

MANITOBA

Order No. 137/09

THE PUBLIC UTILITIES BOARD ACT

October 5, 2009

Before: Graham Lane, C.A., Chairman
 Susan Proven, P.H.Ec., Member

AVION SERVICES CORPORATION
AIRPORT SHUTTLE SERVICE

Table of Contents		Page
EXECUTIVE SUMMARY	.....	3
1.0 Introduction	.....	7
<i>Preamble</i>	.....	<i>7</i>
<i>Avion and the Winnipeg Airport Authority</i>	.....	<i>7</i>
<i>Manitoba Taxicab Board and The Taxicab Act</i>	.....	<i>9</i>
<i>City of Winnipeg</i>	.....	<i>16</i>
<i>The Public Utilities Board</i>	.....	<i>18</i>
<i>Winnipeg's Taxi Industry</i>	.....	<i>19</i>
<i>James Armstrong Richardson International Airport and the Winnipeg Airport Authority</i>	.....	<i>22</i>
<i>Importance of Avion's Application</i>	.....	<i>24</i>
<i>Hotels</i>	.....	<i>26</i>
<i>Context</i>	.....	<i>27</i>
2.0 Motions Concerning Jurisdiction	.....	27
3.0 Application	.....	28
4.0 Intervener	.....	35
5.0 Analysis, Discussion and Preliminary Findings	.....	42
6.0 Board Findings	.....	60
<i>Decision</i>	.....	<i>60</i>
<i>Other comments</i>	.....	<i>67</i>
<i>Costs and Appeals</i>	.....	<i>70</i>
7.0 IT IS THEREFORE ORDERED THAT:	.....	72
8.0 IT IS THEREFORE RECOMMENDED THAT:	.....	74

Executive Summary

By this Order, the Public Utilities Board (Board or PUB) conditionally approves Avion Services Corporation's (Avion) plan to operate an airport/downtown hotel fixed-fee shuttle service, pursuant to a City of Winnipeg (City) resolution establishing an agreement between the City and Avion.

Ahead of Avion commencing its service:

- a) Avion will file an updated business plan with PUB, for PUB's approval ahead of Avion's service commencing;
- b) The Winnipeg Airport Authority (WAA), the sole owner of Avion, will have provided PUB written assurance that it will:
 - i) guarantee and ensure that Avion, following the implementation of its shuttle service, will, subject only to the ability of the City to cancel its agreement with Avion with ninety days notice, continue the service in operation for at least three years;
 - ii) implement signage and other information particulars within and outside the airport terminal (meeting PUB's prior approval), setting out the various ground transportation means available to persons leaving the airport terminal, and the expected price or range of prices for such services; and
 - iii) maintain the current ratio of taxis to executive cars at the terminal curb (4:1), awaiting travellers departing from the airport.

As well, PUB recommends that, in keeping with the spirit and intent of this Order, the Manitoba Taxicab Board (TCB) hold a public hearing to review the implications of Avion's shuttle service, taking into account the findings and issues set out in this Order, and consider increasing Winnipeg taxi fares. TCB would best proceed with its public hearing and issue its decision(s), with reasons, in sufficient time so as to be ahead of the commencement of Avion's proposed service.

With respect to Avion's revised business plan, it is not to provide for any additional shuttle vehicles or shuttle "runs" beyond those proposed in the application heard by PUB. As well, once its service has commenced, Avion may not materially vary any element of its service (number of vehicles, schedule, destinations, pricing, etc.) without first obtaining PUB's approval.

Given PUB's final approval, Avion's airport-downtown hotel shuttle service is to commence no earlier than April 1, 2010 and no later than July 1, 2010. Following commencement of its service, Avion is to file annual audited financial statements with PUB, segmenting the shuttle service, and its shuttle service is to be subject to a tri-annual review by PUB.

While PUB concludes that Avion's airport-downtown shuttle service will negatively impact on the annual volumes and revenue of the taxi industry's "to and from the international airport" fares and, in the absence of a fare increase (which requires TCB approval), expects the average taxicab will note reductions in both gross and net income, PUB, in granting Avion conditional approval to operate a shuttle service, recognizes that:

- a) after a series of public meetings, and after hearing from proponents and opponents of Avion's proposed shuttle service, the City endorsed Avion's shuttle service through a resolution of City Council setting out the terms of its agreement with Avion;
- b) the City has an obligation to concern itself with the public interest of its citizens, similar to PUB's responsibility to determine the public interest, and PUB accepts that the City both had the opportunity and did consider the implications of Avion's proposal;
- c) although Avion's business plan has flaws and requires a thorough re-draft before this Board will give final authorization for the service to commence, the Board recognizes the managerial capacity of WAA and its subsidiary Avion, and is confident that Avion is able to operate a safe shuttle service that will expand

- customer choice for airport travellers (albeit with negative implications for taxi companies and possibly higher taxi fares for all taxi utilization within the City);
- d) there is a wide array of ground transportation arrangements related to Winnipeg's international airport – Winnipeg Transit, taxis, executive cars, limousines, hotel shuttles and private and rented cars; the addition of an airport-hotel shuttle service operated by a subsidiary of WAA will represent the addition of a service that is common-place at other large North American airports; and
- e) pursuant to the *Taxicab Act* and regulations, TCB concerns itself with the affairs and well-being of the taxi industry, and is enabled to deal with and regulate same. TCB has sufficient powers to consider any impact or implications of an Avion airport shuttle service on the industry, so as to be in a position to determine whether adjustments to fares and/or other matters are advisable and/or necessary (to allow for both a reasonable wage for taxi drivers, taking into account the terms and hours of work, and a reasonable rate of return on the investments of taxi owners -- an investment that increasingly includes more environmentally-friendly vehicles and a higher transfer price for a taxi business license).

The reviews conducted by, first the City and, more recently, the Board, have allowed the Board to obtain a sufficient understanding of the pros and cons, and risks, of Avion's proposal, such as to allow for the directions and suggestions made herein.

As previously indicated, PUB will require Avion and WAA to file additional information and representations with the Board, and receive the Board's final approval of Avion's proposal prior to commencement of the shuttle service. And, while PUB calls on and anticipates that TCB will hold a public proceeding to review the implications of Avion's shuttle service for the taxi industry, and other related matters raised herein, ahead of PUB giving final approval for the shuttle service to commence, the Board cannot and does not require TCB to do so.

Notwithstanding whether or not TCB holds such a public hearing, PUB will give serious consideration to Avion and WAA's expected new filings, and if judged adequate and in the public interest, will provide final approval of Avion commencing the shuttle service to and from downtown hotels.

PUB does not envision an oral public hearing following the filing of the additional submissions required of Avion and WAA, although it will allow Unicity Taxi Ltd. and Duffy's Taxi (1996) Ltd. (Unicity/Duffy's or the taxi companies) to provide comments on Avion and WAA's filings prior to reaching a final conclusion allowing the commencement of the service. The delays and costs experienced related to Avion's application have been significant, and PUB is currently not of the view that incurring significant additional costs through another oral public hearing process, following the expected additional filings of Avion and WAA, would serve the public interest.

1.0 Introduction

Preamble

The major parties involved, directly or indirectly, in PUB's review of Avion's application were Avion, WAA, the taxi companies (Unicity/Duffy's), other elements of the taxi industry, the City of Winnipeg, TCB, downtown hotels and the public interest.

This Order follows a public hearing that commenced in July 2009 and concluded with the filing of closing arguments by Avion and Unicity/Duffy's at the end of August 2009. The taxi companies opposed Avion's proposed shuttle service.

Avion and the Winnipeg Airport Authority

Avion first approached the Manitoba Taxicab Board (TCB) for approval of its proposed fixed fare airport/downtown hotel shuttle service in February 2006. Avion's application indicated it would operate three passenger vans in a business to be called *City Connect Shuttle Service*.

Following rejection of its application by TCB, Avion proceeded to seek an agreement with the City of Winnipeg, and, following Avion's success in that initiative, the enterprise sought PUB's approval.

Avion (a wholly-owned subsidiary of WAA) seeks to operate a shuttle service (denoted as the "City Connect Shuttle Service") between Winnipeg international airport (James Armstrong Richardson International Airport, or airport) and downtown hotels, with a stated expectation that local area hotels (near the airport) may be added to the service in the future.

WAA is a 'not for profit' agency operating Winnipeg's international airport through a long-term lease with the federal government. WAA's board of directors includes members designated by the three levels of government (federal, provincial and municipal), chambers of commerce and agencies involved with tourism and travel.

WAA is a well-capitalized and significant enterprise, with a large staff, material annual revenues and expenses, and tremendous responsibilities. WAA has complete authority over the airport's operation; sets its own fees; enters into agreements with third parties with respect to various services (food, retail and ground transportation, for example); and, owns Avion, a 'for profit' subsidiary subject-to-income tax.

At the time of PUB's hearing of Avion's application, Avion's board of directors was comprised of two senior WAA executives. Avion operates and/or oversees a number of services provided by airports; these include parking and security. Avion's management decided that Avion should operate a Winnipeg airport-downtown hotel shuttle service, and, with the agreement of its board and a management committee of WAA, prepared a rudimentary business plan and has since sought approval to commence service.

WAA has contracts with Unicity and limousine operators. WAA's recent agreement with Unicity was entered into in late 2008, and the contract establishes that only Unicity taxis are allowed to park and wait for customers at the airport. Limousine operators, and there are several, also have contracts with WAA – limousines include "executive" cars as well as stretch limousines.

As of April 1, 2009, and following a review of ground transportation services operating at the airport, WAA ceased allowing limousines to pick up passengers at the terminal curb – limousines now await passengers at a distance from the terminal's exits, at the "elbow". In their place, executive cars (generally standard Cadillac and Lincoln vehicles) owned by the limousine operators, join taxicabs at the terminal curb.

By restricting limousine service (while WAA initially barred limousines, following representations from their owners, limousines were allowed, though at a "disadvantaged" location with respect to the prospects of gaining fares), a lower cost option for travellers was essentially removed -- the fare for a ride to downtown Winnipeg in a limousine could be as low as \$9 per person, as compared to Avion's proposed fare of \$11: the average downtown fare for a taxicab in the range of \$15, and that of an executive car, \$25.

Manitoba Taxicab Board and The Taxicab Act

The Taxicab Act established TCB for the purpose of licensing and overseeing the operation of taxicabs (including taxis, Handivans, limousines and a category of limousine, executive cars) in the City of Winnipeg.

Section 4(1) of that Act states:

“No person shall, through an agent or employee, carry on the business of keeping a taxicab or taxicabs for hire, or hold out or advertise that he or she is carrying on that business, or keep for hire or operate for hire any taxicab in the city of Winnipeg unless the person holds a taxicab business licence issued by the board (i.e. TCB) permitting him or her to do so.”

The Taxicab Act also provides for regulations *“respecting any matter the board considers necessary or advisable to carry out the intent and purpose of this Act”*.

TCB regulates the “taxicab” industry, with its regulation going well beyond setting fares and charges, and including vehicle standards, driver licensing, vehicle licensing, safety matters and driver training. (The general powers of TCB are set out in Section 17(1) of *the Taxicab Act*.)

TCB heard Avion’s application on March 8, 2006, and, as previously indicated, rejected it. While TCB held a public hearing and received representations from Avion, the taxi companies and other parties, its subsequent decision was not accompanied by either an analysis of the application or a review of the expected implications for the taxi industry.

And, no detailed reasons were released in support of TCB’s conclusion that Avion’s application did not meet a public service need; TCB simply advised Avion that its application “was denied”. (Though TCB’s regular process for considering applications and other matters related to its jurisdiction usually involves open public hearings, that is

not always the case, and the issuance of decisions is not accompanied by extensive commentary and reasoning.)

