the week and time, the company was probably closed when Ms. Cromer called, especially if she called after midnight.

54. Hearing Exhibit No. 3 includes several letters of support for All Around Taxi. The letters include an endorsement from the owner of the Golden Cavy Restaurant where Ms. Brasfield claims to work part-time. That letter indicates that there has never been a problem with All Around Taxi and it responds to calls in a timely manner and someone has always answered the phone when called. A local chiropractor also submitted a letter of support stating that he has used All Around Taxi on numerous occasions and has “tremendous” customer satisfaction. A support letter from the O.P. Bar and Grill states that they have never had any problems with getting a cab. A support letter from Mr. Tim Hampton praises All Around Taxi as having reliable service and short wait times. He indicates that the company has arranged to pick him up for work before its hours of operations. He does not feel that Craig can sustain two taxi companies. Ms. Melissa Bertram also provided a letter of support and states that All Around Taxi is always prompt, courteous, and accommodating. Finally, Mr. Fred Shaffer, owner of Big O Tires of Craig states that Ms. Brasfield has always been conscientious about properly servicing and repairing her taxicabs.

55. Ms. Brasfield agreed with earlier testimony from previous drivers' the Vices and Ms. Cromer that she does not issue U.S Internal Revenue Service W-2 or 1099 statements to her drivers. She represents that they are paid in cash. However, Ms. Brasfield further stated that All Around Taxi, operating as a limited liability company, pays all required taxes.

56. Ms. Brasfield also sponsored Hearing Exhibit Nos. 8 and 9 which purport to be commercial vehicle policies for the vehicles she utilizes as taxicabs. The policies indicate that both the vehicles she has recently utilized as taxis are covered under commercial policies and are up-to-date.

57. It is Ms. Brasfield's contention that two taxicab companies cannot survive in Craig. She does not believe there is enough business to sustain two companies.

III. ANALYSIS AND CONCLUSIONS

A. **Burden of Proof**

58. 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 4 *Code of Colorado Regulations* 723-1-1500, Rules of Practice and Procedure. 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). The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

B. Legal Standard Governing Application

59. The legal standard governing applications for common carrier taxi authority applicable here is that of regulated monopoly. § 40-10-105(1), C.R.S.; *See also, Yellow Cab Cooperative Association v. Public Utilities Commission*, 869 P.2d 545 (Colo. 1994). Under the doctrine of regulated monopoly, an applicant for common carrier authority has the burden of proving by substantial and competent evidence: (a) that the public needs its proposed service, *Denver and Rio Grande Western Railroad v. Pub. Utils. Comm'n.*, 142 Colo. 400, 351 P.2d 278 (1960); *and* (b) that the service of existing certificated carriers within the proposed service area is substantially inadequate. *RAM Broadcasting v. Pub. Utils. Comm'n.*, 702 P.2d 746 (Colo. 1985); *Rocky Mountain Airways, Inc. v. Pub. Utils. Comm'n.*, 181 Colo. 170, 509 P.2d 804 (1973). Both of these requirements must be met before the Commission may grant common carrier authority in instances in which one or more common carriers are already providing service pursuant to a Commission-issued certificate of public convenience and necessity (CPCN). *Boulder Airporter, Inc. v. Rocky Mountain Shuttlines, Inc.*, 918 P.2d 1118, 1121 (Colo. 1996).

60. The test of substantial inadequacy is not perfection. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n.*, 151 Colo. 596, 603, 380 P.2d 228, 232 (1963) (*Ephraim*). An applicant for a CPCN to provide transportation service to passengers can demonstrate the substantial inadequacy of an incumbent carrier by showing that the incumbent carrier is not “ready, willing, and *able* at all times to render service to anyone who might demand it ...” *Ephraim*, 151 Colo. at 602, 380 P.2d at 232 (emphasis in original). This requires more than a showing that there is “sufficient business to warrant two certified carriers.” *Donahue v. Pub. Utils. Comm'n.*, 145 Colo. 499, 505, 359 P.2d. 1024, 1027 (1961) (internal quotation marks omitted). Moreover, an applicant cannot show substantial inadequacy 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.*, 168 Colo. 339, 342, 451 P.2d 448, 449 (1969). Rather, an applicant must show “a general pattern of inadequate service” on the part of the incumbent carrier. *Ephraim*, 151 Colo. at 603, 380 P.2d at 232. Whether the incumbent carrier’s service is substantially inadequate is a question of fact that is to be determined by the Commission. *RAM Broadcasting of Colo., Inc. v. Pub. Utils. Comm’n.*, 702 P.2d 746, 751 (Colo. 1985); *Durango Transportation, Inc. v. Pub. Utils. Comm’n.*, 122 P.3d 244, 247 (Colo. 2005). Although the applicant bears the burden of proving that the incumbent carrier’s service is substantially inadequate, “where an applicant’s evidence tend[s] to prove the existing carrier’s substantial inadequacy, ‘it [is] incumbent upon [the existing carrier] to rebut this evidence.’” *Id.* at 250 (*quoting Ephraim*, 151 Colo. at 601, 380 P.2d at 231-32).

