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July 24, 2015

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Docket MC-F-21062, Ace Express Coaches, LLC, et al. – Acquisition of Certain Properties of Evergreen Trails, Incorporated d/b/a Horizon Coach Lines

Dear Ms. Brown:

For the reasons set forth below, Evergreen Trails, Inc. d/b/a Horizon Coach Lines (“Evergreen”) hereby renews the request set forth in its June 15, 2015 reply to the adverse comments filed by Colorado Jitney, LLC (“Jitney”) in this proceeding that the Board expeditiously affirm its April 21, 2015 tentative decision approving on public interest grounds the motor passenger transaction for which Board approval is sought in this proceeding. As Evergreen noted in its June 15 reply to Jitney’s June 8 adverse comments, the Board has already assessed Jitney’s views on this matter, having found that very similar comments that Jitney filed in a docket involving an unrelated Evergreen transaction did not justify disapproval of that transaction. *See Academy Bus, LLC – Acquisition of Properties of Evergreen Trails, Inc.*, STB Docket No. MC-F-21060 (served May 29, 2015).

Jitney’s June 8 adverse comment in this proceeding, like its adverse comment filed in the above-cited *Academy Bus* proceeding, was predicated on a complaint that Jitney filed with the Colorado Public Utilities Commission against Evergreen and the City of Denver. CPUC Docket No. 14F-0806CP, *Colorado Jitney v. City and County of Denver, et al.* The CPUC complaint proceeding concerns Evergreen’s now-terminated operations transporting persons to/from Red Rocks amphitheater in the Denver area. As Evergreen has previously stated, the complaint raises issues that are entirely irrelevant to the sale of assets transaction before the Board. Nonetheless, it bears note that on July 21, 2015, a CPUC Administrative Law Judge assigned to that proceeding issued the attached recommended decision dismissing Jitney’s complaint on mootness grounds.

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Finally, the Board should be aware that delay in issuing a decision in this matter is imposing a significant financial burden on Evergreen. Current operations are under the control of Ace Express, et al. (the "Buyer") as per the Board's April 8, 2015 decision authorizing temporary control in this proceeding. Under the temporary control arrangements, the Buyer is collecting and retaining operating revenues while making a payment to Evergreen for use of the Evergreen assets. However, that payment is not sufficient to cover all of Evergreen's debt service on the buses operated by Buyer or other accounting costs that Evergreen must incur. As a result, Evergreen has been losing about \$100,000/month, a significant burden that can only come to an end when the Board approves this transaction and the parties are then able to close the asset sale transaction.

Evergreen therefore urges the Board to act promptly to approve this transaction.

Respectfully,



David H. Coburn
Attorney for Evergreen Trails, Incorporated

cc: All parties of record

Attachment

Decision No. R15-0731

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0806CP

COLORADO JITNEY LLC,

COMPLAINANT,

V.

CITY AND COUNTY OF DENVER AND
EVERGREEN TRAILS, INC., DOING BUSINESS AS HORIZON COACH LINES,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION TO DISMISS,
DISMISSING AS MOOT THE COMPLAINT,
DISMISSING AS MOOT THE AMENDED
COMPLAINT, DENYING AS MOOT ALL
OTHER PENDING MOTIONS, AND
DISMISSING PROCEEDING AS MOOT**

Mailed Date: July 21, 2015

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 A. The Commission Orders That:41

I. STATEMENT

1. On July 25, 2014, Colorado Jitney LLC, doing business as Colorado Jitney (Jitney or Complainant), filed a Complaint against the City and County of Denver (Denver) and Evergreen Trails, Inc., doing business as Horizon Coach Lines (Horizon). That filing commenced this Proceeding.

2. Denver and Horizon, collectively, are the Respondents; each individually is a Respondent. Complainant and Respondents, collectively, are the Parties; each individually is a Party. Each party is represented by legal counsel.

3. On August 6, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. On July 30, 2014, the Commission issued an Order Setting Hearing and Notice of Hearing that scheduled an evidentiary hearing on the merits. On August 20, 2014, by Decision No. R14-1005-I, the ALJ vacated that evidentiary hearing date.

5. On August 18, 2014, Denver filed its Answer in which Denver contested the Complaint and asked that it be dismissed. That filing put this case at issue as to Denver.

6. On August 19, 2014, Horizon filed its Answer in which Horizon contested the Complaint and asked that it be dismissed. That filing put this case at issue as to Horizon.

7. On September 10, 2014, by Decision No. R14-1104-I, the ALJ established a procedural schedule and scheduled an evidentiary hearing on the merits. On December 10, 2014, by Decision No. R14-1456-I, the ALJ vacated the scheduled evidentiary hearing on the merits and the procedural schedule established in Decision No. R14-1104-I.

8. On October 14, 2014, Jitney filed a Motion to Amend Complaint. The Amended Complaint accompanied that filing. On November 19, 2014, by Decision No. R14-1389-I, the ALJ granted the motion and permitted Jitney to file an Amended Complaint. The Amended Complaint supersedes in its entirety the Complaint filed on July 25, 2014.¹

9. On October 17, 2014, Horizon filed its Answer to the Amended Complaint. In that filing, Horizon raises the issue of the Commission's subject matter jurisdiction in this matter.

10. On October 28, 2014, Denver filed a Motion to Dismiss (October 28 Motion). In that filing, Denver raises the issue of the Commission's subject matter jurisdiction in this matter. Because the October 28 Motion tolls the time within which Denver must file an answer, as of the date of this Decision, Denver has not filed its answer to the Amended Complaint.

11. On November 4, 2014, Horizon filed a Motion to Dismiss (November 4 Motion) which addresses both the Complaint and the Amended Complaint. In that filing, Horizon raises the issue of the Commission's subject matter jurisdiction in this matter.

12. On November 18, 2014, Complainant filed its Response in Opposition to the October 28 Motion and to the November 4 Motion.

¹ In the remainder of this Decision, unless the context indicates otherwise, reference to the Complaint is to the Amended Complaint.

13. On November 24, 2014, Denver filed a Motion for Leave to Reply and a Reply. Colorado Jitney opposed that motion. On December 10, 2014, by Decision No. R14-1456-I, the ALJ granted that motion and permitted the Reply.

14. The October 28 Motion and the November 4 Motion question whether the Commission has subject matter jurisdiction in this Proceeding. Finding that those motions raise issues of fact that must be resolved in order to decide the motions, the ALJ determined that, because “there are jurisdictional facts in dispute, there must be an evidentiary hearing on those disputed facts; and the ALJ must make the factual findings necessary to rule on the [Colorado Rule of Civil Procedure] 12(b)(1) portions of the” two motions to dismiss. Decision No. R14-1456-I at ¶ 25.

15. By Decision No. R14-1456-I, the ALJ scheduled a February 25 and 26, 2015 evidentiary hearing on subject matter jurisdiction. On February 17, 2015, by Decision No. R15-0160-I, the ALJ vacated that February hearing on subject matter jurisdiction.

16. Each party filed a list of witnesses and copies of its exhibits for the hearing on subject matter jurisdiction. Denver filed a Corrected Witness and Exhibit Lists. Jitney filed a Corrected Witness List and Exhibits.

17. On February 9, 2015, Denver filed a Motion *in Limine* to Exclude Testimony of Legislative Intent (Motion *in Limine*); and Horizon joined that motion. On February 23, 2015, Jitney filed a response in opposition to the Motion *in Limine*. On February 26, 2015, by Decision No. R15-0192-I, the ALJ granted the Motion *in Limine* and excluded testimony from any person concerning the legislature’s intent in enacting House Bill 11-1198 and, more particularly, § 40-10.1-105(1)(j), C.R.S.

18. On March 13, 2015, Complainant filed a Motion Contesting Interim Decision No. R15-0192-I. Denver and Horizon each filed a response in opposition to the motion. Complainant also filed two motions pertaining to the responses filed by Denver and Horizon, and Denver and Horizon each filed a response in opposition to those motions.

19. On April 3, 2015, by Decision No. C15-0302-I, the Commission referred to the ALJ for disposition: (a) the Motion Contesting Interim Decision No. R15-0192-I; and (b) the two related motions. On April 7, 2015, by Decision No. R15-0306-I, the ALJ denied the three motions.²

20. On March 10, 2015, by Decision No. R15-0226-I, the ALJ scheduled an April 22 and 24, 2015 evidentiary hearing on the subject matter jurisdiction. On April 15, 2015, by Decision No. R15-0348-I, the ALJ vacated that hearing and scheduled an April 22, 2015 status conference in this Proceeding.

21. On April 6, 2015, Jitney filed a Motion for Summary Judgment. On April 15, 2015, Denver filed (in one document) a Response to Colorado Jitney's Motion for Summary Judgment and Motion to Strike. Horizon joined in that filing. On April 29, 2015, Jitney filed its response in opposition to the Motion to Strike.

22. On April 22, 2015, the ALJ held a status conference in this Proceeding. All Parties were present, were represented, and participated. A transcript of the status conference has been filed in this matter.

23. On May 8, 2015, Denver filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (Motion to Dismiss). In that filing, Denver represents that Horizon joins in the

² In doing so, the ALJ treated the Motion Contesting Interim Decision No. R15-0192-I as a motion for reconsideration of Decision No. R15-0192-I.

motion. On May 29, 2015, Jitney filed its Response in Opposition to Motions to Dismiss for Alleged Mootness (Jitney Response).