TCB's 2008 *Taxicab Industry Data Report* reports:

- a) Excluding Handivans/Accessible taxis, Winnipeg has 409 taxicabs, providing a ratio of population to the number of cabs of 1,738:1, a ratio far higher than that of Calgary (869), Edmonton (912), Quebec City (1,142) and Ottawa (1,168), but in the same range as that of Hamilton and Regina;
- b) Winnipeg's population increased by 14% from 1986 through to the end of 2007, while the number of taxicab business licenses remained at 409 (though there were increases in executive cars, limousines and Handivans/Accessible vehicles) – thus, the population to cab ratio increased from 1,563 to 1,738;
- c) As of December 31, 2008, TCB licensed 410 standard taxis, 24 accessibles, 65 Handi-cab vans, 28 limousines, 16 executive cars, 8 specialty vehicles and 70 seasonal taxis (the number of executive cars expanded to 46, with a TCB decision that followed WAA's restriction on airport limousine service);
- d) The average transfer value for a taxicab increased from \$76,700 in 1997 to \$223,174 in 2008 -- an increase of 191% (average values are "held down" by the inclusion of an undisclosed number of transfers at a stated value of \$1);
- e) The average wait time in the "corral" (the area at the airport where taxis, executive cars and limousines await a "spot" at the curb in front of the terminal or on the "elbow") declined slightly since 2004 (to 34 minutes from 44);
- f) Taxi fares (trips) from the airport increased from 1998's 165,118 to 246,353 in 2008 (an increase of 49%); and
- g) Taxicab driver licenses issued increased from 1999/2000's 1,138 to 2,372 in 2008 (an increase of 108%).

TCB also supplied information to the hearing providing a 2008 comparative review of taxi fares in 15 Canadian cities, including Winnipeg.

For a 10 kilometer trip by taxi, with a projected “six minutes of waiting time” (fares involve an initial charge, plus charges based on distance and time), the estimated costs ranged from \$18.05 in Windsor to \$22.88 in Victoria – the estimated fare for a Winnipeg taxi was second lowest, at \$18.48. The highest fares were reported for Victoria, St. John’s, Toronto and Vancouver (each over \$22). The distance from Winnipeg’s international airport and downtown ranges from 7 to 10 kilometers, unlike the longer distances between the airport and downtown for many of the other cities (for example: Edmonton, Toronto and Halifax).

The Winnipeg Taxi Study (of 2008), commissioned by TCB from the Tennessee Transportation and Logistics Foundation, provided the following recommendations to TCB:

- a) Require all owner/operator taxi license holders to be affiliated with a legitimate call center and provide service as directed by their taxi call center (almost all taxis in Winnipeg are associated with one of three firms – Unicity and Duffy’s (the two having over 90% of the licensed taxis), and Spring Taxi (a private firm rather than a cooperative) with approximately 5% of the licenses; there are only a few “independents”, lacking a “sophisticated” dispatch call center);
- b) Require the minimum number of dispatched taxi service trips per day per vehicle to be 15, and establish a threshold of 40 trips per vehicle per day before additional licenses be issued (currently, with 409 licensed taxicabs, it would appear that overall industry annual trips would have to double before additional cabs would be required);
- c) Enforce daily taxi logs through mandating the use of newer taxi technologies (while records exist for fares arising through taxi call centers, there are also “pre-arranged” trips – between a driver and a passenger and “street flags”); and

- d) Assist the taxi industry to become more efficient.

The Winnipeg Taxi Study (of 2008) concluded:

- a) the City enjoys a “good to great” level of taxi service from an operational standpoint (compared to other North American cities);
- b) taxis currently provide very quick response times in the downtown and denser areas of Winnipeg, and “good” response times in the other areas of the City;
- c) a problem exists with respect to a lack of capacity during the winter peak season (leading to the suggestion that the number of seasonal licenses be increased – currently 70 -- and that the seasonal licenses apply for 5 months of the year, rather than the current 3);
- d) “... *adding a greater supply of taxis ... will not create additional demand ... only spread the existing demand among the participating taxi drivers and vehicles ... if a 10% increase in the number of taxis available is introduced, existing taxis, in the short run, will experience a 10% drop in their demand*”;
- e) “... *recently, limousine services have crowded the traditional taxi market with cheaper sedan or town car services ... where there is a lack of available taxis or the price differential between (taxis and limousines/executive cars is reduced) at the expense of regular taxis...*”;
- f) “*the methodology for determining the number of taxis ... must take the number of limousines/sedans (executive cars and limousines) acting as car services (into account)*”; and
- g) change the methodology for seasonal cars to “*greatly improve the availability and perception of taxi service (in the peak winter season).*”

The Winnipeg Taxi Study (of 2008) projected that:

“... *unless significant changes are enacted, one can expect the situation to deteriorate as pressure for more taxis is generated by individuals desiring to start new co-ops or*

expand their license numbers, hoping to later sell them at a significant profit ... this would cause considerable frustration to the existing long-term owner/drivers who view their investment in their taxi license as their long-term job, retirement, or both. If significantly more taxis or limousines are permitted into the Winnipeg market, the result will be for a greater tendency for current drivers to take the longer route, refuse to take credit cards, overcharge the passenger with phony bad fees, insist on a minimum fare, or all of the above”.

The Winnipeg Taxi Study also opined that if: “to make up for lost revenues now shared with others”, pressures will be applied to increase fares, and that increased taxi fares will make it “easier for competitors in the (executive car) and limo market to attract more of the traditional taxi market from existing providers...”.

The Winnipeg Taxi Study also noted problems with respect to the terms and working conditions of taxi drivers, citing several labour issues:

- a) drivers not paid overtime, though working 60-84 hour weeks on a “share of receipts” or “flat rate” basis;
- b) no benefits or holiday pay or leave;
- c) no termination notice or benefits; and
- d) expenses incurred by a driver claimed as a tax deduction by the taxi owner rather than the driver, reducing the net income of the driver.

The Winnipeg Taxi Study was released prior to several major industry events – Avion’s reactivating its application before PUB; WAA changing ground transportation arrangements at the airport (limousines restricted, executive cars favoured); TCB granting 30 additional executive car licenses to limousine owners; the global recession; and Duffy’s contract with the new bus terminal located at the airport.

While assessing the implications of ground transportation changes depends in part on an understanding of overall and average taxicab revenues and net income, and that dependent upon the number of trips and the average fare, TCB advised PUB that TCB:

“... currently lacks a complete data base on the demand for taxicab services in the City ... it is not possible to determine the precise impact of the proposed airport shuttle service on the overall taxicab economics ...”.

As well, TCB further advised that it has not been regulating (controlling) the sale transfer value of a taxicab, which is negotiated between vendors and purchasers – presumably driven by market forces (demand and supply, and the economics of taxicab ownership).

Reported by TCB, the transfer/sale value of a taxicab business license includes the *“vehicle, meter and all equipment, the affiliation with a dispatch company, and the transfer of a taxicab business license granting authorization to operate a taxicab ... market value ... varies to a large degree on the affiliation with a taxi dispatch call center ... Duffy’s ... realize the highest sale transfer value in the range of \$285,000 ... Unicity ... value in the range of \$250,000 ... the market value of a taxicab business is analogous to owning a franchised business...”.*

TCB advised that it had changed its approach to the status of taxicab business licenses, and since 2001, any new additional taxicab licenses are non-convertible and non-transferable (yet, no new taxicab licenses have been issued), and that *“it is taxicab licenses that were issued prior to 2001 that are transferable and over time acquire a market value”.* In fact, the number of taxicab business licenses issued by TCB has not appreciably changed in decades and, as to “non-convertible non-transferable licenses”, the only taxicabs falling into that category are seasonal licenses (which have been largely granted proportionate to the representation of taxi dispatch firms’ taxicabs to the total number of taxicabs).

During the proceeding, PUB asked TCB whether TCB would, on the premise that Avion’s application was approved and the firm commenced its proposed shuttle service,

take the new service into account when considering future applications for additional taxicab licenses.

TCB advised that it “... *assess operational data and the general economic outlook when considering applications for new taxicab business licenses. The applicant ... must satisfy the Taxicab Board that there is a need for additional taxicabs ... decisions (are based on) information provided by (the) applicant, current data and economic outlook, any contracts or commitments the applicant provides in the application, and the opposition filed ... the final decision ... is based on perceived need and public convenience ...*”.

TCB also advised that, regardless of the event of Avion commencing a shuttle service, the agency would not reduce the number of transferable standard taxicab business licenses, which stands at 409 (all issued prior to 2001). As to considering the possibility of a fare increase for taxicabs, it has been TCB’s practice to await an application from the industry seeking higher fares, with such applications based on input cost factors incurred by taxicabs.

Further, TCB noted that it had commissioned *The Winnipeg Taxi Study (2008)*, and that amongst the recommendations of the study was that consideration of a new application include the application of a formula premised on the basis that the minimum number of daily fares for a taxicab is 15, and that only when the number of fares exceeds 45 daily should consideration be given to adding new licenses. However, TCB also advised that it does not have this type of operational data available (to assist in making new license decisions).

The most recent major taxicab license decisions taken by TCB involved TCB denying applications by prospective new and current taxicab firms (private and cooperative), on the basis of no “public need”. While Unicity and Duffy’s were among the firms applying for additional licenses, they reported that their application was in the nature of a “defensive move” and that neither firm was of the view that additional taxicab business

licenses should be issued, due to concerns over the implications for existing taxicab owners.

City of Winnipeg

Subsequently, and still in 2006, following TCB's rejection of its application, Avion approached the City, pursuant to Section 163 of The City of Winnipeg Charter (Charter), which, in subsection 3, states in part:

"... where a person wishes to provide a local transportation service that falls under the exclusive authority of the city ... and the person is not providing the service for or on behalf of the city, the city may, at the person's request enter into an agreement with the person under which the person will operate a local passenger transportation service of such kind and in such part of the city as is specified in the agreement; but (a) before beginning to operate the service the person must obtain from The Public Utilities Board approval of the agreement and be authorized by that board to operate a local transportation service in the city; and (b) the operation of the service is, in all respects, subject to the authority and supervision of that board."

Section 162(1) of the Charter provides the City of Winnipeg Council authority to "pass by-laws respecting local transportation systems and chartered bus services", and Section 163(1) provides the City with "exclusive authority to operate fixed fare passenger transportation services within the City except ... b) taxicabs and school buses ...".

Subsequent to Avion approaching the City, TCB advised the City that TCB lacked jurisdiction and accordingly, did not oppose (took no position) Avion's application to the City.

After a series of public meetings involving City committees, apparently five in number, held primarily before the City's *Standing Policy Committee on Infrastructure Renewal and Public Works*, Avion obtained an agreement with the City (which, pursuant to Section 163 (3) of *the Charter Act*, requires the approval of PUB).

Avion's agreement with the City includes requirements that the shuttle service:

- a) be restricted to carrying passengers between (the airport) and hotels in the City;
- b) charge a minimum fare at least 4 times the regular fare for Winnipeg Transit and Handi Transit;
- c) is prohibited from using stops used by either Winnipeg Transit or Handi Transit;
- d) comply with safety standards/requirements;
- e) carry a minimum of \$5.0 million of liability insurance, with a provision to protect the City;
- f) be operated by Avion (the service not to be assigned or sublet without the consent of the City's Director of Transit); and
- g) operate subject to the condition that it may be cancelled by the City without compensation (to Avion) upon 90 days of advance notice.

From the evidence, the City's interest in the shuttle is based on three factors:

- a) Winnipeg Transit's forecast that Avion's shuttle service would not reduce Winnipeg Transit's ridership;
- b) support for Avion's proposal from the hotel and tourism industry; and
- c) the City's general interest in business development and tourism.