61. To meet its burden of proof, Applicant must prove both: (a) its operational, financial, and managerial fitness; and (b) the public need for the proposed common carrier service, which includes the substantial inadequacy of the intervenors’ transportation services.

62. Before issuing a certificate authorizing common carrier services, the Commission is required to make a finding that “the present or future public convenience and necessity requires or will require such operation.” § 40-10-104, C.R.S. *See also*, § 40-10-105(1), C.R.S. (PUC empowered to issue certificate to motor vehicle carrier as, in its judgment, the public convenience and necessity may require). Thus, it is the public’s need for transportation service that is paramount, not the private needs of a particular party.

63. An applicant for common carrier authority must also establish its “fitness”, both financially and operationally, to conduct the service it proposes. 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. It also includes

consideration of whether the applicant has the ability and willingness to comply with applicable public utilities laws governing regulated motor carrier operations. *See, Thacker Brothers Transportation v Public Utilities Commission*, 543 P.2d 719 (Colo. 1975). 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.

64. For the reasons discussed below, it is found that Applicant has met its burden of proof regarding fitness, as well as the public need for the proposed taxi service.

1. Operational, Managerial, and Financial Fitness

65. As detailed above in the Findings of Fact, there is substantial record evidence that establishes that Applicants are fit, financially and otherwise to conduct operations under the CPCN sought in the Application. The evidence on fitness was neither rebutted nor controverted.

66. Applicants have identified sufficient financial resources to begin operations. They also have previous experience in the taxicab industry having driven and handled operations for Intervenor at one time. They understand the needs of the community and understand the requirements for operating a small taxicab company.

67. The ALJ finds and concludes that Applicants possess the operational, managerial, financial, and other fitness necessary to provide the proposed taxi service.

2. Burden Under Doctrine of Regulated Monopoly

68. Under the doctrine of regulated monopoly, Applicant bears a heavy burden proof. The first prong of the doctrine addressed here is whether All Around Taxi's service is substantially inadequate. This issue was a principal point of contention in this proceeding and was addressed by all witnesses.

69. It is uncontroverted that All Around Taxi has made a business decision not to provide taxi service after midnight during the week. For an undisclosed period of time continuing through the hearing, All Around Taxi has not provided, and is not providing taxi service to people who require taxi service after midnight on many nights of the week. Ms. Cromer offered unrebutted testimony that no one answers the phone between midnight and 8:00 a.m. at All Around Taxi when called for courtesy rides or to transport released inmates from the county jail.

70. While All Around Taxi does provide taxi service late at night on the weekends to transport people from bars, All Around Taxi does not have sufficient vehicles to conduct all of its CPCN-authorized transportation services, when bars close and particularly when it transports passengers to the airport. Anyone who requires a taxi at that time must wait an inordinate amount of time for the taxi to return to Craig before they can be transported. The record evidence shows that more than occasionally, All Around Taxi has been unable to provide taxi service because vehicles and/or drivers were unavailable. The inability or failure to provide taxi service was not only limited to after midnight calls and calls from bar patrons, but occurred under various circumstances as attested to by local motel managers.

71. The record testimony in this proceeding also persuasively shows that the residents of Craig perceive All Around Taxi's rates to be too expensive or to be excessive. This is one of several reasons members of the public do not use All Around Taxi's services.

72. The ALJ also found the testimony of Ms. Cromer convincing regarding the inability of the sheriff's department to secure transportation from All Around Taxi at various times. She recounted several, credible attempts to secure taxi service from All Around Taxi and in each instance the department was unable to get anyone on the phone. The general pattern that

emerges is the inability to contact All Around Taxi by telephone and its inability to provide service during busy periods at bar closing times.

73. While Ms. Brasfield testified that there is an insufficient need for taxi service in Craig to support another taxi service and that granting the Application would be destructive to All Around Taxi's overall business operations, the ALJ finds these arguments unpersuasive. The overwhelming record evidence establishes that many of the local motels, hotels, bars, and the general public are underserved by All Around Taxi. This clearly establishes a public need for additional taxi service. Additionally, All Around Taxi's business decision to discontinue service at midnight on most days does little to support its argument that there is insufficient need for an additional taxi service.

74. Regarding whether granting the Application would result in destructive competition, Ms. Brasfield offered little testimony and no evidence of such an occurrence. She offered no financial information or testimony regarding All Around Taxi's revenues or costs. In short, Ms. Brasfield did not offer any persuasive evidence or testimony that another taxi service would adversely impact All Around Taxi's ability to provide efficient and safe taxi service under its operating authority.