24. On May 27, 2015, Jitney filed a formal Complaint against Denver and Colorado Tour Line, LLC, doing business as Gray Line of Denver. That filing commenced Proceeding No. 15F-0383CP, *Colorado Jitney LLC v. City and County of Denver and Colorado Tour Lines, LLC, Doing Business as Gray Line of Denver*.

25. On June 19, 2015, Jitney filed a Motion to Consolidate this Proceeding and Proceeding No. 15F-0383CP.

26. As of the date of this Decision, the following motions are pending in this Proceeding: (a) the October 28 Motion; (b) the November 4 Motion; (c) the Motion for Summary Judgment; (d) the Motion to Strike; (e) the Motion to Dismiss; and (f) the Motion to Consolidate.

27. In accordance with, and pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of the Proceeding together with a written recommended decision.

II. DISCUSSION AND CONCLUSIONS

28. For the reasons discussed below, the ALJ will grant the Motion to Dismiss and will dismiss this Proceeding as moot. Because this Proceeding is dismissed as moot, the ALJ will deny as moot the remaining pending motions and any pending motion not identified in this Decision.

A. Applicable Law.

29. Rules 4 *Code of Colorado Regulations* (CCR) 723-1-1308(c)³ and 723-1-1001 pertain to motions to dismiss. Rule 4 CCR 723-1-1308(e) provides, in pertinent part: a “motion to dismiss may be made on any of the following grounds: lack of jurisdiction over the subject matter[.]” In the Motion to Dismiss, Respondents argue that the Complaint is moot and that, as a result, the Commission lacks subject matter jurisdiction.

30. Rule 4 CCR 723-1-1001 provides: “Where not otherwise inconsistent with Title 40 or these rules, ... an Administrative Law Judge may seek guidance from or may employ the Colorado Rules of Civil Procedure.” A Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 12(b)(1) motion is one that asserts a lack of subject matter jurisdiction.

31. A tribunal should assert jurisdiction “only if the case contains a currently justiciable issue or an existing legal controversy, rather than the mere possibility of a future claim.” *Developmental Pathways v. Ritter*, 178 P.3d 524, 530 (Colo. 2008) (citations omitted). *See also State Board of Chiropractic Examiners v. Stjernholm*, 935 P.2d 959, 970 (Colo. 1997) (subsequent events render a case moot “when the relief sought, if granted, would have no practical legal effect”); *Crowe v. Wheeler*, 165 Colo. 289, 294, 439 P.2d 50, 53 (1968) (“A case is moot when a judgment if rendered will have no practical legal effect upon an existing controversy”). Thus, in determining whether a case is moot, the tribunal must examine whether a change in the circumstances that existed at the commencement of a case precludes the prospect for meaningful legal relief. *Independence Institute v. Coffman*, 209 P.3d 1130, 1140 (Colo. App. 2008).

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

32. In Decision No. R10-0497,⁴ ALJ Paul Gomez discussed the applicable legal principles:

The mootness doctrine generally holds that *an actual live controversy must exist at all stages of a proceeding. An issue becomes moot when events subsequent to the filing of the case resolve the dispute. County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). When an issue is moot, a court normally refrains from addressing it. *Grossman v. Dean*, 80 P.3d 952, 960 (Colo. App. 2003). However, there are *two exceptions to the mootness doctrine. An otherwise moot case may be resolved if the matter is one capable of repetition yet evading review, or if the matter involves a question of great public importance or recurring constitutional violation. Bd. of County Comm'rs v. Crystal Creek Homeowners Ass'n*, 14 P.3d 325, 345 (Colo. 2000).

Decision No. R10-0497 at ¶ 41 (emphasis supplied). *See also Humphrey v. Southwestern Development Company*, 734 P.2d 637, 639 (Colo. 1987) (same).

33. The Commission affirmed Decision No. R10-0497. In doing so, the Commission applied these principles:

The judicially developed mootness doctrine requires the existence of an actual live controversy at all stages of a judicial or quasi-judicial process. *If events subsequent to the filing of the case resolve the dispute, the case should be dismissed as moot. See, County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). The mootness doctrine applies to quasi-judicial proceedings conducted by administrative agencies. However, review of important continuing controversies should not be defeated by an overly narrow application of the mootness doctrine in cases of short term administrative orders that are capable of repetition, yet evading review. *See, Tennessee Gas Pipeline Co. v. Federal Power Comm'n*, 606 F.2d 1373, 1379 (D.C. Cir. 1979).

In addition, *an administrative agency has substantial discretion in determining whether an issue pending before it is moot. The agency's determination of mootness must be guided by judicial precedent, judicial economy, and an examination of the proper institutional role of an adjudicatory body. See, Climax Molybdenum Co. v. Sec'y of Labor*, 703 F.2d 447, 451-452 (10th Cir. 1983).

⁴ That Decision was issued on May 19, 2010 in Proceedings No. 09F-891CP, *Union Taxi Cooperative v. MKBS, LLC, doing business as Metro and/or Taxis Fiesta, and Yellow Cab Company, LLC, doing business as Denver Yellow Cab, and/or Boulder Yellow Cab*, and No. 09F-892CP, *Freedom Cabs, Inc., v. MKBS, LLC, doing business as Metro and/or Taxis Fiesta, and Yellow Cab Company, LLC, doing business as Denver Yellow Cab, and/or Boulder Yellow Cab*.

* * *

In order for the capable of repetition yet evading review exception to apply, the alleged violation must be of a type likely to happen to the same plaintiff again and it must be a type of violation of inherently limited duration so that it is always likely to become moot before litigation is completed. See, e.g., Weinstein v. Bradford, 423 U.S. 147, 149 (1975). Perhaps the most well-known example of the violation capable of repetition yet evading review is discussed in Roe v. Wade, 410 U.S. 113 (1973). In that case, the United States Supreme Court stated that the duration of a pregnancy is inherently likely to be shorter than the time required for federal court litigation. Therefore, challenges to the constitutionality of state laws restricting abortions were capable of repetition yet evading review.^[Note 5]

* * *

The courts and administrative agencies may resolve a moot issue if it involves a question of great public importance or an alleged constitutional violation. See, Combs v. Nowak, 43 P.3d 743, 744 (Colo. App. 2002). For example, in Colorado Office of Consumer Counsel v. Mountain States Tel. & Tel. Co., 816 P.2d 278, 281 (Colo. 1991), the Colorado Supreme Court ruled that the issue of whether the Commission exceeded its authority involved a matter of great public importance. Therefore, although the immediate dispute between the parties was resolved and the precise factual circumstances were unlikely to recur, the case was not moot.^[Note 7]

We find that it is not necessary for an issue to involve a constitutional violation to fall within the above mentioned exception to the mootness doctrine since the exception is stated phrased in the disjunctive On the other hand, *a mere alleged illegality is not enough to qualify for this exception since then the exception would swallow the rule. ...*

Note 5 states: We list some examples of how Colorado courts have applied the capable of repetition yet evading review exception. *Gambler's Exp. Inc. v. Pub. Utils. Comm'n*, 868 P.2d 405 (Colo. 1994) (Judicial review of a Commission decision granting temporary transportation authority is not moot even though temporary authority already expired by the time the matter reached the Colorado Supreme Court); *Grossman v. Dean*, 80 P.3d 952 (Colo. App. 2003) (The challenge to the use of a "super-motion" to kill a proposed bill without prior committee consideration on the merits of the bill was not moot even though the legislative session where the challenge arose already concluded); *People in the Interest of C.A.G.*, 903 P.2d 1229 (Colo. App. 1995) (The lawsuit related to whether the department of human services was obligated to provide an education for a delinquent child while that child was expelled from school was not moot even though the period of school expulsion has ended by the time the case reached the court of appeals); *People ex rel. Morgan County Dept. of Human Services ex rel. Yeager*, 93 P.3d 589 (Colo. App. 2004) (The issue of whether the department of human services was authorized to execute a do-not-resuscitate

order for a terminally ill person is not moot even though the person passed away during the pendency of appeal).

Note 7 states: We list examples of how Colorado courts have applied this exception to the mootness doctrine in the past. *People ex rel. Morgan County Dept. of Human Services ex rel. Yeager*, 93 P.3d 589 (Colo. App. 2004) (The issue of whether the department of human services was authorized to execute a do-not-resuscitate order for a terminally ill person is one of great public importance and thus not moot even though the person passed away during the pendency of appeal); *Grossman v. Dean*, 80 P.3d 952 (Colo. App. 2003) (The challenge to the use of a “super-motion” to kill a proposed bill without prior committee consideration on the merits of the bill is an issue of great public importance and therefore not moot even though the legislative session where the challenge arose already concluded). We also found one instance where the Commission applied this exception to the mootness doctrine previously. In a formal complaint docket, the complainant alleged that certain bylaws of the Delta-Montrose Electric Association (DMEA) violated § 40-9.5-110, C.R.S. That statute provides that nominations for a director on the board of a cooperative electric association may be made by written petition signed by at least 15 members of such association. However, a DMEA bylaw required nominating petitions to be signed by a minimum of 100 persons. By the time that the Commission had an opportunity to consider this issue, DMEA had revised its bylaws and adopted the minimum number of 15 signatures as part of its election procedures. The Commission found that the issue was not moot and involved a question of great public importance, since a determination of this issue would apply not only to DMEA and its members, but to all other electric cooperatives subject to the statute. See Decision No. C94-1443, mailed November 8, 1994 in Docket No. 93F-121E.