Acting in accordance with the expectations of the City, as set out in City Council's resolution, and in response to comments made by the Mayor of the City at the time of the resolution's passing, calling on PUB to hold a public hearing (and take particular notice of the implications for taxi owners and drivers), Avion filed an application with PUB in 2007, seeking PUB's approval of its proposed airport-downtown hotel shuttle service, pursuant to the firm's agreement with the City and the requirements of the Charter.

The Public Utilities Board

Following the receipt of Avion's application, PUB requested additional information from Avion, and advised of an intention to hold an oral public hearing which would be preceded by the publication of a Notice of Hearing, stating that PUB would consider applications for intervener participation. PUB provided Avion with a projected cost for the process, and advised that those costs, then estimated at approximately \$50,000, would be assessed against Avion.

After PUB rejected Avion's arguments that, given the firm's agreement with the City and the five public meetings held by the City ahead of the agreement, a public hearing before PUB was unnecessary and too costly for a small enterprise such as Avion, the applicant suspended its application for approximately a year and a half.

Subsequently, Avion renewed its application with PUB and filed additional information in response to PUB's request. PUB then proceeded to establish a process to involve a public oral hearing at which interveners and presenters would participate.

After publishing a Notice of Hearing and holding a Pre-Hearing Conference (PHC) in early 2009, the PHC was attended by Avion and the taxi companies, and after holding two motions hearings (motions brought on two occasions by the taxi companies, seeking the termination of PUB's involvement and the application – both rejected by PUB), PUB held an extensive oral public hearing of Avion's application in accordance with the expectations of the City, as set out in City Council's resolution.

At the public hearing, PUB received evidence from Avion's, WAA's, Unicity's and Duffy's witnesses brought forward by the parties as well as the Executive Director of TCB – the TCB Executive Director being a witness brought forward by PUB. Albeit not of evidentiary value, presentations were made to the Board by individuals representative of the taxi industry, limousine and executive car operators, and the Manitoba Hotel Association. Finally, the Board received final argument from Avion and Unicity/Duffy's.

Despite the significance of the application, no individual members of the public, other than those connected to the taxi and hotel industries, WAA or Avion, either intervened or participated as a presenter at the proceeding, despite the Notice of Application having been published and several pre-hearing media reports.

Winnipeg's Taxi Industry

Winnipeg's taxi industry is comprised of taxicabs (fares are set by TCB, with the fare schedule based on distance and time); executive cars (generally "higher-grade" vehicles – such makes as Cadillac and Lincoln Town Car, for which TCB sets fares based on an hours of service and/or "districts"); and limousines (multi-passenger vehicles, capable of transporting up to 10 passengers, with fares set by TCB and involving hours of service and districts, and allowing for shared-use).

Taxi companies enter into agreements with property owners (including hotels and the international airport) allowing taxicabs from a particular firm to pick-up passengers at a property owner's address. These agreements generally involve terms that provide for concession fees (either flat monthly or per trip payments) to be paid to the property owner by the taxi firm for the exclusive right to pick-up passengers at a particular address; other terms may include service standards required of the taxis and obligations of the property owner to "advertise" or otherwise facilitate the availability of the taxis.

TCB has licensed 409 taxicabs to operate in Winnipeg (the number of taxi licenses granted by TCB has not materially changed since 1946, when 400 taxis were licensed). TCB also licenses limousines and Handi Transit vehicles, the former category including "stretch" limousines and executive cars.

Almost all "regular" (non-seasonal) taxis are associated with one of three dispatch companies – Unicity, Duffy's and Spring. Taxicabs associated with Unicity and Duffy's represent approximately 95% of the 409 licenses. Unicity and Duffy's are cooperatives, owned by, generally, incorporated taxi firms. Many of the incorporated taxi firms have

more than one owner, and each taxi is generally “on the road” in service on a virtually 7/24/365 basis.

Taxis are driven by their owners and by employees of the owners, with the average working week for a full-time taxi driver reported to be in the range of 60 to 84 hours, with some owner/drivers reported to be working as many as 100 hours a week (to, reportedly, earn a very modest income).

While the net income or wage of a taxi owner or driver is reportedly very modest, a significant investment is required to acquire a taxi license. The evidence at the hearing was that recent (2009) transfer values/sales prices for a taxicab business license associated with either Unicity or Duffy’s (cooperatives providing dispatch and other services to taxicab owners) were in excess of \$300,000, and that one recent sale involving a Duffy’s taxicab business license had been for (based on full rather than shared ownership) a value in excess of \$400,000. (As previously indicated, the transfer value includes the taxi and equipment associated with the taxi, a share in a cooperative [for Duffy’s and Unicity], and goodwill.)

The increasing value of a taxicab license, reportedly in the \$50,000 range only ten years ago, and apparently now approaching or exceeding \$300,000 for taxicabs associated with Duffy’s and Unicity (transfer values for limousines and Spring taxis are reportedly lower) is reportedly being driven by factors other than the economics of taxi ownership.

Evidence provided at the hearing suggested that some immigrants “buy a job” for themselves and their family members through acquiring a taxi business license, and finance the cost through a combination of business loans (apparently limited by mainstream lenders to \$100,000), mortgaging their homes, funding from family members both here in Canada and their country of origin, and higher cost lenders.

From the evidence, the Board anticipates that little if any return is either earned or assured for recent taxicab business license purchasers, at least on their investment, with the prospect for recovery of investments lying with possible future sales.

Another factor driving the increasing price of getting into the taxicab business is the increasing volume of immigrants. In recent years, there has been a surge in both immigration and applications for taxi cab driver licenses. The Board understands that, upon securing a taxicab business license and operating the taxicab, an immigrant may enhance his or her opportunity to sponsor additional family members in their emigration to Winnipeg and, to assist in such applications, some observers have asserted that taxicab owners exaggerate the annual level of earnings derived from their ownership of a taxicab business.

While the “goodwill” portion of the purchase price of a taxicab license/business represents by far the largest component of the price and, as the Board understands, is non-depreciable and non-deductible for income tax purposes, the “hope” is that the value will further increase so that, upon retirement or sale, the owner will at least recoup the original investment (apparently, capital gains on the sale of a small business are income tax exempt).

Based on the evidence filed and presented at the hearing, the Board understands that the average taxicab generates a net income before principal and interest on loans (vehicle and borrowed portion of the purchase price of the taxicab business) and amortization of the vehicle, to be in the range of \$75,000, based on the taxi operating 24-hours a day, 365 days of each year – which appears to suggest that owner-drivers and employed drivers can expect to earn less than the current Manitoba minimum wage (\$9.00 per hour as of October 1, 2009).

The Board further understands that Unicity operated an airport-downtown shuttle service approximately thirty years ago; neither the duration of that service nor the regulatory framework, if any, that applied, or the rationale for beginning or ending the service, were known to either Avion or the taxi companies appearing at the hearing. The same lack of information applies as well for a Greyhound shuttle that apparently operated at or about the same time.

James Armstrong Richardson International Airport and the Winnipeg Airport Authority

The airport is served by a variety of ground transportation services; these include taxicabs, executive cars and limousines. Each of these modes of transportation are both regulated by TCB and, with respect to the airport, subject to agreements entered into with WAA.

On November 13, 2007, during the period of Avion's suspension of its application to PUB, WAA and Unicity announced a three-year contract pursuant to which Unicity would be the exclusive provider of taxicabs at the airport (the new contract has a term extending from January 1, 2008 to December 31, 2010).

According to a press release issued by both of the parties "*the new contract sees WAA and Unicity institute customer service standards that include driver tourism training under the National Occupational Standards, decreased age of vehicles servicing the airport, a 24 hour 7 day a week presence to ensure availability at all times and dedicated airport taxis at high travel times such as winter charter season and vacation travel*".

WAA's President and CEO advised that "*the collaboration of both (WAA) and Unicity Taxi towards meeting the needs of today's customers is testimony to our common goal of providing excellence in customer service ... the benefits will be realized as visitors and community members traveling via airport taxi experience service that is sure to reflect positively on our region*". Unicity's General Manager responded "*we are pleased to enter into a long term agreement that sees Unicity lead in airport ground transportation standards ... the agreement not only benefits our company but our drivers who will be professionally certified across Canada by the Canadian Tourism Human Resource Council*". During the hearing before PUB, WAA indicated that it was satisfied with the service being provided by Unicity, and that Unicity had met or exceeded the expectations of its contract with WAA.

Until earlier this year, stretch limousines served the airport from a curbside location (just outside the terminal), similar to the positioning of taxicabs. By a unilateral decision of

WAA, the limousines were 'relocated' to a different location outside of the terminal, reducing substantially their opportunities for gaining fares.

The change occurred following WAA concluding that, generally, travellers prefer executive cars to stretch limousines and that, by providing executive cars, WAA would improve curb access to such vehicles for prospective passengers (access adjacent to the curb placement of taxicabs).

In an effort to "compensate" limousine owners for their loss of business due to the "move away from the curb" (the investment in a stretch limousine by a limousine owner was reported to be in the area of \$140,000), TCB provided the owners with 30 additional executive car licenses, bringing the number of executive cars serving the airport to 46, from 16.

While assisting limousine owners, the increase in executive car service at the airport apparently negatively affected both the volume of taxicab trips from the airport and the revenues associated with the reduced volume. It was reported at the hearing that since the number of executive cars serving the airport were increased, the ratio of executive car trips to taxi fares from the airport had changed to the detriment of taxis (taxicab trips were reported down 7% in 2009, compared to limousine/executive car trips being down 4% -- the decreases were through to June 30, 2009, though limousines were restricted only from April 1, 2009).

That said, WAA advised that the present alignment of taxis and executive cars at the terminal curb is in the ratio of 4 taxis to each executive car.

Importance of Avion's Application

Avion's application is important to Avion and its parent company, WAA, just as it is important to all elements of the taxi industry.

WAA, now on the cusp of opening a new terminal building offering expanded services, seeks the provision of a shuttle service to provide "additional customer choice" (as to

ground transportation from and to the airport), while Avion seeks to extend its for-profit business interests with a service that is found at most major North American airports.

The matter is also important to the taxi companies and the taxi industry in general because “to and from” airport trips represent the largest single component of the industry’s overall annual trip volume (approximately 250,000 annual trips from the airport and perhaps a similar number of trips to the airport, out of an estimated total annual trip volume in the range of 3 million for the entire taxicab fleet). In short, perhaps 1/6th of annual taxicab fares are related to airport service, with this service representing the largest component of annual taxicab fares.

The operation of Avion’s shuttle service is expected to reduce overall taxicab trips and gross revenue in the range of 6%, and compound decreasing volume issues for taxicabs arising out of the recent addition of increased executive car service at the airport and decreased passenger volumes for the airport as the result of the global recession.

Unicity/Duffy’s opined that the operation of Avion’s proposed shuttle service would negatively impact both the gross and net annual income of the taxicabs, as well as the market value and marketability of a taxicab license.

Unicity/Duffy’s estimated that Unicity’s annual trip volume (to and from the airport) would drop, in the first year of Avion’s service, by approximately 120,000 – 116,808 per Avion’s business plan, as Avion projected 120,000 passenger trips in its first year of operation – representing approximately 25% of Unicity’s 2008 volume of trips to and from the airport.

The taxi companies forecast that during “*the first year of operation by Avion ... (there would be) at least a 5.6% reduction in the taxicab revenue of the average taxicab ...*”, and “*the initial effect of the Avion service would be to reduce the value of each Duffy’s taxi by approximately \$16,000 or approximately a \$2,464,000 reduction in value for the whole Duffy’s fleet ... for Unicity the corresponding numbers would be a reduction in*

the value of each taxicab of approximately \$14,000 ... reduction in value for the whole fleet of \$3,570,000 ...”.

The taxi companies based their projected loss in value of taxicab, in part, on TCB’s report of average 2008 sale transfer values for Unicity and Duffy’s taxis, that being \$250,000 for a Unicity cab and \$285,000 for a Duffy’s cab.