75. The ALJ also notes with concern the un rebutted testimony that All Around Taxi consistently over the years has operated outside its authorized service territory. Although its CPCN only authorizes it to provide taxi service "between points in Moffat county and between those points and the Hayden Airport and Hayden, Colorado on the other hand," it was unrefuted that All Around Taxi has transported passengers to, among other destinations, Grand Junction, Vail, and to Denver. Ms. Brasfield admitted such practices and indicated she just became aware

that All Around Taxi's operating authority did not permit such trips.² The ALJ is concerned that she would not realize the scope of her company's operating authority, especially given its limited geographic area. Additionally, the ALJ is concerned that All Around Taxi is charging Homelink a rate higher than its authorized fare for service. While Ms. Brasfield testified that she tried to inform them they were paying too much for service, there was no testimony that she returned the excess payments.

76. The record evidence taken all together establishes that All Around Taxi is not adequately serving the public under its CPCN. Therefore, it is found that the service that All Around Taxi provides under its CPCN is substantially inadequate.

77. With regard to the public need for the proposed taxi service in Craig, the record evidence establishes that additional call-and-demand taxi service is needed in Craig and the community will benefit by the additional service. It is established that All Around Taxi does not provide full-time taxi service leaving gaps in the service it provides. The proposed service of Craig Taxi will provide, among other things, transportation to appointments, medical treatments, and daily activities; transportation of persons who are too impaired to drive from bars; transportation to the airport, and transportation point-to-point in Craig not only for residents, but for hunters, which make up a large part of Craig's tourism trade.

78. Based on the record evidence as a whole, it is found that there is a public need for additional taxi service in Craig.

79. Based on the record of evidence as a whole and for the reasons discussed above, the ALJ finds and concludes that Craig Taxi has met its burden of proof in this case. The ALJ finds and concludes that the Application should be granted. Craig Taxi should be granted a

² This testimony is contradicted by Mr. Vice who testified that when transporting passengers to such destinations, drivers were instructed to use a vehicle with no taxi markings.

CPCN to provide taxi service between all points in the County of Moffat, State of Colorado; between points in the County of Moffat, State of Colorado, on the one hand, and on the other hand, all points within ten miles of St. Mary’s Regional Medical Center, 2635 North 7th Street, Grand Junction, Colorado; and in one way service only from points in the County of Moffat, State of Colorado to the Yampa Valley Regional Airport at Hayden, Colorado, and the Yampa Valley Regional Medical Center complex at 1024 Central Park Drive and 940 Central Park Drive in Steamboat Springs, Colorado, with no right to provide return service.

80. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle filed by Craig Taxi, LLC is granted.

2. Craig Taxi, LLC is granted a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in taxi service:

- (I) between all points in the County of Moffat, State of Colorado;
- (II) between points in the County of Moffat, State of Colorado, on the one hand, and on the other hand, all points within 10 miles of St. Mary’s Regional Medical Center, 2635 North 7th Street, Grand Junction, Colorado; and
- (III) in one way service only from points in the County of Moffat, State of Colorado to the Yampa Valley Regional Airport at Hayden, Colorado, and the Yampa Valley Regional Medical Center complex at 1024 Central Park Drive and 940 Central Park Drive in

Steamboat Springs, Colorado, with no right to provide return service under the authority granted in this Part (III).

3. The authority granted in Ordering Paragraph No. 2 is conditioned on Craig Taxi, LLC meeting the requirements contained in this Order and the authority is not effective until these requirements have been met.

4. Craig Taxi, LLC shall not commence operations until it has:³

- (a) Caused proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission in accordance with Rule 6007 (Financial Responsibility) 4 *Code of Colorado Regulations* (CCR) 723-6;
- (b) For each vehicle to be operated under authority granted by the Commission, paid to the Commission, the \$5.00 vehicle identification fee required by Rule 4 CCR 723-6-6009, or in lieu thereof, has paid the fee for such vehicle(s) pursuant to Rule 4 CCR 723-6-6401 (Unified Carrier Registration Agreement);
- (c) Filed a tariff in compliance with Rule 4 CCR 723-6-6207 (Tariffs), with an effective date no earlier than ten days after the tariff is received by the Commission;
- (d) Paid the \$5.00 issuance fee required by § 40-10-109(1), C.R.S. or § 40-11-108(1), C.R.S.; and
- (e) Received notice in writing from the Commission that it is in compliance with the above requirements and may begin service.

5. If Craig Taxi, LLC does not comply with the requirements of Ordering Paragraph No. 4 above, within 60 days of the effective date of this Decision, then Ordering Paragraph No. 2 above shall be void. On good cause shown, the Commission may grant Craig Taxi, LLC additional time for compliance with this Order.

6. The right of Craig Taxi, LLC to operate shall depend upon its compliance with all present and future laws and regulations of the Commission.

³ Any questions regarding the completion of these requirements may be directed to Gary Gramlick of the Commission's Transportation Staff at 303-894-2870.

7. 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.

8. 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.

9. 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

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director