Decision No. C10-0786⁵ at ¶¶ 10-11, 14, 18-19 (emphasis supplied).

34. With respect to the circumstances in which the capable of repetition, yet evading review exception applies, the United States Supreme Court explained:

The capable-of-repetition doctrine applies only in exceptional situations, where the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.

Spencer v. Kemna, 523 U.S. 1, 17 (1998) (*Spencer*) (internal quotations and citations omitted).

⁵ That Decision was issued on July 27, 2010 in Proceedings No. 09F-891CP and No. 09F-892CP.

35. When confronted with a claim that the actions of third parties led to mootness and that, as a result, mootness should be ignored, the United States Supreme Court stated:

Finally, petitioner argues that, even if his case is moot, that fact should be ignored because it was caused by the dilatory tactics of the state attorney general's office and the delay of the District Court. *But mootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so.* We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong. As for petitioner's concern that law enforcement officials and district judges will repeat with impunity the mootness-producing abuse that he alleges occurred here: We are confident that, as a general matter, district courts will prevent dilatory tactics by the litigants and will not unduly delay their own rulings; and that, where appropriate, corrective mandamus will issue from the courts of appeals.

Spencer, 523 U.S. at 18 (internal quotations and citations omitted) (emphasis supplied).

36. With respect to the Motion to Dismiss, Respondents⁶ (as the movants) bear the burden of proving that the Commission lacks subject matter jurisdiction because the case is moot. With respect to an assertion that one or both of the exceptions (*i.e.*, the case presents a controversy that is capable of repetition, yet evading review, or the case involves a question of great public importance) apply, Jitney bears the burden to establish that the asserted exception or exceptions apply.

37. In deciding the Motion to Dismiss, the ALJ relied on Commission decisions that address the issue of mootness. In addition, the ALJ sought guidance from Colo.R.Civ.P. 12(b)(1) and from judicial decisions applying that rule.

⁶ Denver filed the Motion to Dismiss, which Horizon supports.

B. Findings of Fact.

38. These facts are based on the Motion to Dismiss, the Jitney Response, the Complaint, and the Amended Complaint. These facts are found for the express and limited purpose of deciding the Motion to Dismiss.

39. This is a complaint case brought by Jitney against Denver and Horizon. This is not a petition for declaratory ruling case.

40. Denver owns Red Rocks Park, which is located within Jefferson County, Colorado. Denver holds events at Red Rocks Amphitheatre, which is located within Red Rocks Park.

41. At some point in the past, Denver decided that, when events are held at Red Rocks Amphitheatre, Denver would provide shuttle service between Red Rocks Amphitheatre and the parking lots located within Red Rocks Park.

42. Rather than provide the shuttle service itself, Denver decided to contract with an outside company to provide that service.

43. On August 26, 2013, Denver entered into a contract with Horizon to provide the shuttle service at Red Rocks Park (Denver-Horizon contract).⁷ Under the terms of that contract, Denver paid Horizon to provide shuttle service between Red Rocks Amphitheatre and the parking lots located within Red Rocks Park.

44. On April 13, 2015, Denver received an e-mail from Horizon notifying Denver that Horizon was selling the assets of its transportation operation in Golden, Colorado⁸ and, as a

⁷ A copy of the August 26, 2013 Denver-Horizon contract is attached to the Motion to Dismiss as Exhibit A.

⁸ Horizon operates in several states. Its transportation operation in Colorado was located or headquartered in Golden.

result, would no longer be able to provide shuttle service at Red Rocks Park after April 14, 2015.⁹

45. On April 14, 2015, Horizon stopped providing shuttle service at Red Rocks Park.

46. Horizon has sold and has transferred its Colorado Commission-issued authorities.¹⁰

47. Horizon has ceased operations in Colorado.¹¹

48. By correspondence dated April 17, 2015, Denver notified Horizon that Denver had received Horizon's April 13, 2015 e-mail and that the Denver-Horizon contract was terminated for cause.¹²

49. Denver has entered into a contract with Colorado Tour Line, LLC, doing business as Gray Line of Denver (Gray Line), to provide shuttle service at Red Rocks Park (Denver-Gray Line contract). The service provided by Gray Line is almost identical to the service once provided by Horizon.

50. On May 27, 2015, Jitney filed with the Commission a formal complaint naming as respondents both Denver and Gray Line.¹³ This filing commenced Proceeding No. 15F-0383CP. That Proceeding is pending before the undersigned ALJ.

⁹ A copy of the April 13, 2015 e-mail is attached to the Motion to Dismiss as Exhibit B.

¹⁰ Jitney Response at 13. *See also* Proceeding No. 15M-0263CP, *In the Matter of the Interim Transfer of Certificates of Public Convenience and Necessity Nos. 44908 and 47967, of Permit Nos. B-9941, CSB-00179, and ORC-00191, and of Related Properties from Evergreen Trails, Inc., Doing Business as Horizon Coach Lines, to Industrial Bus Lines, Inc., Doing Business as All Aboard America!, and to Ace Express Coaches, LLC* (proceeding commenced by notification that Horizon transferred its state and federal carrier authorities to Industrial Bus Lines and Ace Express Coaches as of April 16, 2015).

¹¹ Jitney Response at 13.

¹² A copy of the April 17, 2015 letter is attached to the Motion to Dismiss as Exhibit C.

¹³ A copy of that formal complaint is attached to the Jitney Response.

51. Except as necessary to reflect the Denver-Gray Line contract, the complaint in Proceeding No. 15F-0383CP contains the same substantive allegations as those contained in the Complaint in this Proceeding. *Compare* formal complaint filed on May 27, 2015 at 9-10 (“B. Jitney’s Claims Against Gray Line and the City and County of Denver”) *with* Amended Complaint at 2-3 (“specific acts or things complaint of, with the necessary facts to give a full understanding of the situation”). Except as necessary to reflect the Denver-Gray Line contract, the complaint in Proceeding No. 15F-0383CP requests relief that is identical to the relief sought in the Complaint in this Proceeding. *Compare* formal complaint filed on May 27, 2015 at 11-12 (prayer for relief) *with* Amended Complaint at 4-5 (prayer for relief).

52. There are additional findings of fact in the remainder of this Decision.

C. The Parties’ Positions.

53. Asserting that events subsequent to the filing of the Complaint render this Proceeding moot, Respondents move to dismiss. Complainant opposes dismissal.

1. Respondents.

54. In the Motion to Dismiss, Respondents ask that the Complaint be dismissed as moot. As good cause to grant the Motion to Dismiss, Respondents assert that recent events render the Proceeding moot; that neither of the recognized exceptions applies; and that the Proceeding must be dismissed.

55. Respondents first state that, at all times during the pendency of a case, an actual controversy must exist and, when the controversy ceases to exist, the case must be dismissed as moot. Respondents then assert that these facts establish that this Proceeding is moot: (a) the underlying basis for the Complaint is the transportation provided pursuant to the Denver-Horizon contract; (b) “Jitney has not alleged any injury that does not tie directly to” the Denver-Horizon

contract to provide shuttle service at Red Rocks Park (Motion to Dismiss at 4); (c) on April 17, 2015, Denver terminated the Denver-Horizon contract to provide shuttle service at Red Rocks Park; and (d) Horizon no longer operates in Colorado. Respondents argue that, given these facts, a Commission decision issued in this Proceeding would have no practical legal effect on an existing controversy.

56. Respondents acknowledge that the Commission may deny a mootness-based motion to dismiss if the Commission finds that, although moot, the case presents a question that is capable of repetition, yet evading review, or presents a matter that is of great public importance or is an alleged recurring constitutional violation. Respondents argue that neither exception applies here.

57. As to the *capable of repetition, but evading review* exception, Respondents state that this exception has two elements, each of which must be present for the exception to apply. Those elements are: (a) the challenged action must be of a duration too short to be fully litigated prior to its expiration or cessation; and (b) there is a demonstrated probability or reasonable expectation that the complaining party will be subjected to the same action in the future.

58. Respondents assert that the first element is not present in this case because the typical term for Denver's contracts, including the term of the Denver-Gray Line contract, is three years. This is a sufficient period within which to obtain -- in Proceeding No. 15F-0383CP -- Commission review of the central question presented in this Proceeding and in Proceeding No. 15F-0383CP: "whether [Denver] and its contractors are required to have Commission authority to provide shuttle service at Red Rocks Park" (Motion to Dismiss at 6).

59. Respondents assert that the second element is not present in this case because the issue cannot recur in the short-term because Denver has entered into the Denver-Gray Line

contract pursuant to which Gray Line will provide shuttle service at Red Rocks Park “and Gray Line has authority from the Commission to provide such service at Red Rocks Park” (Motion to Dismiss at 7).

60. As to the *this matter presents a question of great public importance* exception,¹⁴ Respondents argue that this exception does not apply here because resolution of the issues in this Proceeding will affect only the rights of the Parties in this Proceeding.