Furthermore, the taxi companies expressed concern that their annual losses in revenue and the projected loss in market value of their taxicabs would worsen as Avion’s service continued (and possibly expanded). Avion did not dispute any of the taxi companies’ estimates of losses to arise out of its service, asserting that the effect on taxis of its service should be considered irrelevant by PUB for the purposes of consideration of its application.

Unicity advised that it currently *“allocates 50 or more vehicles on a daily basis to service the airport ... (and forecast that) ... in the first full year of the Avion shuttle service, it could be contemplated that at least 20 Unicity cabs would be redeployed to serve the general market in Winnipeg, rather than serving transportation to and from the airport and downtown hotels”*. Unicity claimed that the redeployment of taxicabs from the airport to the general Winnipeg market would lead to increased competition between taxicabs in Winnipeg, reduced average annual revenue and net income for each cab, and longer hours for taxicab drivers.

In summary, Unicity/Duffy’s opposed Avion’s proposed shuttle service on several grounds, these including:

- a) *“... existing taxi and other transportation alternatives provide an adequate level of service to the public”;*
- b) *“the volume of traveling public ... between the airport and downtown hotels is currently well served by existing resources and consequently there is no need for the Avion shuttle”;*

- c) *“there is no demand or need for the Avion shuttle ... there are significant wait times for both taxicabs and limousines to obtain a trip from the airport ...”*;
- d) *“... if there was a significant demand for multiple passenger shared ride services, why would ... WAA have eliminated airport services by limousines”*; and
- e) *“increasing the supply of ground transportation ... would diminish the revenue of the existing taxi industry, lower the value of existing taxicabs and cause economic hardship to existing owners”*.

Hotels

Finally, the Board’s decision on Avion’s application is likely of varying importance to the downtown hotels intended by Avion to be serviced by the shuttle service. Some of these hotels may reduce or end their current “free” shuttle service to the airport for their patrons, reducing their expenditures and increasing their annual returns as a result.

Generally, the tourism industry, excluding the taxicab industry, supports the additional option of a shuttle service from and to the airport, asserting that such a service would be representative of an additional choice for travellers, a choice now available in most large cities.

Certain downtown hotels (including the Radisson, Fairmont, Inn at the Forks, Place Riel and Delta) provide “free” shuttle services for their patrons to and, in some cases, from the airport. It is not known if hotels currently providing “free” shuttle services for their patrons would continue the service if Avion commenced its proposed shuttle service, nor is it known the terms that may be required of Avion by downtown hotels contracting with Avion (allowing Avion’s shuttle to drop-off and pick-up airport passengers).

Furthermore, it is not known as to the details of how an Avion shuttle and a continuing taxi service to a particular downtown hotel would both, simultaneously, access passengers from that particular location.

No hotel intervened or participated as a presenter at the hearing.

Context

This Order should be read in conjunction with previous Board Orders 9/09 and 76/09, which, along with this Order, are available on request from PUB or accessible through PUB's website, www.pub.gov.mb.ca. All documents filed with the Board ahead of and during the hearing are marked as Exhibits and were taken into account by the Board in considering Avion's application, as was *viva voce* evidence heard over the course of the hearing. With appropriate notice, filings and transcripts from the proceeding are available for public review at PUB's office.

2.0 Motions Concerning Jurisdiction

The question of jurisdiction was front and center from the outset of PUB's involvement with Avion's proposed shuttle service application.

Avion's proposed shuttle service has been vigorously opposed by the taxi companies – that opposition began in representations made to the City of Winnipeg ahead of the City entering into an agreement with Avion and referring the matter to PUB, and prior to PUB's public hearing.

Unicity/Duffy's brought two motions before PUB on the issue of jurisdiction, claiming, in the first pre-hearing motion, that Avion had no agreement with the City, and, in the second, that PUB lacked jurisdiction to approve Avion's application and that only TCB has the prerequisite jurisdiction to determine if Avion would be allowed to operate its proposed shuttle service. The Board's decisions relative to both motions were dealt with in detail, with reasons, in its Orders 9/09 and 76/09.

Following PUB's rejection of the taxi companies' second motion, Unicity/Duffy's appealed to the Manitoba Court of Appeal (MCA), which rejected Unicity/Duffy's application for leave to appeal and for an injunction to prevent PUB's hearing of Avion's

application, declaring the taxi companies' appeal "premature" -- a decision that allowed PUB's hearing of Avion's application to proceed.

3.0 Application

As previously indicated, Avion applied to PUB for approval to operate a shuttle service called the "City Connect Shuttle Service" between the Winnipeg airport and downtown hotels (on the basis that it had entered into an agreement with the City to operate such a service), with an expectation that airport area hotels and/or other destinations could be added to the service in the future.

In early 2007, Avion applied to the PUB for approval of the proposed shuttle service and subsequently suspended its application (for the reasons set out above).

However, on May 30, 2008, after WAA entered into a new contract with Unicity with respect to airport taxicab service, Avion advised PUB of its intention to recommence its application.

Avion then-filed documentation with the Board by way of letters dated June 25, 2008 and October 21, 2008 in support of its application. Subsequently, PUB had a Notice of Application (Notice) published on November 5, 2008 in Winnipeg daily newspapers (as well as *La Liberté*). Additionally, copies of the Notice were specifically sent, by PUB, to:

- The Chief Administrative Officer of the City of Winnipeg;
- Unicity Taxi;
- The Taxicab Association;
- The Manitoba Taxicab Board;
- The Manitoba Hotel Association; and
- The Winnipeg Airport Authority.

In Order 9/09, which followed the Pre-Hearing Conference, PUB firstly rejected the taxi companies' initial jurisdictional challenge of the Board's jurisdiction, and then concurrently accepted Unicity/Duffy's as an Intervener to the proceeding and established the procedure and timetable to be employed for the oral public hearing of Avion's application.

As previously indicated, and subsequent to the PHC, Unicity/Duffy's brought a second motion seeking to halt proceedings before the Board. Then, with that motion heard and denied by PUB by way of Order 76/09, taxi companies sought leave to appeal to the MCA.

The Honourable Madam Justice Hamilton dismissed Unicity/Duffy's motion for leave to appeal as well as their application for a stay of proceedings, but indicated that Unicity/Duffy's could return to MCA at a later date to argue the merits of their position. Subsequent to Madam Justice Hamilton's decision, and with the agreement of all parties as to the timing, PUB's hearing of Avion's application began July 2, 2009.

Avion's application, together with its responses to pre-hearing interrogatories (IRs submitted by PUB and Unicity/Duffy's), and oral testimony by its witnesses, supplemented by additional exhibits placed on the record during the proceeding, includes Avion's financial projections for the shuttle service and its plans with respect to matters ranging from the number and characteristics of vehicles to form Avion's shuttle fleet, a draft shuttle schedule, and estimates of the number of hotels and passengers that Avion expects to serve in its initial years of operations. Avion declined to file with the Board its most recent audited financial statements (although the publicly disclosed consolidated financial statements of WAA, which include the results of Avion's operation, were placed into evidence by PUB).

On the issue of jurisdiction, Avion holds that its application to PUB is made pursuant to Section 163(3) of the Charter, a section that is positioned under the part entitled "Public Transportation", and that Section 162(1) provides Winnipeg Council with authority to

“pass by-laws respecting local transportation systems and chartered bus services”. Avion also noted that Section 163(1) provides the City with *“exclusive authority to operate local fixed fare passenger transportation services within the City except ... b) taxicabs and schools buses as those expressions are defined in the Highway Traffic Act”.*

Further, Avion argued that *“Section 163(3) provides the City with the discretion to enter into an agreement for the provision of a local transportation service (and) Section 163(3) (a) requires (Avion) to (obtain PUB’s approval) ... of the agreement and be authorized by (PUB) to operate...”.*

Avion cites Section 107 of *the Public Utilities Board Act* and opines that *“the core duties of (PUB)”* do not include approving a shuttle service operating pursuant to an agreement entered into by the City. Avion supports its contention noting that its application *“takes the Board out of its core duties and area of expertise...”*, and claims that a fair reading of *the Public Utilities Board Act* implies that *“there is no provision similar to the general supervisory authority over utilities”* provided with respect to a matter such as Avion’s application.

With respect to TCB’s authority, Avion claimed that while TCB *“has no authority over other industries, including competitors to the taxicab industry”* (such as Avion’s proposed shuttle service), it notes that TCB has *“expansive supervisory authority over ... taxicabs ... primarily exercised through the power to grant licences to taxicab owners and set fares”.*

Accordingly, Avion claimed PUB *“has no authority, or mandate, similar to that of the Taxicab Board to protect and/or enhance the taxicab industry in Winnipeg, much less an expanded mandate to restrict or control a business outside of the taxicab industry on the basis that that business may impact the taxicab industry”.*

Avion further asserted that *“(PUB) does not sit in review of (the City’s) exercise of its discretion in the public interest. Council is an elected body that made a considered and informed decision in the public interest. Further, the City ... has expertise with respect to*

local fixed fare transportation services ... (and PUB) owes a duty of deference to (the City's) determination of the public interest in respect of (Avion's application), as well as its determination of the terms of operation contained in the Agreement".

As to the details of its business plan, Avion acknowledged that its financial projections were "guesses" based on the preliminary plans and Avion's initial projections for the volume of trips and passengers, and the projected initial fee level (the fare cannot exceed 4 times the fare charged by Winnipeg Transit from time to time). Avion confirmed in its closing argument that "its revenue projections were untested and speculative".

Avion also acknowledged that it had not surveyed outgoing or incoming airline passengers at the airport towards firming up its trip volume projections, noting that it "does not have any entitlement to conduct such research inside the Winnipeg airport terminal" and that, instead, had "consulted with ... the tourism and hospitality industry Including Destination Winnipeg, Travel Manitoba and the Chamber of Commerce (and that) all of these organizations support the proposed service".

And, with respect to Avion's intended service to disabled persons, Avion amended its initial plan from that presented to the City, from a plan that would have Avion owning and operating shuttle vehicles that would accommodate the disabled to a pledge to ensure disabled passengers would be properly served, either directly by Avion or by sub-contract to another party that would provide adequate and safe service within reasonable time frames.

On the issue of a potential conflict of interest (WAA being Avion's only shareholder and also controlling actions within the airport terminal and property, including signage and other directions to departing persons), Avion asserted that "there is no evidence of favoritism toward (Avion) by WAA in dealing with (Avion's) proposed service and/or any other service being provided by (Avion) to WAA ... while related entities, (Avion and WAA) deal with each other on a strictly arms-length basis in respect of any and all business dealings".

Avion's claim with respect to not being in a conflict of interest was supported by testimony by WAA officials, who advised that WAA would not favour Avion with respect to either in situ advertising at the airport or by way of directions given to prospective passengers by WAA or Avion staff with respect to considering the several options for travel to and from the airport (bus, taxis, executive cars, limousines – with respect to service from the airport). As well, both WAA and Avion witnesses indicated that Avion would be expected to pay WAA concession fees, just as Unicity is required so to do.

Avion also acknowledged that, while it reported having “spoken to” the nine downtown hotels it plans to initially serve, it has not developed contracts (even in principle) with any downtown hotels to-date, though expressing its view that, with the evident support of the Manitoba Hotel Association and other tourist industry associations, it anticipated that at least nine downtown hotels would serve as pick-up and drop-off points for Avion's shuttle.

Also, with respect to the downtown hotels, Avion acknowledged that it had neither developed any tentative arrangements with respect to concession fees that may be required by downtown hotels nor was it certain that hotels presently offering free shuttle service to the airport for their patrons would discontinue their service once Avion commenced operation, nor that it had included concession fee costs within its financial projections.

While Avion demonstrated considerable interest in its shuttle plans, its witnesses did not commit to Avion operating the shuttle service for any specific period of time, regardless of the financial results incurred or achieved. In fact, Avion's witnesses indicated that if the shuttle service wasn't fairly quickly proved profitable, it would likely not be continued. Avion also acknowledged that although it was aware of two previous airport-downtown shuttle services that had operated in the past (Greyhound and Unicity), both of which ceased service, it had not researched the experiences or determined the basis for

their discontinuance. Avion advised that it *“does not have a corporate mandate to provide services in the public interest”*.

As previously indicated, Avion argues that PUB’s jurisdiction is limited with respect to the range of decisions that may be made. Avion opined that PUB should not “approve” Avion’s shuttle service but rather, its agreement with the City, and that PUB should defer a) to the City, with respect to whether an airport/downtown hotel shuttle service is in the public interest; and b) to TCB, with respect to the status of and implications for the taxi industry.

While acknowledging that it, Avion, had not considered the implications for the taxi industry of its proposed shuttle service, Avion held that any implications, such as they may or may not be, should be irrelevant as far as PUB’s consideration of Avion’s application is concerned. Nonetheless, Avion suggested that the implications of its shuttle service for the taxicab industry would likely not be overly grievous, given Avion’s projection for 136,000 one-way passenger trips per year for its service compared to its estimate of approximately 2.7 million taxi fares per year.

Further, Avion asserted that the actions of TCB, with respect to issuing 80 seasonal taxi licences, to apply for five months of each year – apparently the busiest months – with the potential for adding a further 40 seasonal cabs would have a greater negative effect for the taxicab industry than Avion’s shuttle service.

Avion also noted evidence presented at the hearing that the value of a taxicab license in Winnipeg is both “high” and has “soared”, and asserted that “there is also good reason to believe that the average earnings of taxicab licence holders and/or drivers are substantially higher than suggested by (Unicity/Duffy’s – which suggested an average net income in the area of \$20,000 per annum)”.

In support of its assertion, Avion noted that:

- a) a report commissioned by TCB entitled *the Tennessee Report* “conclude(d) that total gross revenue per vehicle for Spring Taxi ‘would be approaching \$140,000 per year’ ”; and
- b) Mr. Kozubal, Executive Director of TCB, “... stated that total gross revenue per vehicle per annum for the industry is in the area of \$145,000 ...”

Avion also claimed that “(Unicity/Duffy’s) seeks through the Board’s process to block the very service it operated and chose to end (Unicity, at one time, operated a shuttle service from and to the airport, and ceased operations apparently due to the service not being economic to continue), to impose upon (Avion) costs and delay ... and to challenge (Avion) with multiple legal proceedings and arguments ...”.

Avion took no issue with the taxi companies’ evidence, which included a letter from WAA and oral confirmation of the letter’s contents by a WAA witness at the hearing, that taxicab service from the airport is acceptable, and that Unicity’s efforts to meet WAA’s expectations were commendable (new hybrid vehicle replacements for older cars, training of drivers, conduct of drivers, and availability of cabs at the airport to meet airline arrival requirements).

In summary, Avion claims: “*unless specifically provided for by law, no business is or ought to be protected from competition in the marketplace. Governments alone determine the extent to which, in the public interest, certain businesses or industries are granted protection from competition, and no such protection exists for the taxicab industry ... under the Charter, the PUB Act, The Taxicab Act or otherwise*”.

Avion argued that by approving the proposed shuttle service PUB would be allowing for more choices to consumers as to their means of ground transportation from and to the airport, and that, regardless of whether the shuttle would be more or less economical for passengers traveling in pairs or more, it should be consumers, not PUB, that should determine whether the service is viable.

Avion also noted that airport shuttle services are available at airports throughout Canada and other countries, although acknowledging that the distance between the airport and the downtown was relatively short compared to certain other cities.

In short, from Avion's perspective, PUB *"has no mandate or authority to require (Avion) to demonstrate that the proposed service is likely to succeed ... (Avion) is entitled, just like any other business, to start up a new business based on its assessment of the potential economic risks and benefits"*.

4.0 Intervener

Unicity/Duffy's, generally if not fully supported by the other elements of the taxi industry in Winnipeg, has opposed Avion's proposed shuttle service since Avion first raised the prospect through its initial application to TCB.

The intervener notes the "split vote" of City Council in approving a resolution to enter into an agreement with Avion, with that agreement being conditional, among other terms, on the approval of PUB.

Unicity/Duffy's also note that the Mayor of the City of Winnipeg commented at the time of the City's decision that it was his expectation that PUB would hold a public hearing and that PUB would pay attention to the circumstances of the taxi industry, asserting that *"It is doubtful that City Council would ever have given an affirmative vote on the resolution, if there was any doubt on the part of City Council that (PUB) would do anything else than conduct a thorough hearing and examine and consider all relevant issues (and that) consideration of all relevant issues includes, amongst other things, the impact of the service on existing service providers and other stakeholders and the broad public interest"*.

In supporting its contention, Unicity/Duffy's claimed that it *"did not escape the notice of City Council that Avion is a wholly owned subsidiary of (WAA) (and that) consequently,*

there was some commentary about the fact that the proposed arrangement with Avion was not the subject of a public tender, but was a rather handed to Avion by its parent corporation”.

Unicity/Duffy’s opined that *“it is the obligation of (Avion) to prove that there is a demand or need beyond the capacity of the existing service providers and therefore allowing additional service providers would not adversely impact the existing service providers”*, and noted that Avion had made no effort to address this “obligation”.

The taxi companies noted that with number of 2008 taxi trips from the airport being reported as 246,353, and with a further 22,263 limousine trips from the airport, it was clear that adding another service provider, i.e. an Avion shuttle, would materially impact on existing service providers.

In considering the level of service required of Unicity, which has a exclusive contract with WAA to provide adequate taxi service to the airport on a 24-hour 365 day per year basis, Unicity/Duffy’s asserted (not disputed by Avion) that Unicity had met WAA’s requirements and, to-date, not been assessed any penalties (which are assessable pursuant to the Unicity-WAA contract if warranted). Unicity/Duffy’s noted that to meet WAA’s needs, Unicity had *“expanded its internal resources ... to better ensure ... a sufficient number of taxis are available to provide prompt service to travelers”*.

In short, Unicity/Duffy’s asserted that Avion *“... has not brought forward any empirical evidence whatsoever to indicate there is a public need or need for the service proposed by Avion”*.

With respect to the question of “public need” for a shuttle, Unicity/Duffy’s focused on the “short distance” between the airport and downtown in Winnipeg, compared to other airports and cities. (The distance from the airport to downtown is *“... not more than 7 kilometers to the western boundary of the downtown and not more than 10 kilometers to the heart of the City at Portage and Main”*).

The taxi companies noted that that the “economics” of taking a shuttle as opposed to a cab are “not there” in Winnipeg, due to the short distance to downtown and the low average taxi fare to downtown (\$13-\$16) – contrasted with the \$11 fee for Avion’s proposed shuttle and the fact that a taxi trip fare to downtown Toronto was in the range of \$50-\$60.

Unicity/Duffy’s advised that given the shuttle fare at \$11, taking a taxi downtown rather than the shuttle would ‘profit’ any group of two or three. And, with respect to a single passenger, the taxi companies opined that the difference between \$13 to \$16 (for a taxi) and \$11 (for Avion’s shuttle) would be too small to justify, for most passengers, taking a shuttle.

The taxi companies also noted that a shuttle passenger would have to wait until other passengers board, and that up to 8 stops of the shuttle may occur before the passenger reaches his/her destination, as opposed to cab service, which takes a passenger directly to the hotel. (Taxis are allowed to take up to 4 passengers, which, given a \$16 fare, would amount to \$4 per passenger as compared to \$11 for one passenger taking the shuttle.)

Unicity/Duffy’s claimed that during negotiations between WAA and Unicity (which led to an agreement that, among other conditions, has Unicity paying WAA in the range of \$350,000 to \$400,000 in annual concession fees), Unicity had been (either knowingly or inadvertently) misled into believing that Avion had withdrawn its shuttle service proposal, and that if Unicity had been aware that Avion’s shuttle service application to PUB would be renewed, it would have insisted on an exclusivity clause to prevent the shuttle service from being implemented during the three year term of the contract with WAA.

Unicity/Duffy’s noted that following Unicity’s agreement with WAA, and its efforts to meet the requirements of the contract, including incurring training costs and paying WAA \$1.65 for each airport pick-up fare, WAA had not only, though its subsidiary,

Avion, unilaterally, and to the taxicabs' detriment, renewed the shuttle application before PUB and changed the provisions for limousines and executive cars.

(At first, WAA banned limousines from picking up fares at the airport, then amended the ban to a change to the location of limousines which severely damaged the prospects for an adequate volume of limousine trips from the airport. To replace the limousines at the 'curb', WAA then sought additional executive car service, the latter desire being satisfied by TCB's granting of an additional 30 executive car licenses for then-existing limousine owners.)

With the limousine/executive car changes, Unicity/Duffy's assert:

- a) by the removal of limousines from their previous preferential placement at the curb, the stage has been set for Avion's proposed shuttle service – as the limousines can carry up to 10 passengers at an individual fare of under \$10, whereas the replacement for limousines, additional executive cars, can carry no more than three passengers and at an average fare per customer as high or higher than Avion's proposed shuttle fare; and
- b) by the addition of 30 more executive cars serving the airport, taxi trip volume has been negatively affected, as evidenced by TCB's report that for the first six months of 2009 limousine trips from the airport was down 4% as opposed to taxi trips being down 7% - since executive cars are included in the count of limousine trips and executive cars were increased half way through the six month period, the disadvantage to taxis is even greater than shown by the 4% and 7% decline disparity.

Unicity/Duffy's criticized Avion's application and accompanying business plan, noting or asserting in particular:

1. that Avion's application and other filings failed to address matters regularly required to be addressed by TCB, i.e. providing the public purpose and demand or

- need for the service, a review of the adequacy of existing service (including the ability and willingness of existing operators to serve the identified public purpose, demand, or need, and the affect of additional service on existing operators;
2. an agreement between Avion and WAA with respect to such concession payments as may be required of Avion and other matters (such as curb placement at the airport for the shuttle) has yet to be developed and, thus, was not filed with PUB;
 3. Avion had not complied with PUB's minimum filing requirements, in that it had not provided the projected effects of the (shuttle) on the taxi and limousine firms, existing hotel shuttle services and Winnipeg Transit;
 4. while Avion assured the City that its shuttle service would accommodate the disabled, at the hearing Avion declined to commit to that approach, suggesting that it would provide adequate service to disabled patrons, though such service may be provided through the services of Handi Transit or another service provider (Unicity/Duffy's suggested that if Avion had not made its initial commitment to the City with respect to service to the disabled, then it would have been likely that the disabled community would have opposed Avion's proposal during City committee meetings and that the vote in favour of Avion by City Council may not have occurred);
 5. while Avion's business plan indicates a specific vehicle make and model to form its shuttle fleet, providing for transporting a specific maximum number of customers, at the hearing Avion withdrew that plan and had no specific substitute to replace it with (other than a pledge that it would acquire suitable vehicles to form its shuttle fleet);
 6. Avion's projected revenues for its shuttle operation, as described in its tabled business plan, was based on a \$9 one-way fare when presented to the City, and that the plan provided to PUB employed a \$10 fare, with that fare being further amended at the hearing to \$11;

7. Avion conducted no relevant research to support its claim of either a need for a shuttle service or of sufficient public interest in such a service – Avion conducted no surveys of persons arriving at or departing from the airport as to their views on the need for a shuttle service to and from the airport and downtown hotels;
8. Avion has advised having no contracts with the downtown hotels that Avion suggests will represent pick-up and destination stops for the shuttle;
9. Avion has not provided diagrams indicating that the downtown hotels will be able to accommodate both the shuttle and taxi service;
10. Avion has not taken into account “exclusivity” contracts, for ground transportation, that exist between the taxi companies and some of the downtown hotels that Avion targets as pick-up and destination locations for their shuttle;
11. Avion has not factored in to its projections concession fees that it would likely have to pay to the downtown hotels that the service intends to serve;
12. the draft shuttle service schedule presented within Avion’s business plan is, according to the taxi companies, unrealistic – if the assertion is correct, Avion’s business plan financial projections would require reworking for either less trips or more shuttle vehicles, etc.;
13. Avion’s plan for training its drivers does not meet TCB’s requirements for taxi drivers, and would, if implemented, result in lower standards and perhaps performance by Avion’s shuttle drivers; and
14. Avion has not arranged a location inside the airport terminal at which shuttle tickets would be sold – a witness for Avion confirmed that advertising within the airport is controlled by a third party.