61. For these reasons, Respondents seek dismissal of this Proceeding because it is moot.

2. Complainant.

62. Complainant opposes the Motion to Dismiss, asks that the motion be denied, and asks that the Proceeding be allowed to go forward. As grounds for its opposition, Complainant asserts: (a) this Proceeding falls within the capable of repetition, yet evading review exception; (b) this Proceeding falls within the matter of great public importance exception; (c) this Proceeding is not moot because it “involves criminal violations, which, once committed, are not absolved by cessation of the illegal activity” (Jitney Response at 5); and (d) the Motion to Dismiss “contains a number of misrepresentations of fact and incorrect interpretations of the law” (*id.* at 6.).

63. Jitney acknowledges that *Horizon* has ceased “its part in the complained of operations” at Red Rocks Park and has “ceased operations” in Colorado (Jitney Response at 6).

64. Jitney’s arguments focus exclusively on *Denver*.

¹⁴ Because Jitney does not assert that this Proceeding raises or involves an alleged recurring constitutional violation, this Decision does not discuss or address this aspect of the exception.

65. As to the *capable of repetition, but evading review* exception, Jitney explains that this Proceeding presents an issue that is capable of repetition, yet evading review:

If the instant case were to be dismissed merely because one of the Respondents [*i.e.*, Horizon] ceased operations, then the precedent is set for a similar occurrence happening in [Proceeding No.] 15F-0383CP, with [Denver] and Gray Line running up Complainant's expenses only to have Gray Line cease operations prior to hearing thereby triggering [Denver] to file another motion to dismiss for mootness. And, as here, before the motion to dismiss for mootness is at issue, [Denver] would most likely have yet another carrier to continue providing the service. All the while, [Denver] is reaping the benefit of illegal operations from first Horizon and now Gray Line, while at the same time, Complainant continues to suffer lost business without any hope of relief.

Jitney Response at 6-7. Jitney argues that granting the Motion to Dismiss and dismissing the Complaint establishes the precedent for these future occurrences. Jitney argues that Denver “cannot be allowed to so easily evade the PUC’s jurisdiction by its repetitive conduct” (*id.* at 16).

66. In addition, Jitney argues that the “collateral consequences” aspect of the capable of repetition, but evading review exception applies in this Proceeding:

“Collateral Consequences” exist for both Complainant and [Denver] in the instant case. Complainant, at great expense, sought and obtained authority from the PUC to serve Red Rocks Park. Because of the actions of [Denver], which does not have PUC authority to serve Red Rocks Park, and which needs authority to serve Red Rocks Park, *City and County of Denver vs. Public Utilities Commission*, 507 P.2d 871 (Colo. 1973)[,] Complainant has been deprived of revenue from providing service at Red Rocks Park. Each day that [Denver] provides service at Red Rocks Park, either by itself or in conjunction with another carrier that does not have authority to provide service within Red Rocks Park, such as Horizon in the instant proceeding, and Gray Line in [Proceeding No.] 15F-0383CP[,], it violates the Public Utilities Laws. Each day is a separate violation. C.R.S. 40-10.1-113 provides as follows:

“Any person who provides transportation in intrastate commerce without first obtaining a certificate or permit, violates any of the terms thereof, fails or refuses to make any return or report required by the commission, denies to the commission access to the books and records of such person, or makes any false return or report commits a **misdemeanor** and, upon conviction thereof, shall be punished as provided in section 40-10.1-114.” (Emphasis in statute)[.]

Because operating a motor vehicle for hire without PUC authority to do so is a criminal violation, neither cessation of operations or dissolution of the company moots a proceeding in which such violations are alleged. ... Simply put, illegal operations did not disappear with their discontinuance. Nor should the illegal operations complained of at the hand of Respondents here disappear merely because Horizon [has] ceased its operations and sold its Colorado PUC authorities.

Jitney Response at 12-13 (bolding in original).

67. Finally, Jitney argues that the relief sought in this Proceeding supports its position that the capable of repetition, but evading review exception applies in this Proceeding. In support, Jitney points to specific requests for relief (Jitney Response at 13-15). The first is the request for a Commission finding that “Respondents have unlawfully conducted, and are unlawfully conducting[,] transportation operations for hire without appropriate authority from the ... Commission to conduct said operations” (Complaint at 4). Jitney asserts that Denver is providing (either directly or indirectly through contractual arrangements) unauthorized transportation at Red Rocks Park. The second is the request for issuance of a cease and desist order against each Respondent (Complaint at 4). Jitney asserts that this “prayer for relief seeks a continuing and permanent cease and desist order which, by definition[,] will outlast [this Proceeding]. This the PUC is able to provide due to its continuing jurisdiction” (Jitney Response at 14). The third is the request for such additional relief as the Commission may deem appropriate, including “findings of unfitness against each and every Respondent” (Complaint at 5). Jitney asserts that, as to Denver, it

seeks ... a finding of unfitness. To obtain authority, an applicant must satisfactorily establish its fitness and therefore, the operations of [Denver] via Horizon, although ended, still have bearing on [Denver’s] fitness and the motion to dismiss for mootness should be denied.

Jitney Response at 15.

68. As to the *this matter presents a question of great public importance* exception,¹⁵

Jitney argues that this Proceeding presents a matter of great public importance:

This case involves legal precedents with respect to the jurisdiction of the PUC over [Denver] going back over 40 years. It is beyond cavil that such a situation constitutes a matter of great public importance. ... In *City and County of Denver vs. Public Utilities Commission*, 507 P.2d 871 (Colo. 1973) the Colorado Supreme Court held that outside its homerule boundaries, [Denver] is subject to the PUC's jurisdiction just like any other common carrier subject to the PUC's jurisdiction. [Denver] can neither cease operations, nor, as in the case at hand, initiate operations at Red Rocks Park without prior PUC approval. But if this case is dismissed for mootness, merely because one of the Respondents is no longer providing service, the PUC will have abrogated it's authority in violation of the Supreme Court's holding in *City and County of Denver vs. Public Utilities Commission, supra*. To paraphrase the [Colorado] Supreme Court's holding in *Colorado Ute Electric Association v. Public Utilities Commission, supra*, at 633, 634: "This case is not moot.... (I)t takes longer than 30 days for the Commission to review a complaint case filed by Colorado Jitney, to say nothing of the time necessary for an appeal of a Commission decision to work its way through the judicial system. If a home rule city could render an appeal moot merely by switching contracting carriers while an appeal is pending, the Commission's authority to regulate home rule cities outside their home rule boundaries would be undermined." paraphrasing *Colorado Ute Electric Association v. Public Utilities Commission, supra*, at 633, 634.

Jitney Response at 16-17 (bolding in original).

69. Jitney raises *additional arguments* in opposition to the Motion to Dismiss and to establish that this Proceeding is not moot.

70. Jitney argues that this Proceeding is not moot because it "involves criminal violations, which, once committed, are not absolved by cessation of the illegal activity" (Jitney Response at 17). In support of this assertion, Jitney states: (a) Denver violates the Public Utilities Law each day that it

provides service at Red Rocks Park, either by itself or in conjunction with another carrier that does not have authority to provide service within Red Rocks Park,

¹⁵ Because Jitney does not assert that this Proceeding raises or involves an alleged recurring constitutional violation, this Decision does not discuss or address this aspect of the exception.

such as Horizon in the instant proceeding, and Gray Line in [Proceeding No.] 15F-0383CP

(Jitney Response at 18); (b) pursuant to § 40-10.1-114, C.R.S., providing transportation in intrastate commerce without Commission-issued authority is a misdemeanor; and (c) each day on which unauthorized transportation is provided is a separate violation. Based on the foregoing, Jitney states that,

[b]ecause operating a motor vehicle for hire without PUC authority to do so is a criminal violation, neither cessation of operations or dissolution of the company moots a proceeding in which such violations are alleged.

Jitney Response at 18.

71. Jitney also argues that the Motion to Dismiss contains five factual misrepresentations and some “incorrect interpretations of the law” (Jitney Response at 18). First, Jitney states that, contrary to the Respondents’ assertions,

the underlying basis for both the Complaint and Amended Complaint is *not* the City’s contract with Horizon. Indeed, the word ‘contract’ nowhere appears in the Amended Complaint. The complaint focuses on the illegal operations being conducted by

Denver in Red Rocks Park (Jitney Response at 18 (bolding in original)). Second, Jitney states that, contrary to the Respondents’ assertions,

the underlying basis for the Amended Complaint is *not* gone. Indeed, [Denver] is still providing service, now either directly or through another carrier without PUC authority to do so as more fully set forth in [Proceeding No.] 15F-0383CP.

Jitney Response at 19 (bolding in original). Third, Jitney states that, contrary to the Respondents’ assertions,

the shuttle service at Red Rocks Park is *not* provided free of charge. In [Denver’s] responses to Complainant’s discovery, [Denver] has admitted that the service is paid for through Red Rocks concert ticket sales.

Jitney Response at 19 (bolding in original). Fourth, Jitney states that, contrary to the Respondents’ assertions, “Gray Line does *not* have appropriate authority to provide

transportation service within Red Rocks Park. (See [Proceeding No.] 15F-0383CP)” (Jitney Response at 19 (bolding in original). Fifth, Jitney states that, contrary to the Respondents’ assertions, Jitney

does *not* refer to “injury stemming from the existence of the City’s contract with Horizon”, in its Amended Complaint but to injury caused by illegal operations by [Denver] ... Indeed, this injury continues to occur at the hands of [Denver], either directly, or in conjunction with another carrier, providing illegal transportation services at Red Rocks Park.

Response at 19 (bolding in original).