Unicity/Duffy’s also noted that Avion had made no commitment to continue the shuttle service if the service did not achieve a profit, and the City could cancel its agreement

with Avion with only 90 days notice, and that two previous shuttle service initiatives had failed, suggesting that failure of Avion's shuttle was quite possible.

Unicity/Duffy's asserted;

“Avion did not and does not care what impact the proposed shuttle service would have on taxis, limousines or on the shuttle vans operated by hotel ... couple this with Avion's lack of research relative to any need or demand for the proposed service ... the lack of reliability of any financial models presented by Avion, necessarily leads to the conclusion that Avion's believes (PUB) should approve this application even though Avion has not presented a scintilla of probative evidence to support its application or to demonstrate that it is the public interest”.

Unicity/Duffy's also noted that the shuttle service would negatively impact on taxicab, executive car and limousine owner/drivers (an anticipated drop in overall taxi revenue of approximately 6%), and reviewed the level of investment made by taxi owners in their individual businesses, suggesting *“taxi ownership provides only a modest living and even more modest return on investment ... any circumstance which will have an adverse effect on the revenue of taxicabs will erode the income of taxi owners and the drivers they employ”.*

As previously noted, a witness (from the taxi companies) suggested that if Avion's shuttle service goes into operation, cabs now assigned to the airport will be reassigned to other areas in the City -- putting increased pressure on the revenues of all taxi owners and drivers, and “possibly” resulting in reduced service levels at the airport for arriving passengers. Another witness for the taxi companies suggested that with reduced revenues, service standards would fall as the replacement of older taxis with hybrids would become harder to fund, and that, in the end, the general public would suffer.

In summary, Unicity/Duffy's recommended that PUB reject Avion's application, on the grounds that the operation of an airport-downtown hotel shuttle is not in the public interest.

5.0 Analysis, Discussion and Preliminary Findings

The Board expects its decision on Avion's application will be important to Avion, its parent company, WAA, Duffy's, Unicity and the taxi industry in general (including taxis, executive cars and limousines -- both owners and drivers), other elements of ground transportation to and from the airport (Winnipeg Transit, hotel shuttles, etc.), those traveling to and from the airport, the City of Winnipeg, the hotel association and the hotels intended to be on Avion's shuttle route, and to associations interested in matters related to tourism and travel. As well, the Board anticipates its decision will also be important to the overall public interest.

The availability of taxicabs in the City is important – not only for travellers to and from the airport, but also for residents, including lower-income residents lacking their own vehicles, businesses and tourists. For taxis to be available as and when a need arises, the economics of the taxi industry has to be such that persons continue to be interested in owning and/or driving taxis (and in sufficient numbers).

There are many elements to the competitive nature of ground transportation to and from the international airport, and the addition of another source of ground transportation is very likely to have a material effect on the other providers. That, by itself, is not a valid reason to turn down Avion's application.

The question is, what is the likely effect? And, on a balance of probabilities, will the addition of Avion's shuttle service affect the business and business prospects of taxis and/or other ground transportation such that the public interest itself, which includes taxi owners and operators, is irreparably and/or materially damaged?

Taxicab trips from the airport increased steadily through to the start of the global recession, as airport passenger volume increased, yet the number of taxicab business licenses have not changed – though the number of limousines and executive cars has. The study commissioned by TCB outlined a number of reasons why increased

volume of airport related taxi fares may not have increased the economic results and prospects of taxi owners and drivers – increased personal wealth has led to increased personal automobile registrations, for one.

It is possible that WAA's decision to restrict limousine service from the airport and increase the availability of executive cars, as well as TCB's decision to grant 30 additional executive car licenses to then-current limousine owners for airport service, may prove more damaging to taxicab airport trip volumes than Avion's proposed shuttle, assuming it is implemented. A key factor as to "how damaging" the additional executive cars are to taxicab volumes is "curb placement" (with the current arrangement, since the additional executive cars were added, being 4 taxicabs are available for every 1 executive car, as travellers exit the terminal and seek ground transportation), and terminal signage.

And, the addition of the bus terminal at the airport, with a contract between Duffy's and Greyhound with respect to taxicab service, may affect Unicity's prospects at the airport, with the bus terminal located across from the terminal.

With respect to the general guidelines that govern the Board's approach to applications, the onus is on Avion to support its application. The Board is under no obligation to either approve or deny the application. And, the Board's rules also provide for a conditional approval, and one that varies the application to meet the Board's determination as to the merits of the case, that is, in the public interest.

Section 47(1) of *The Public Utilities Board Act* provides the Board the authority required to issue an Order containing directions that meets the public interest, including the ability to provide a conditional approval that involves parties other than Avion and the taxi companies:

47(1) *The Board may direct, in any order, that the order or any portion or provision thereof shall come into force:*

- a) *at a future fixed time; or*
 - b) *upon the happening of any contingency, event, or condition specified in the order; or*
 - c) *upon the performance to the satisfaction of the board, of a person named in the order for the purpose, of any terms that the board may impose upon any party interested;*
- and the board may direct that the whole or any portion of the order shall have force for a limited time, or until the happening of a specific event.*

Avion argues that the Board's exercise of its "determination of the public interest" should be circumscribed, in light of the fact that the City approved Avion's shuttle application and "*wanted it to go ahead*"; while Unicity/Duffy's asserted that the Board should exercise its 'full' mandate with respect to the determination of the public interest.

On this matter, the Board may conclude that regardless of the City's support for Avion's service, the application is, in the end, subject to the approval of PUB, and that it is not in the public interest that PUB unduly restrict its consideration of the various factors comprising the public interest.

Avion's contention is that the Board is not mandated to approve Avion's application, but only to approve the agreement already entered into between Avion and the City, is not supported by legislation. Avion suggests that the Board's authority, beyond that of approving the City's agreement with Avion, only manifests itself after the fact (i.e. subsequent to the approval of Avion agreement with the City).

However, the section in the Charter giving PUB jurisdiction in the matter, namely Section 163(3), specifically states, in clause (a), that before beginning to operate the service in question not only must PUB approval of the agreement be obtained, but the person (firm) operating the service must also be authorized by PUB to operate the

service. The latter requirement means that PUB's mandate extends beyond mere approval of the agreement between Avion and the City.

Neither does the Board agree with Avion's claim that the Board's jurisdiction is limited because Section 107 of *The Public Utilities Board Act*, which provides the Board with jurisdiction over matters assigned to it by an Act of the Legislature, refers only to the authorities of the Board pursuant to Part 1 of the Act.

In essence, Avion argues that Section 74(1), which provides the Board general supervisory authority over utilities, is not invoked with its application, and that all other parts of *The Public Utilities Board Act*, other than Section 197, also do not apply, and, accordingly, the Board's mandate does not extend beyond Section 107 of its Act and the provisions of 163(3) of the Charter. In short, Avion maintains the Board's mandate is restricted only to approving its agreement with the City.

The Board disagrees with Avion and does not understand Avion's reasoning, considering that, in addition to what is pointed out above, clause (b) of section 163(3) of the Charter specifically states that the operation of the service is, "*in all respects*", subject to the authority and supervision of PUB.

The Board also takes issue with Avion's contention that PUB has neither the authority nor mandate to "protect" the taxicab industry, or to restrict or control an "outside" business on the basis that it might impact the taxicab industry. To the opposite, PUB is compelled by its mandate to determine the public interest, and, in this case, must take into account whether Avion's proposed service will so negatively impact the existing service (i.e. taxicabs at the airport) as to produce an overall detrimental result for the public interest.

This is a valid consideration for PUB, in determining whether PUB should authorize operation of Avion's shuttle service (in accordance with section 163(3) of the Charter).

That said, the Board concludes that the Taxicab Board (TCB) is the most appropriate agency to consider the situation of taxicab owners, drivers and the overall taxi industry. Yet, PUB will not delegate to another agency, such as TCB, responsibilities that it, itself, bears – in this case, reaching a decision on Avion’s application.

Accordingly, by this Order, PUB will recommend, rather than direct, the TCB to undertake a review of taxicab fares and other related taxi industry matters and in doing so, will suggest some of the factors and circumstances that TCB take into account.

As well, the Board will also recommend TCB hold a public hearing and issue its decision, with reasons, ahead of Avion commencing its proposed airport-downtown hotel shuttle service. The Board understands that TCB’s practice has been to receive applications, hold a public hearing, decide on the matters before it, and issue a decision without accompanying detailed analysis and rationale. While PUB will not direct how TCB should proceed, it does suggest that detailed analysis and rationale are needed in this case if the taxicab industry is to understand how any decisions taken by TCB have been arrived at, and that the public interest will be best served if TCB follows this advice.

Nonetheless, PUB cannot and will not require TCB to either hold such a proceeding or arrive at a particular “answer” (as to the level of fares that should be set, or as to the whether recent license sales have taken place at reasonable and recoverable prices, prices able to be fairly reflected in fares), although PUB is of the view that TCB should hold such a hearing, should consider the facts and issues presented in this Order, and should, subsequent to its proceeding, issue a written decision with analysis and reasons.

With these preliminary and mostly jurisdictional issues commented upon, the Board sets out its general understanding of the facts and factors supporting and in opposition to Avion’s application.

Firstly, the evidence and other publicly known indications supportive of the Board approving the application includes:

1. Following a protracted series of public meetings, at which hearings the City received submissions and heard arguments similar in part to those made through this process, the City of Winnipeg approved an agreement with Avion that, subject to the approval of the PUB, will allow for Avion to operate a shuttle service from and to the airport and downtown hotels;
2. Despite the TCB's initial receipt, consideration and disapproval of Avion's application for the shuttle, and following Avion's successful approach to the City, that pursuant to Section 163 of the *City of Winnipeg Charter Act*, TCB declared it does not have jurisdiction – presumably, as far as TCB is concerned, leaving the matter to the City and this Board;
3. Based on the MHA's presentation, there appears there is support for Avion's proposal from the Winnipeg hotel industry, although PUB considers the possibility that an Avion shuttle would allow some of the hotels expected to be on the shuttle route to discontinue their no-cost service to their patrons, i.e. that some hotels have an unstated pecuniary interest in the outcome of this proceeding;
4. Avion is a wholly-owned subsidiary of the WAA, a non-share community controlled corporation governed by a board of directors appointed, directly and indirectly (indirectly in the sense that four members of WAA's board of directors are appointed by a resolution of the other directors), those other directors having been elected by various public sector bodies – i.e. the City of Winnipeg, the Government of Canada, the Government of Manitoba, the Chambers of Commerce of Winnipeg and Assiniboine, and the Rural Municipality of Rosser;
5. The indication, found in the WAA's annual report, that the primary objective of the WAA, the owner of Avion, is to operate to the benefit of the community;

6. Indications drawn from WAA's latest audited financial statements, and notes thereto, that WAA is well-capitalized with a secure financial future, and is a monopoly (as to arrivals and departures in the context of a major international and national airport) that is able to set its fees without reference to any other body, this clearly indicating that WAA, which is now in the throes of completing the construction of a new terminal building and other facilities at the airport site, has the means to support Avion in its plans to operate its proposed shuttle;
7. There is clear inference that WAA not only has the ability to fund Avion but also the will to do so – the Board notes that Avion's board of directors, at the time of the Board's hearing of Avion's application, was comprised of only two persons, both of whom being senior executives of WAA;
8. Other major Canadian and international airports have airport-hotel shuttle services;
9. Hotel-airport shuttle services are already in operation, evidenced by the fact that several hotels operate shuttles to and from the airport for their patrons (the Board has received no evidence to indicate whether or not hotel shuttles now in service will stop upon Avion beginning a shuttle service);
10. There are many forms of ground transportation serving the airport (bus, taxis, executive cars, limousines, rented cars, Air Park Park and Ride, Impark valet service, personal passenger vehicles -- parked at or close to the airport, hotel-based shuttles, transportation by non-commercial cars – friends, family, business associates, etc.);
11. The majority of persons leaving and coming to the airport leave and arrive other than by taxi (airport traffic, departures and arrivals, exceed 3 million annually, yet taxi trips from the airport approximate 250,000 – taxi trips to the

airport were not estimated during the proceeding, though may be in the same order as taxi trips from the airport);

12. The evidence at this hearing suggests that Avion's shuttle would not contravene any agreements with other ground transportation services;
13. The WAA provided testimony that its new terminal will provide additional "curb room" for the various forms of ground transportation, and advises that taxis will not be "crowded out" as a transportation option for travellers; and
14. On the surface, it has been argued and appears a reasonable contention that Avion's shuttle would increase customer choice.

While there are these points supporting a decision by this Board to approve the application, and there likely other reasons that could be enumerated, there is other evidence and argument providing reasons why the Board should not approve Avion's application (at least ahead of additional information and further consideration as to the impact of the service on the taxi companies and the broader public interest).

The contrary evidence is based in part on Avion's business plan and the current state of the arrangements involving Avion, the WAA, Unicity/Duffy's and third parties:

1. No tender was issued by either WAA or the City, seeking an airport/downtown hotel shuttle service;
2. The applicant is a wholly-owned subsidiary of a not-for-profit corporation, with the parent company, WAA, in full control of airport ground transportation arrangements;
3. A lack of concrete support underlying the projections of Avion's business case, the projections are based on speculation and are not supported by analyses, traveller surveys, reviews of present (other jurisdictions) and past (previous Winnipeg airport shuttles that shut-down) experiences;

4. The business plan contains an unconfirmed estimate for concession fee payments from Avion to WAA, with no analysis of the impact on WAA consolidated revenues if taxi service is reduced at the airport as a result of shuttle operations;
5. The business plan has not been updated to indicate the type of vehicles that would be purchased to operate as shuttle, and the costs associated with the vehicles;
6. The business plan does not establish exactly where on the curb the shuttle would be found and the relationship of that location to the location to be provided for taxis, executive cars, limousines and other shuttles;
7. The failure of past Winnipeg airport-downtown shuttle services, i.e. the reported Unicity and Greyhound efforts, with Avion's indication that it neither researched those experiences to determine why they failed nor took the experiences into account in developing its business plan;
8. Some may say there is evidence the airport is well-served now, with many other forms of ground transportation, and that the addition of another shuttle provider, one owned by a subsidiary of WAA, would not significantly enhance the choices available to consumers;
9. The Board understands that the TCB's rejection of Avion's proposal was based on that board's conclusion that there was "no public need" – that said, this board notes that the TCB's rationale was not provided (apparently it being the TCB's practice not to give reasons for its decisions);
10. Testimony by Avion's witness that the firm conducted no consumer surveys of arriving and/or departing persons at the airport, or of downtown hotel guests, to support its contention that there is a public need for the shuttle (that

- contention evidenced in its projections for the volume of passengers included in its business plan);
11. Avion's business plan apparently did not involve the participation of WAA's Manager of Parking and Ground Transportation – though that manager is responsible for the management of these services;
 12. The issue of the proximity of airport to downtown, noted by both parties, with the proposal suggesting, as confirmed by Avion's own witness, that if two or more persons were traveling to or from the airport together they would be "better off" economically taking a taxi, both with respect to incurring less cost and having direct transportation to or from their hotel, with the shuttle to pick and drop off passengers at up to 9 hotels both ways;
 13. The City's resolution that establishes its agreement with Avion allows the City the ability to cancel the agreement with only 90- days notice, which could be given without either providing a reason or paying any compensation to Avion; this provision appears to provide no comfort that a service that would begin with the approval of this Board, cost Avion significant funds to start, and which would affect other ground transportation services negatively to various degrees, will last;
 14. Avion's witness' evidence that suggested that if the shuttle does not prove to be profitable it would likely be discontinued, also does not provide confidence that the proposed service, after being implemented, would not come to a quick end (after having "upset" the plans and operations of the taxi industry, hotels to be served and the traveling public);
 15. While Avion's business plan provided a detailed review of a particular vehicle to be purchased to serve as the shuttle, testimony at the hearing indicated that the vehicle would not be acquired. Avion's witness was unable to provide details of the make or model of the vehicles to be obtained, and, though

- somewhat less troubling, the fact that Avion's filed business plan was first based on a vehicle that would carry up to 15 passengers, while testimony by Avion's witness reported that the shuttle would carry no more than 9 passengers, and that the vehicle indicated in the business plan would not be the vehicle that would be purchased and operated;
16. With respect to service to the disabled, Avion's witness appeared to contradict the statements made to the City and contained in the business plan, and was unable to give concrete details as to how Avion would service disabled consumers. The original commitment to serve the disabled was reduced to the statement that Avion would ensure disabled travellers were served, although perhaps not by Avion's shuttle but by calls to a handi-van provider;
 17. Testimony followed by cross-examination of Avion's witness provided evidence suggestive of the proposed shuttle schedule not being realistic, if the Board was to accept Mr. Walding's (from Duffy's) evidence that it would take more than 1 hour and 20 minutes to transport passengers from the airport to the downtown hotels and return to the airport; 29 round-trip shuttles per day would not be possible, seemingly making Avion's business plan and projections more doubtful, not to say that adjustments, or additional shuttles, could presumably be made (though adjustments might affect the projected profitability);
 18. Avion's witness advised that Avion did not take into consideration the implications for Unicity and the overall taxi industry of it operating a shuttle service, despite having a contract with Unicity, does not at "first blush" seem congruent with its parent's objective of attending to community needs, etc. – while Avion's witness, and WAA's two witnesses, asserted little knowledge of each other's plans, the Board is faced with its understanding that Avion's board of directors is composed of two WAA executives;

19. Avion's witness also advised that in developing the business plan, Avion did not take into consideration concession agreements existing between the hotels and Unicity and/or Duffy's. In the absence of being aware of the details of those agreements, it may be difficult to be confident that the business plan projections are sound;
20. Further on this note, Avion's witness also testified that the firm does not have any agreements with the hotels that the business plan indicates would be served by the shuttle service (although the hotel association clearly supports Avion's proposal, the "concreteness" of Avion's business plan once more may be questioned); and
21. Avion's witness also testified that Avion has not conducted any market research into how many downtown hotels are required to be served to allow the shuttle to be economic – in short, this appears to suggest that assurance that the shuttle would start and last is somewhat lacking.

Some of the other matters and factors the Board consider relevant to its deliberations follow:

1. While the TCB denied Avion's application to it apparently on the basis there was no public need for the service, TCB provided no rationale for its decision – in the absence of the provision by TCB of its analysis and rationale, should the Board ignore the TCB's rejection?;
2. The 1997 and 2008 analyses of taxi industry proposals for increased fare tariffs, which were received and considered by the TCB, do not appear to pay any attention to either the transfer values for medallion licenses or the rising value of those transfers, nor does the 2008 analysis appear to consider what, on the surface of the analysis of 2008, appears to be an indication of significantly reduced annual kilometers traveled by an average taxi, that suggestive of reduced trips – presumably affecting gross revenue (should the

- Board give any credence to these matters, given that Unicity/Duffy's declined to put definitive trip volumes, revenues and the average net income of a owner-operator on the record?);
3. The witness from the TCB gave no indication as to whether that board would consider a fare increase in the event this Board approved Avion's application, yet agreed that reduced taxi trips are to the detriment of taxi owner operators and drivers (should this Board give any consideration to the actions or possible actions of the TCB?);
 4. As reported earlier in this review, Avion's witness testified that Avion did not consider the welfare of the taxi industry in its decision, and that Avion's focus was providing increased customer choice and not the viability of the taxi industry (given the importance of the taxi industry to Winnipeg, as evidenced by the study commissioned by the TCB, should not the Board consider the implications for the taxi industry of Avion operating a shuttle service, a service that Avion indicated could either be expanded or shut down in the future, dependent upon results?);
 5. Evidence at the hearing related to the recent global recession, and that taxi trips from the airport were down 7% to the end of June 2009 compared to 2008 (should the Board consider the implications for the taxi industry of the operation of a new form of ground transportation to and from the airport at a time when the recession has already depressed taxi volumes from the airport?);
 6. There was evidence presented that 30 new executive cars are now in service at the airport, which, in the Board's current understanding, suggests that there is now one executive car for every four taxis leaving the airport with a fare, and that while the location of limos have been moved and limos no longer pull up and leave from the curb of the terminal, limo service is still available;

7. While the number of limo fares from the airport were reported to be down 4% to the end of June in 2009, the trips of executive cars, a component of the limo category, were reported to have increased, although there was no indication of by how much (should the Board consider the possible impact on the taxi industry from the combined impact of additional executive cars, continuation of limo service, albeit from a different airport location, a recession and a new shuttle service?);
8. An Avion witness reviewed a number of recent changes to the placement of taxis and executive cars at the airport, and there has been no indication as to the implications for taxi revenue arising out of those changes;
9. Unicity's witness suggested that if the shuttle is approved and begins service, Unicity may withdraw as many as half of its current fleet of approximately 50 taxis now devoted to the airport (should the Board consider the potential for reduced customer service and choice from such an event?);
10. The implications of Greyhound's plan to run a free shuttle to downtown and its contract with Duffy's (to provide taxi service from the new bus terminal at the airport) have not been outlined and are unknown to this Board;
11. Unicity's witness suggested that if the shuttle service is introduced 20 or more taxis now operating at the airport could be diverted to serve the rest of the City, when the rest of the City is, according to the TCB's commissioned study already adequately served (again, should the Board take under consideration the potential impact of 20 or more taxis serving non-airport locations on other taxis into account?);
12. Unicity/Duffy's declined to file evidence as to the average number of annual trips, gross and net income of taxi owner-operators, yet their witnesses did not contradict, but in fact supported, the contention that taxi ownership and the occupation of taxi driver were marginal economic activities (as suggested by a

Board exhibit taken from a government website, which reported average taxi cab driver income – an estimate likely developed before taking into account the events of this year, which include the addition of executive cars and the recession. The 1997 and 2008 analysis of taxi industry fare increase application to the TCB also provided estimates of net incomes for industry participants that could be considered as quite low, particularly in light of the investment required and the suggested weekly average working hours of a cab driver (should the Board consider the economic situation of taxi owner operators and drivers under the scenario that an airport-downtown shuttle service is in place, one that was reported may reduce taxi industry gross revenues by 4-6%, that before taking into account the other negative events for the taxi industry of this year?):