72. For these reasons, Jitney asks that the Motion to Dismiss be denied and that this Proceeding be allowed to continue.

D. Rulings.

1. The Case is Moot.

73. Respondents have met their burden of proof and have established that this Proceeding must be dismissed because events that transpired after the filing of the Complaint have rendered this Proceeding moot.

a. Horizon.

74. Jitney seeks a cease and desist order against Horizon “to refrain [it] from providing the complained of operations until such time as” Horizon receives appropriate authority from the Commission and files appropriate tariffs. Amended Complaint at 4. In addition, Jitney seeks a Commission finding that Horizon “ha[s] unlawfully conducted, and [is] unlawfully conducting transportation operations for hire without appropriate authority from the” Commission. *Id.* The complained-of transportation operations occurred in Red Rocks Park.

75. It is undisputed that, as of April 2015, Horizon no longer provides transportation service in Red Rocks Park; no longer operates in Colorado; and has sold and transferred its

Commission-issued authorities to third parties. In addition, there is no suggestion in the record that Horizon intends to resume transportation operations in Colorado, let alone intends to provide shuttle (or any other transportation) service in Red Rocks Park. In fact, Horizon's divesting itself of its intrastate transportation authorities is strong evidence that Horizon does not intend to provide shuttle (or any other transportation) service in Red Rocks Park in the future. Finally, any suggestion (if made) that Horizon intends to provide transportation service in Colorado would be pure speculation. As a result, issuance of a cease and desist order requiring Horizon to cease providing transportation service at Red Rocks Park until it has authority from the Commission would have no legal effect because Horizon no longer provides transportation in Red Rocks Park; no longer operates in Colorado; and, insofar as the record in this case shows, has no intention of providing transportation in Red Rocks Park.

76. Horizon has ceased the complained-of transportation at Red Rocks Park; is not now providing the complained-of transportation; and, insofar as the record in this Proceeding shows, has no plan to provide transportation at Red Rocks Park in the future. This negates Jitney's allegations in the Complaint that Horizon *at present* is conducting the complained-of transportation at Red Rocks Park and, in turn, negates Jitney's requests for a finding that Horizon is at present providing unauthorized transportation at Red Rocks Park.

77. What remains is Jitney's request that the Commission make a finding about Horizon's now-ceased behavior. For the Commission to make such a finding would serve no regulatory purpose (that is, would not advance the Commission's regulation of transportation or of motor vehicle carriers). The ALJ finds no persuasive reason for the Commission, which is "not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong" (*Spencer*, 523 U.S. at 18), to make such a finding.

78. For these reasons, this Proceeding is moot as to Horizon.

b. Denver.

79. Jitney seeks: (a) a cease and desist order against Denver “to restrain [it] from providing the complained of operations [in Red Rocks Park] until such time as” Denver receives appropriate authority from the Commission and files appropriate tariffs; and (b) a cease and desist order that requires Denver “to refrain from illegally impeding [Jitney] in conducting its PUC authorized operations[.]” Amended Complaint at 4. In addition, Jitney seeks these Commission findings: (a) Denver “has illegally usurped the powers of the [Commission] and illegally interfered with [Jitney’s] PUC authorized operations;” (Amended Complaint at 4); and (b) Denver “ha[s] unlawfully conducted, and [is] unlawfully conducting[,] transportation operations for hire without appropriate authority from the” Commission. Amended Complaint at 4. Finally, Jitney seeks such other relief against Denver as the Commission may find appropriate.

80. In its response, Jitney principally focuses on Denver. Jitney argues that this Proceeding is not moot because it is based on, and focuses on, Denver’s providing -- both directly and indirectly -- transportation at Red Rocks Park without Commission authority.

81. For the following reasons, the ALJ finds unsupported and unpersuasive Jitney’s argument that this Proceeding is not moot because Denver *directly* (that is, using vehicles owned or leased by Denver) provided and is providing transportation at Red Rocks Park.

82. First, Jitney has conceded that Denver provided the Red Rocks Park transportation at issue *indirectly* (that is, through the Denver-Horizon contract) *and not directly* (that is, using its own or leased motor vehicles):

Complainant seeks both an order requiring [Denver] to cease and desist from all transportation operations at Red Rocks Park until it obtain[s] appropriate authority from the PUC to do so and a finding of unfitness. To obtain authority, an applicant must satisfactorily establish its fitness and therefore, *the operations of [Denver] via Horizon, although ended, still have bearing on [Denver's] fitness* and the motion to dismiss for mootness should be denied.

Jitney Response at 15 (bolding and underlining supplied); *see also id.* at 6 (“All the while, [Denver] is reaping the benefit of illegal operations from first Horizon and now Gray Line”).

83. It is important to Jitney to defeat the Motion to Dismiss and, to do so, Jitney must demonstrate the existence of facts that establish -- or, at a minimum, provide a credible basis for a finding -- that this Proceeding is not moot. Thus, if Jitney had information that Denver *directly* provided or *directly* is providing (or both) the transportation at issue at Red Rocks Park, one reasonably would expect Jitney to include -- or at least to make mention of -- that information in its Response. Jitney neither includes nor mentions such information.

84. Second, the Complaint was filed on July 25, 2014; and the Amended Complaint was filed on October 14, 2014. At the April 22, 2015 status conference, the ALJ and Complainant's counsel had this exchange:

ALJ: So the complained-of operations are the Red Rocks Park operations; is that correct?

[Counsel]: That is correct.

ALJ: And the Red Rocks Park operations are pursuant to the [Denver-Horizon] contract; is that correct?

[Counsel]: *There may be others that -- that are not pursuant to the contract. I have not that that knowledge.*

We are complaining about all operations in Red Rocks Park whether they are pursuant to a contract or not.

Transcript of April 22, 2015 status conference at 43:12-24 (emphasis supplied).

85. Jitney's counsel made those statements over eight months after the filing of the Complaint, over seven months after the filing of the Amended Complaint, and after conducting at least some discovery in this Proceeding.¹⁶ In addition, Jitney's counsel signed the Amended Complaint. As relevant here, his

signature ... constitute[d] a certificate by him that he ha[d] read the [Amended Complaint and] that to the best of his knowledge, information, and belief *formed after reasonable inquiry*, [the Amended Complaint was] well grounded in fact[.]

Colo.R.Civ.P. 11(a) (emphasis supplied).¹⁷ Thus, Jitney's counsel should have been able to provide at least some information about transportation that Denver provided directly at Red Rocks Park. He could not do so.

86. Third, the statements that this Proceeding involves all transportation operations at Red Rocks Park that involve Denver, whether or not pursuant to the Denver-Horizon contract, are based on two implicit assumptions: (a) there *were* transportation operations at Red Rocks Park other than those pursuant to the Denver-Horizon contract; and (b) Denver *did* provide transportation in Red Rocks Park (either directly or through a carrier other than Horizon) other than the transportation provided pursuant to the Denver-Horizon contract.¹⁸ For the reasons discussed above, each assumption is based on speculation; the record contains no fact or information to support either one.

¹⁶ In the Jitney Response at 19, Jitney refers to and relies on Denver's responses to Jitney's discovery.

¹⁷ Rule 4 CCR 723-1-1202(d) is to the same general effect.

¹⁸ To support its argument that this Proceeding is not moot, Jitney cannot rely on transportation provided at Red Rocks Park by Gray Line or pursuant to the Denver-Gray Line contract because that transportation is the subject of Proceeding No. 15F-0383CP.

87. Fourth, Jitney states that “the word ‘contract’ nowhere appears in the Amended Complaint” (Jitney Response at 18) and denies that the focus of the Complaint is on operations conducted pursuant to the Denver-Horizon contract. At no time in this Proceeding and in no filing made in this Proceeding has Jitney cited to even one example of Denver’s *directly* providing transportation service at Red Rocks Park. Irrespective of the language in the Complaint, the entire focus of this Proceeding is and has been on Denver’s *indirectly* providing, through the Denver-Horizon contract, transportation service at Red Rocks Park.

88. For the following reasons, the ALJ finds unsupported and unpersuasive Jitney’s argument that, based on Denver *indirectly* providing (that is, through the Denver-Horizon contract) transportation at Red Rocks Park, this Proceeding is not moot.

89. Denver contracted with Horizon to provide the transportation service at Red Rocks Park that is at issue in this case. This is the transportation that Jitney alleges is unauthorized, is unlawful, and results in Denver’s illegal interference with Jitney’s authorized transportation operations.

90. The termination of the Denver-Horizon contract terminated the complained-of transportation at Red Rocks Park and, as a result, the alleged interference with Jitney’s authorized transportation operations. Thus, issuance of a cease and desist order against Denver based on the transportation at issue in this Proceeding and the alleged interference with Jitney’s authorized transportation operations would have no legal effect because the complained-of transportation and the associated alleged interference with Jitney’s transportation operations have ceased.

91. Jitney also seeks Commission findings that Denver has conducted and is conducting unlawful transportation operations without Commission authorization; that Denver

has illegally interfered and continues illegally to interfere with Jitney's authorized transportation operations; and that Denver has usurped and continues to usurp the "the powers of the" Commission (Amended Complaint at 4). The termination of the Denver-Horizon contract terminated Denver's complained-of transportation. This negates Jitney's assertions that Denver *at present* is conducting the complained-of transportation at Red Rocks Park and, in turn, negates Jitney's requests for findings that Denver is at present violating the law, is interfering with Jitney's operations, and is usurping the Commission's "powers."

92. What remains is Jitney's request that the Commission make findings about Denver's now-ceased behavior. For the Commission to make the requested findings would serve no regulatory purpose (that is, would not advance the Commission's regulation of transportation or of motor vehicle carriers), particularly considering that the same issues are now before the Commission in Proceeding No. 15F-0383CP. The ALJ finds no persuasive reason for the Commission, which is "not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong" (*Spencer*, 523 U.S. at 18), to make such findings.

93. For these reasons, this Proceeding is moot as to Denver.

2. The Capable of Repetition, Yet Avoiding Review Exception.

94. As discussed above, the Commission may hear a Proceeding that is otherwise deemed moot if this exception applies: the matter is one that is capable of repetition, yet evading review. As the Party asserting and relying on the exception, Jitney has the burden to establish that this exception applies in this Proceeding.

95. With respect to this exception to mootness, the Commission has stated:

In order for the capable of repetition yet evading review exception to apply, the *alleged violation must be of a type likely to happen to the same plaintiff again and it must be a type of violation of inherently limited duration so that it is always likely to become moot before litigation is completed.* ...

We agree with the ALJ and Yellow Cab that the allegations related to the legality of the exclusive agreement do not fall into the capable of repetition yet evading review exception to the mootness doctrine. Even though the exclusive taxicab agreement between the Mall, Metro [Taxi], and Yellow Cab turned out to be of a relatively short duration and was rescinded before this consolidated docket proceeded to a hearing, *there is no reason to believe that a future agreement also will be of a short duration. The exclusive agreements [at issue in that case] are not inherently of a short duration*, unlike Commission-issued temporary transportation authorities, pregnancies, legislative sessions, or school expulsions. *We also do not agree with Freedom Cabs that one instance of rescission of an exclusive agreement establishes a “cat and mouse” pattern.*^[Note 2] We therefore deny the exceptions filed by Freedom Cabs on this ground.

Note 2 states: However, if future similar agreements are rescinded before a formal complaint docket that relates to such agreements proceeds to hearing, we will be less likely to grant a motion to dismiss on mootness grounds.

Decision No. C10-0786 at ¶¶ 14-15 (bolding and italics supplied).

96. This is consistent with the United States Supreme Court’s formulation and application of the exception:

The *capable-of-repetition doctrine applies only in exceptional situations*, where the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, *and* (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again. Petitioner’s case satisfies neither of these conditions. He has not shown (and we doubt that he could) that the time between parole revocation and expiration of sentence is *always so short as to evade review*. Nor has he demonstrated a reasonable likelihood that he will once again be paroled and have that parole revoked.

Spencer, 523 U.S. at 17-18 (internal quotations and citations omitted) (bolding and italics supplied).

97. In this case, Jitney has failed to meet its burden to establish that the capable of repetition, yet evading review exception applies here. Denver has entered into the Denver-Gray Line contract to provide transportation service in Red Rocks Park; that contract is the subject of Proceeding No. 15F-0383CP. Jitney has not shown that the Denver-Gray Line contract will be of short duration, or is a type of contract that is inherently of short duration, such that the issues will not be litigated and decided before the expiration of the Denver-Gray Line contract. In addition, Proceeding No. 15F-0383CP is before the undersigned ALJ. If the Denver-Gray Line contract is terminated before Proceeding No. 15F-0383CP is decided, the ALJ “will be less likely to grant a motion to dismiss on mootness grounds” (Decision No. C10-0786 at ¶ 15 n.2); *see also Spencer*, 523 U.S. at 18 (“As for the petitioner’s concern that law enforcement officials ... will repeat with impunity the mootness-producing abuse that he alleges occurred here: We are confident that, as a general matter, district courts will prevent dilatory tactics by litigants[.]”). Thus, Jitney has not satisfied the elements of the capable of repetition, yet evading review exception.

98. In support of its argument that the capable of repetition, yet evading review exception applies in this case, Jitney relies on judicial decisions and Commission Decisions. None is apposite or persuasive authority in this Proceeding.

99. Jitney relies on *United States v. Trans-Missouri Freight Association*, 166 U.S. 290 (1897) (*Trans-Missouri Freight Association*). In that case, the member companies of the defendant trade association dissolved the defendant trade association after judgment was entered against them in the trial court and while the matter was pending on appeal. Those companies immediately formed another trade association that promptly began to engage in the conduct that formed the basis of the complaint; the second trade association was active and the conduct was

continuing when the motion to dismiss for mootness was filed. The United States Supreme Court refused to dismiss the appeal, stating:

where parties have entered into an illegal agreement and are acting under it, and there is no adequate remedy at law and the jurisdiction of the court has attached by the filing of a bill to restrain such or any like action under a similar agreement, and a trial has been had, and judgment entered, the appellate jurisdiction of this court is not ousted by a simple dissolution of the association, effected subsequently to the entry of judgment in the suit.

Trans-Missouri Freight Association, 166 U.S. at 309 (emphasis supplied).

100. None of the facts cited by the Supreme Court in *Trans-Missouri Freight Association* are present in this Proceeding: Horizon has not resumed transportation operations at Red Rocks Park under a different name; there are no on-going transportation operations at Red Rocks Park involving Denver and Horizon; and no judgment on the merits has issued following an evidentiary hearing. Given the clearly distinguishable facts, the *Trans-Missouri Freight Association* decision and rationale are inapplicable here.

101. Jitney relies on *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U.S. 498 (1911) (*Southern Pacific Terminal Company*). In that case, the plaintiff sought judicial review of a final Interstate Commerce Commission (ICC) order to which they were subject. The ICC order expired during the pendency of judicial review, and the ICC moved to dismiss the appeal as moot. The United States Supreme Court determined that the case was not moot because the parties affected by the ICC order had a right to judicial review of the order to determine their rights and had a right to a decision on judicial review that might provide guidance to the ICC in the future.

102. The facts in *Southern Pacific Terminal Company* are clearly distinguishable from the facts of this Proceeding: this is a complaint proceeding before the Commission in which the focus is on the activities of Denver and Horizon; this is not a judicial proceeding in which Jitney

seek judicial review of a final Commission decision in order to determine the validity of the Commission decision and to determine Jitney's rights. Given the clearly distinguishable facts, the *Southern Pacific Terminal Company* decision and rationale are inapplicable here.

103. Jitney relies on *Moore v. Ogilvie*, 394 U.S. 814 (1969) (*Moore*). In that case, the plaintiff appealed the constitutionality and the application of an Illinois statute that pertained to nominations for statewide offices. The plaintiffs sought to prevent the application of the Illinois statute in the 1968 general election. A three-judge district court found *MacDougall v. Green*, 335 U.S. 281 (1948), to be controlling and granted a motion to dismiss for mootness because the 1968 election had been held. The United States Supreme Court reversed that dismissal:

Appellees urged in a motion to dismiss that since the November 5, 1968, election has been held, there is no possibility of granting any relief to appellants and that the appeal should be dismissed. But while the 1968 election is over, the burden which [*MacDougall v. Green*, 335 U.S. 281 (1948),] allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore capable of repetition, yet evading review[.] The need for its resolution thus reflects a continuing controversy in the federal-state area where our "one man, one vote" decisions have thrust. ...

Moore, 394 U.S. at 816 (internal quotations and citations omitted).

104. The facts in *Moore* are easily distinguished from the facts in the instant Proceeding. Here, there is no long-standing and controlling Commission Decision that must be addressed to protect Jitney from the consequences of that preexisting long-standing decision. Nor could there be because the Commission is not bound by *stare decisis*, which is the touchstone of binding judicial precedent. Insofar as the ALJ is aware, the instant Proceeding is a case of first impression; thus, there is no Commission Decision that addresses -- let alone controls -- the issue raised in this Proceeding. Here, the issue is transportation and not access to the ballot and "one man, one vote." *Moore* is neither relevant nor persuasive.

105. Jitney cites *Urevich v. Woodard*, 667 P.2d 760 (Colo. 1983) (*Urevich*). *Urevich* is not persuasive or relevant authority because the facts in *Urevich* are distinguishable from those in the instant Proceeding.

106. First, in *Urevich*, the Colorado Supreme Court's decision interprets a statute (§ 1-40-110, C.R.S. (1973)) which "deal[s] with payment to initiative or referendum petition circulators" (*Urevich*, 667 P.2d at 761) and which (unless amended) would be in effect at the time of the next election cycle. The instant Proceeding does not pertain to an election-related statute and does not pertain to placing initiatives on the ballot.

107. Second, if the Court had granted the motion to dismiss in *Urevich*, thus denying the plaintiff Association of Community Organizations for Reform NOW (ACORN)

a decision ... because of the passage of the date for placing an initiative on the ballot, there is no reason to believe that it will be any more likely to obtain review the next time. The only way ACORN could be assured of obtaining a decision on the merits of its proposed plan would be to proceed with it and raise its arguments in defense to a felony prosecution, a procedure that [§ 13-51-101 *et seq.*, C.R.S. (1973), and Colorado Rule of Civil Procedure 57] -- providing for declaratory judgments -- were supposed to make unnecessary.

Urevich, 667 P.2d at 761-62 (internal citations omitted). Granting the motion to dismiss in *Urevich* would have presented ACORN with a Hobson's choice (*i.e.*, forego its plan to place an initiative on the ballot or violate the law and face felony charges in order to obtain a ruling on its legal theory) and would have defeated the purpose of declaratory ruling proceedings. In contrast, granting the Motion to Dismiss in the instant Proceeding neither presents Jitney with a similar Hobson's choice nor implicates declaratory ruling proceedings.

108. Jitney cites *Colorado-Ute Electric Association, Inc. v. Public Utilities Commission of the State of Colorado*, 760 P.2d 627 (Colo. 1988) (*Colorado-Ute*). In that case, Colorado-Ute Electric Association, Inc. (Colo-Ute), appealed to the Colorado Supreme Court a

state district court decision that affirmed the Commission decision in Case No. 6076, a rate-making proceeding. Colo-Ute moved to dismiss the appeal as moot.

109. In denying the motion to dismiss, the Colorado Supreme Court stated:

In support of its position [that the appeals are moot and should be dismissed], Colo-Ute states that in October 1986, five months after the decision of the district court, it filed a new wholesale rate tariff governing electric power sales to the co-ops [rural electric cooperatives] which became effective by operation of law on December 1, 1986. ... Colo-Ute contends that since the tariff supersedes the tariff which is the subject of Case No. 6076 and these appeals, the issues raised in the instant case are “purely academic.” The PUC [and other parties] argue to the contrary and urge us not to dismiss on the ground of mootness.

We have previously stated that a case is not moot where interests of a public nature are asserted under conditions that may be immediately repeated. Under our latest formulation of the mootness test, we have held that a case is not moot where the controversy is one “capable of repetition, yet evading review.”

This case is not moot because *the issue of proper rate design survives the most recent tariff filing*. Colo-Ute’s 1986 rate filing retains the same flat-energy rate structure which the Commission found objectionable, and which is at issue in the instant appeal. Colo-Ute may have changed the level of its rates with its most recent filing, but the level of rates has never been a matter of dispute. In fact, the issue which has given rise to these appeals -- the authority of the PUC to prescribe the demand-energy rate for Colo-Ute -- presents no less a controversy now than when the PUC first set Case No. 6076 for hearing. *The lawfulness of the Commission’s orders with respect to Colo-Ute’s rate design remains a viable legal controversy.*

In addition, *Colo-Ute’s argument, if accepted, would operate to insulate much of its activity from judicial and/or Commission review*. With the addition of [§ 40-6-111(4)(a), C.R.S. (1984)], the PUC no longer possesses the statutory authority to suspend the date on which a tariff filed by a cooperative electric association becomes effective. As a result, any new or revised tariff filed by a cooperative electric association such as Colo-Ute becomes effective by operation of law after the expiration of the 30-day notice period specified in [§ 40-3-104, C.R.S. (1984)]. But it takes longer than 30 days for the Commission to review a rate tariff filed by Colo-Ute, to say nothing of the time necessary for an appeal of a Commission decision to work its way through the judicial system. *If a cooperative could render an appeal moot merely by filing a new tariff while an appeal is pending, the Commission’s authority to regulate cooperative utilities would be undermined.*

Colorado-Ute, 760 P.2d at 633-34 (internal citations omitted) (emphasis supplied).

110. *Colorado-Ute* is not persuasive or relevant authority because the facts in *Colorado-Ute* are distinguishable from those in the instant Proceeding. First, *Colorado-Ute* was decided in the context of judicial review of a Commission decision issued in a rate-making proceeding. The instant Proceeding is not a rate-making proceeding, and no Commission decision on the merits has been issued.

111. Second, in *Colorado-Ute*, the dispute was between the Commission, which asserted that it had authority to prescribe *Colorado-Ute*'s rates, and *Colorado-Ute*, which asserted that the Commission lacked that authority. In the instant Proceeding, the Commission is the decision-maker, not a party. In addition, the Commission has not determined -- let alone asserted -- its jurisdiction over the transportation at issue in this case.

112. Third, in *Colorado-Ute*, the Court found that accepting *Colorado-Ute*'s statute-based arguments and dismissing the case as moot would undermine the Commission's authority to regulate cooperative electric utilities. Accepting Denver's fact-based case-specific arguments, granting the Motion to Dismiss, and dismissing this Proceeding as moot will have no impact beyond the instant Proceeding and will not undermine the Commission's authority to regulate transportation by motor vehicle.

113. Jitney relies on Decision No. 90012, which was issued on January 13, 1977 in Proceeding No. 5678, *Mellow Yellow Taxi Co. v. Aspen Airport Transit Company, Inc., a Colorado Corporation, doing business as "Quicksilver Limousine Service."* In that Proceeding,

[Complainant] Mellow Yellow and [Respondent] Quicksilver ... stipulated that the following are agreed facts: ... (8) Quicksilver *operates* its motor vehicle passenger equipment interchangeably under all of its certificates; ... (15) Quicksilver transported passengers for hire from Sardy Field (Aspen airport) to Glenwood Springs, Colorado, on approximately five occasions within the twelve months prior to the signing of the stipulation [of facts]. Quicksilver voluntarily discontinued those operations prior to the 15th day of April 1976, and

prior to the filing of the complaint which initiated this proceeding. Quicksilver agrees it is without any present authority to perform such services for the public. Quicksilver states that it does not intend to perform the transportation of passengers for hire from Sardy Field (Aspen airport) to Glenwood Springs, Colorado, in the future, unless or until it receives authority from this Commission. ... All of the agreed upon facts are accepted and are found to be facts in this decision.

Decision No. 90012 at 2-3 (emphasis supplied); *see also id.* at 4 (“Quicksilver ... operates pursuant to a lease” (emphasis supplied)). Based on the stipulated facts, the ALJ in that case issued a cease and desist order against the respondent Quicksilver¹⁹ and dismissed all other requests for relief (*id.* at 6). On February 8, 1977, by Decision No. 90136, the Commission denied the exceptions filed by the complainant Mellow Yellow and adopted the findings of fact and conclusions in Decision No. 90012.

114. Jitney proffers Decision No. 90012 to “amply demonstrate[]” this proposition:

Because operating a motor vehicle for hire without PUC authority to do so is a criminal violation, neither cessation of operations or dissolution of the company moots a proceeding in which such violations are alleged.

Jitney Response at 12.²⁰

115. Decision No. 90012 is inapposite here. In that Decision, the Commission issued a cease and desist order against an existing transportation carrier that was operating in Colorado and that had neither dissolved nor ceased operations. The facts in the instant Proceeding are distinguishable from those in Decision No. 90012: Horizon no longer operates in Colorado and has sold its Colorado operating authorities; the respondent Quicksilver in Proceeding No. 5678 was operating. In addition, and contrary to Jitney’s representation, Decision No. 90012 does not

¹⁹ The cease and desist order mirrored Quicksilver’s statement of intent contained in the stipulation of facts.

²⁰ At times, Jitney appears to assert this proposition as support for its argument that the capable of repetition, yet evading review exception applies here. At times, Jitney appears to assert this proposition as a separate basis for denying the Motion to Dismiss. Either use of this proposition is unpersuasive as Jitney cites no relevant authority, and the ALJ is aware of none, for the proposition advanced by Jitney.

mention -- let alone decide -- the question of whether the respondent Quicksilver's prior transportation activities constituted a criminal violation. Finally, Decision No. 90012 does not mention -- let alone decide -- the issue of whether Proceeding No. 5678 was rendered moot by the respondent Quicksilver's voluntary cessation of the transportation in question in that case. For these reasons, Decision No. 90012 is not persuasive authority on the question of mootness and does not support the proposition for which Jitney proffers it.

116. Jitney relies on Decision No. R82-0824-I, which was issued on May 28, 1982 in Consolidated Proceedings No. 34027, *In the Matter of the Application of Excalibur Limousine, Ltd., Evergreen, Colorado 80439, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*; No. 34028, *In the Matter of the Application of Excalibur Limousine, Ltd., 33421 Stagecoach Boulevard, Evergreen, Colorado 80439, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*; No. 6072, *Palace Limousine Service, Inc., v. Excalibur Limousine, Ltd., and Excalibur Society, Ltd.*; and No. 6108, *Re: The Motor Vehicle Operations of Respondents, Excalibur Society, Ltd., and Excalibur Limousine, Ltd., 33421 Stagecoach Boulevard, Evergreen, Colorado (Excalibur case)*. That Interim Decision was entered in a case in which four Proceedings -- two complaint cases and two application cases -- were consolidated. In that Interim Decision, the ALJ denied a motion to dismiss the two complaint cases as moot, stating:

... Whether Excalibur Society, Ltd., or Excalibur Limousine, Ltd., has operated as a motor carrier without authority from this Commission in violation of Public Utilities Law may have a bearing upon the fitness of Excalibur Limousine, Ltd., to receive the authority which it has requested in Application No. 34027 and Application No. 34028. ...

Decision No. R82-0824-I at 2.

117. Jitney relies on Decision No. R82-0824-I to support its argument that the instant Proceeding is not moot because the prayer for relief seeks, *inter alia*, “any other relief that the PUC may deem appropriate under the circumstances including, but not limited to ... findings of unfitness against each and every Respondent” (Complaint at 4-5) and because “the operations of [Denver] via Horizon, although ended, still have bearing on [Denver’s] fitness” (Jitney Response at 15). For the following reasons, Decision No. R82-0824-I is inapposite; and Jitney’s argument is unpersuasive.

118. First, Denver has not filed and may never file an application for a Certificate of Public Convenience and Necessity (CPCN). This distinguishes this Proceeding from the *Excalibur* case, in which there were two pending CPCN applications. In addition, Jitney’s underlying assumption that Denver may file an application for a CPCN is pure speculation.

119. Second, Jitney’s argument rests on the assumption that, in the instant complaint case, the Commission can determine Denver’s fitness to operate as a motor vehicle carrier for hire and that such a fitness determination will be applicable or controlling in the event Denver files an application for a CPCN in the future. A fitness determination is beyond the scope of the issues that are before the Commission in this Proceeding and, even if made in this Proceeding, would have no effect in a later-filed CPCN application proceeding.

120. Third, the two complaint cases and two application cases referenced in Decision No. R82-0824-I were consolidated and were pending before the ALJ who issued that interim decision. In the instant Proceeding, however, there is no pending application proceeding in which Denver seeks a CPCN. This is a critical fact that distinguishes the circumstances that led to Decision No. R82-0824-I from the circumstances in the instant Proceeding.

121. Citing *Carafas v. LaValle*, 391 U.S. 234 (1968) (*Carafas*), Jitney asserts that the existence of collateral consequences precludes dismissal of this Proceeding on the grounds of mootness. In that case, the United States Supreme Court determined that the presence of collateral consequences flowing from a criminal conviction defeated a motion to dismiss the appeal as moot:

It is clear that petitioner's cause is not moot. In consequence of his conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified period of time; he cannot vote in any election held in New York State; he cannot serve as a juror. Because of these "disabilities or burdens [which] may flow from" petitioner's conviction, he has "a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him." On account of these "collateral consequences," the case is not moot.

Carafas, 391 U.S. at 237-38 (internal citations omitted; footnotes omitted). The United States Supreme Court subsequently made clear that *Carafas* stands for this proposition: "Once the convict's sentence has expired, however, some concrete and continuing injury other than the now-ended incarceration or parole -- some 'collateral consequence' of the conviction -- must exist if the suit is to be maintained." *Spencer*, 523 U.S. at 7.

122. In the instant Proceeding, the collateral consequences doctrine is irrelevant because the issue in this Proceeding pertains to transportation provided by Denver, not to the collateral consequences that flow from a criminal conviction. Jitney's reliance on *Carafas* and Jitney's use of the collateral consequences doctrine are misplaced.²¹

123. For these reasons, the ALJ finds that Jitney has failed to meet its burden to establish that the capable of repetition, yet evading review exception applies in this Proceeding.

²¹ Jitney relies on *City and County of Denver v. Public Utilities Commission of State of Colorado*, 181 Colo. 38, 507 P.2d 871 (1973) (*City and County of Denver*), to establish the existence of collateral consequences to it and to Denver (Jitney Response at 12). The decision is not pertinent for that purpose because, for the reasons discussed, the collateral consequences doctrine is not relevant to the issue of mootness in this Proceeding.

3. The Question of Great Public Importance Exception.

124. As discussed above, the Commission may hear a case that is otherwise deemed moot if this exception applies: the case involves a question of great public importance or an alleged recurring Constitutional violation.²² As the Party asserting and relying on the exception, Jitney has the burden to establish that this exception applies in this Proceeding.

125. With respect to this exception to mootness, the Commission has stated:

The courts and administrative agencies may resolve a moot issue if it involves a question of great public importance or an alleged constitutional violation. ... ^[Note 7]

We find that it is not necessary for an issue to involve a constitutional violation to fall within the above mentioned exception to the mootness doctrine since the exception is stated phrased in the disjunctive[.] On the other hand, *a mere alleged illegality is not enough to qualify for this exception since then the exception would swallow the rule.* ...

Note 7 states: We list examples of how Colorado courts have applied this exception to the mootness doctrine in the past. *People ex rel. Morgan County Dept. of Human Services ex rel. Yeager*, 93 P.3d 589 (Colo. App. 2004) (The issue of whether the department of human services was authorized to execute a do-not-resuscitate order for a terminally ill person is one of great public importance and thus not moot even though the person passed away during the pendency of appeal); *Grossman v. Dean*, 80 P.3d 952 (Colo. App. 2003) (The challenge to the use of a “super-motion” to kill a proposed bill without prior committee consideration on the merits of the bill is an issue of great public importance and therefore not moot even though the legislative session where the challenge arose already concluded). We also found one instance where the Commission applied this exception to the mootness doctrine previously. In a formal complaint docket, the complainant alleged that certain bylaws of the Delta-Montrose Electric Association (DMEA) violated § 40-9.5-110, C.R.S. That statute provides that nominations for a director on the board of a cooperative electric association may be made by written petition signed by at least 15 members of such association. However, a DMEA bylaw required nominating petitions to be signed by a minimum of 100 persons. By the time that the Commission had an opportunity to consider this issue, DMEA had revised its bylaws and adopted the minimum number of 15 signatures as part of its election procedures. The Commission found that the issue was not moot and involved a question of great public importance, since a determination of this issue would apply not only to DMEA and its members, but to all other electric cooperatives

²² Jitney does not assert that this Proceeding involves a recurring Constitutional violation.

subject to the statute. *See* Decision No. C94-1443, mailed November 8, 1994 in Docket No. 93F-121E.

Decision No. C10-0786 at ¶¶ 18-19 (footnote and citations omitted).

126. In this case and for the reasons discussed below, Jitney has failed to meet its burden to establish that this Proceeding involves a question of great public importance.

127. Jitney argues: (a) this Proceeding involves the Commission's jurisdiction vis-à-vis transportation provided by Denver; (b) the same jurisdictional issue was the subject of *City and County of Denver v. Public Utilities Commission of State of Colorado*, 181 Colo. 38, 507 P.2d 871 (1973) (*City and County of Denver*); and (c) as a result, this Proceeding, though moot, nonetheless should be heard because it raises a matter of great importance (*i.e.*, the same issue as that addressed 40 years ago in *City and County of Denver*). Jitney Response at 16-17.

128. Jitney's argument is unpersuasive, and the *City and County of Denver* decision does not support Jitney's argument that the exception applies. In addition, as stated in the Motion to Dismiss, the outcome of this Proceeding (if it were to go forward) would affect only the Parties. Finally, this case does not present a matter of such great importance that, although moot, the Proceeding should not be dismissed. *See generally* Decision No. C10-0786 at note 7 (examples of the circumstances in which the Commission and Colorado courts have applied this exception in the past).

129. For these reasons, the ALJ finds that Jitney has failed to meet its burden to establish that the matter involves a question of great public importance exception applies in this Proceeding.

130. The ALJ considered all arguments presented. To the extent an argument is not addressed in this Decision, the ALJ finds that argument to be unpersuasive.

131. Based on the foregoing, the ALJ finds and concludes: (a) this Proceeding is moot; (b) the Motion to Dismiss should be, and will be, granted as the Commission lacks subject matter jurisdiction; (c) the Complaint and the Amended Complaint should be, and will be, dismissed as moot;²³ and (d) this Proceeding should be dismissed, and will be, dismissed as moot.

132. Having found that the Proceeding is moot and will be dismissed, the ALJ will deny as moot the following motions, each of which is pending: (a) the October 28 Motion; (b) the November 4 Motion; (c) the Motion for Summary Judgment; (d) the Motion to Strike; and (e) the Motion to Consolidate. In addition, to the extent that there are pending motions that are not identified in this Decision, those motions will be denied as moot.

133. In accordance with § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following Decision.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Motion to Dismiss for Lack of Subject Matter Jurisdiction, which motion was filed by the City and County of Denver on May 8, 2015, is granted.

2. Consistent with the discussion above, the Complaint filed on July 25, 2014 by Colorado Jitney LLC, doing business as Colorado Jitney, is dismissed as moot.

²³ The Amended Complaint filed on October 14, 2015 superseded in its entirety the Complaint filed on July 25, 2014. Nonetheless, out of an abundance of caution, the ALJ will dismiss both the Complaint filed on July 25, 2014 and the Amended Complaint filed on October 14, 2015.

3. Consistent with the discussion above, the Amended Complaint filed on October 14, 2015 by Colorado Jitney LLC, doing business as Colorado Jitney, is dismissed as moot.

4. Consistent with the discussion above, this Proceeding is dismissed as moot.

5. Consistent with the discussion above, the Motion to Dismiss filed by the City and County of Denver on October 28, 2014, is denied as moot.

6. Consistent with the discussion above, the Motion to Dismiss filed on November 4, 2014 by Evergreen Trails, Inc., doing business as Horizon Coach Lines, is denied as moot.

7. Consistent with the discussion above, the Motion for Summary Judgment filed on April 6, 2015, by Colorado Jitney LLC, doing business as Colorado Jitney, is denied as moot.

8. Consistent with the discussion above, the Motion to Strike filed on April 15, 2015 by the City and County of Denver is denied as moot.

9. Consistent with the discussion above, the Motion to Consolidate this Proceeding and Proceeding No. 15F-0383CP filed on June 19, 2015 by Colorado Jitney LLC, doing business as Colorado Jitney, is denied as moot.

10. Consistent with the discussion above, a pending motion that is not identified in this Decision is denied as moot.

11. This Recommended Decision shall be effective on the date it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

12. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Recommended Decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; 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 the limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director