13. Evidence has included indications that the transfer value of medallion licenses have increased substantially over the past ten years, coincident it would seem with increased immigration and increased applications for taxi driver licenses, and that in 2009 medallion transfer values have continued to increase (should the Board consider the impact on current taxi owners if transfer values were to fall following the implementation of a shuttle service to and from the airport? Or, should the Board consider transfer values to the natural outcome of demand and supply, supply restricted by regulation and demand increased by immigration, and ignore the issue?);
14. Should the Board conclude that the rationale for new taxi ownership, which would involve the payment of a substantial amount to bring about the transfer of a medallion license, an amount that, based on the evidence, would possibly represent a non-depreciable cost for tax purposes, is based on three premises: the acquisition of a job with the prospect for employment not only for the purchaser but also for members of his/her family, the hope that the “business” that was being acquired would allow the purchaser to make representations to

- immigration officials that would assist in the emigration to Canada of family members, and the expectation that the transfer value, though high, could be recouped at a later day when the license was sold to another person as the present purchaser was leaving the industry? Should the Board pay any attention to the general economics of the taxi industry, and the particular risks to new entrants to taxi ownership?
15. If Avion proved successful and sought to expand its service, as was suggested as a possibility in the testimony of Avion's witness, should the Board consider whether approval of the application currently before the Board should include any restrictions or directions with respect to future applications related to a possible expansion?
16. Evidence was presented, and not disputed, that the taxi industry has made significant efforts to improve their customer service – new hybrids, training of drivers, and that complaints down, with a letter of appreciation sent by WAA to Unicity commenting on the improvements being entered into the record (should the Board take such factors or matters into account if approval of the shuttle service is provided, i.e. with respect to the timing of beginning the service and the terms of the service with respect to past taxi cab industry investments in improved service?); and
17. Excepting for the decline in airport deplaned passenger and taxi volume declines of this year, a year of recession, taxi volumes rose steadily for the past ten years, and during that period no new taxis were licensed by the TCB (although seasonal cars and executive cars, and limos as well, have increased). As well, transfer values have continued to increase, one may say “soared”, despite executive cars being more than doubled, a recession underway and Avion's application. Does this further suggest that whether for economic or non-economic reasons taxi ownership has become increasingly more desirable, and that providing increased customer choice should trump social

and economic concerns related to the present ownership of taxis, particularly given the long hours of service required to “make a living”?

The City of Winnipeg appended a request to its approval of Avion’s shuttle service proposal, that being that PUB hold a public hearing, and the Mayor of the City of Winnipeg, in commenting upon the City’s approval and reference to this Board, said that he expected this Board to consider the implications of the shuttle for the taxi industry. PUB has met that request.

The WAA is a well-financed monopoly, one without a shareholder and able to raise fees and charges for any number of reasons (to offset volume decreases, to pay for airport improvements, to cover of losses on interest rate derivatives, etc.), without requiring the approval of any other board or agency.

WAA is tax-exempt and directed by a board primarily drawn from various levels of government. WAA’s subsidiary, Avion, directed by a board that consists only of two senior WAA executives, seeks to add an un-tendered service to increase “customer choice” without either first having surveyed airport travellers or considered the implications for other ground transportation services (the taxicab industry, in particular).

According to the WAA’s 2008 audited financial statements, WAA is:

“ ... incorporated under Part II of the Canada Corporations Act as a corporation without share capital. (WAA) operates the Winnipeg James Armstrong Richardson International Airport ... under a long-term lease with the Government of Canada for the benefit of the community... is governed by a 15-member Board of Directors of whom eleven members are nominated by the City of Winnipeg, the Rural Municipality of Rosser, Destination Winnipeg, the Winnipeg Chamber of Commerce, the Assiniboia Chamber of Commerce and the Federal and Provincial governments, with the remaining members appointed by the Board from the community at large.”

WAA's financial statements include the position and results of its subsidiaries, including Avion. Of WAA's overall revenue of \$80.1 million for the year ended December 31, 2008, \$5.9 million was for "concessions", which includes fees charged to taxis, executive cars and limousines for the right to pick up passengers from the airport. The overall net income of WAA for 2008 was \$28.7 million, with \$29.4 million (more than the net income of WAA) accounted for by airport improvement fees, which "... *can only be used to pay for airport infrastructure development and related financing costs ...*".

At the hearing, Unicity's witnesses claimed that WAA, in its negotiations leading to a new "exclusive" taxi contract between WAA and Unicity, which took place during the period when Avion had placed into abeyance its application for a shuttle service to PUB, had asserted that Avion would not be proceeding with the shuttle service, and that, as a result of those comments, Unicity had not "insisted" on a contractual clause that would have prevented the shuttle service from proceeding.

WAA's witness, present at the negotiations with Unicity, was unable to confirm that Unicity had not raised the topic during the negotiations, asserting no memory of the reported conversations but not willing to testify that conversations of that nature had taken place. In any case, Unicity neither insisted on an "exclusivity" clause nor did it obtain one: Unicity further testified that the cooperative had not employed legal counsel to assist it in its negotiations with WAA. It is clear that neither WAA nor Avion has concerned themselves materially as to the well being of Unicity.

Unicity/Duffy's are two taxi cooperatives which represent the vast majority of taxi owner-operators (apparently many cabs have two owners), and these cooperatives and their members are subject to competitive and market pressures from many sources. Taxis are unable to raise their fees without regulatory approval. Apparently the average owner-operator and taxi driver earns a low income, despite enormous hours of work; the taxi industry is dependent on market and regulatory restrictions for entry, and to maintain or increase the value of their investments.

This hearing brought the economics of two taxi cooperatives under review, apparently threatened by, in a sense, its largest stakeholder, a well-financed, public sector monopoly, with which it must work with, even though it disagrees with its plans.

There is an enormous “power” imbalance between the two parties before the Board. Avion, fully owned by WAA, is financed and directed by WAA, with WAA having full control over airport services, and neither dependent on any particular mode of travel to and from the airport nor requiring regulatory approval for its decisions. Meanwhile, the taxi industry is reliant on airport traffic for a significant, in fact the largest, single source of its annual revenue.

One of the questions before this Board is whether or not this imbalance should also be taken into account.

6.0 Board Findings

Decision

PUB will conditionally approve Avion Services Corporation’s (Avion) plan to operate an airport/downtown hotel fixed-fee shuttle service, pursuant to Avion’s agreement with the City of Winnipeg (City).

Ahead of Avion commencing its service:

1. Avion will have filed with PUB an updated business plan and received PUB’s approval of that plan – the updated plan is not to contain plans for any additional shuttle vehicles or daily/weekly/annually shuttle runs or destinations other than downtown hotels as currently provided for in Avion’s shuttle service business plan;
2. The Winnipeg Airport Authority (WAA), the sole owner of Avion, must have provided PUB adequate written assurance that it will ensure Avion implements,

upon final approval from PUB, and then operates its shuttle service for at least three years, and WAA will commit to maintaining the current taxicab to executive car ratio at the terminal curb, and implement and maintain signage and other information particulars within and outside the airport terminal, meeting PUB's prior approval, setting out the various ground transportation means available to persons leaving the airport terminal, and the expected price or range of prices for such services; and

3. While not required by PUB, though strongly recommended, the Manitoba Taxicab Board (TCB) will ideally have held a public proceeding to consider revising Winnipeg taxi fares, and in that proceeding will best have taken into account the findings and the various circumstances and issues set out in this Order.

As well, once commenced (service is to begin no earlier than April 1, 2010 and no later than July 1, 2010), Avion may not materially vary its shuttle service (number and type of vehicle(s), schedules, destinations, pricing, etc.) without first obtaining PUB's approval.

PUB establishes April 1, 2010 as the earliest date Avion's shuttle service may commence so as to allow TCB the opportunity to hold a hearing and reach a conclusion on the adequacy of fares and other issues raised herein, ahead of the taxi companies and industry having a new competitor, namely Avion's shuttle service.

PUB establishes July 1, 2010 as the final date by which Avion must have both obtained final approval from PUB to operate its shuttle service and be operating its service, so as to ensure the prospect of such a service is not left "hanging" over the heads of the taxicab industry.

If Avion's interest in operating a shuttle service remains strong, and WAA continues to support the plan, then Avion should have had ample time to get its new service into operations by July 1, 2010. If Avion's shuttle service is not in operation by July 1, 2010, the conditional approval provided by this Order is withdrawn.

Annually, Avion is to file its audited financial statements with PUB, and those statements are to segment its shuttle service, and, on a triennial basis, PUB will review Avion's shuttle service and its approval of continuing service.

With respect to the details of the actions that will be required of Avion, PUB expects Avion to file:

- a) updated details of its proposed service, including the vehicles to be used, the hotels to be served, service schedule, how disabled passengers are to be transported, details of the planned advertising of its service at the airport within the airport, planned placement of the shuttle service and taxis at the airport, and updated revenue and expense projections for the first five years of shuttle operation;
- b) assurances to PUB and the general public from Avion and its parent company, WAA, that regardless of the financial results of Avion's shuttle service, the service, once commenced, will, subject only to the possible cancellation of the service by the action of the City, remain in operation at the planned service level and schedule for no less than three years; and
- c) WAA's plans with respect to posting and providing information with respect to ground transportation choices and prices within, on the outside wall of the terminal, and at the curb where taxis, executive cars, limousines and the shuttle service will be located.

And, with respect to TCB, ahead of Avion's shuttle service being in service, PUB strongly recommends that TCB hold a public proceeding and, in that proceeding, review taxi fares in the full context of the industry's financial situation and prospects, including the assumption that Avion will be operating an airport-downtown hotel shuttle service.

Other matters that could or should be taken into consideration by TCB include the implications for taxicab owners and drivers of:

- a) TCB's prior decision to allow an additional 30 executive cars to serve the airport,
- b) TCB's prior decision to reject an application from Unicity requesting a surcharge to cover a portion of the concession fee Unicity taxis are required to pay WAA for trips originating from the airport,
- c) the advent of the bus terminal at the airport and the presence of Duffy's taxicabs, and
- d) Avion operating a shuttle service expected to reduce overall taxi trips to and from the airport by up to 50%, representing 5-6% of annual taxi trips in Winnipeg.

When assessing the implications of these past and possible events for taxicab owners and drivers, TCB should consider not only the implications with respect to the annual income prospects for Unicity members now servicing the airport, but also the implications of all taxicab owners and drivers (all will be affected if less taxicabs are required at the airport due to the operation of the shuttle, the presence of three times the previous number of executive cars serving the airport, and the potential for additional seasonal licenses being granted).

Also, TCB should consider the implications of all of these events, individually and combined, for the prospects of future transfer/sales prices for taxicab licenses.

In reaching its decision to either confirm or amend existing fares, presumably TCB would develop projections of average annual taxi revenue and expenses pursuant to the above actual and potential events. And, with respect to projecting annual taxicab expenses, TCB would ideally explicitly recognize financing and opportunity costs related to the current value of a taxicab business license, and also the amortization of depreciable taxi vehicles and equipment.

With respect to the "goodwill" involved in the purchase of a license, TCB should also consider not only the annual carrying cost of that investment but also the potential for that investment losing value.

The final report of the 1972 *Taxicab Inquiry* Commission, chaired by H.L. Stevens, noted that “*the prices being paid by purchasers of taxicabs in metropolitan Winnipeg had skyrocketed from approximately \$13,000 in 1966 to as high as \$24,000 in 1970*”, and recommended that “*a formula be devised to protect the public interest and the investment of the present taxicab owners by implementing a new concept regarding the maximum price that may be approved (by the TCB) in the exercise of its discretion*”. The Commission recommended a “*formula of two times the replacement value of the vehicle and operating equipment, which at present day prices would result in a maximum of \$10,000 per taxicab, would not appear to be unreasonable*”.

Clearly, the objective of that 1972 Commission is no longer being followed, as sales prices for taxicab business licenses associated with Unicity and Duffy’s have reached what some observers may consider “astronomical” levels, particularly if one accepts the evidence at the hearing with respect to the average hours of work for taxi drivers (for the reported result of a net income that appears to be in the area of Manitoba’s minimum hourly wage, or less).

TCB is the body assigned the responsibility to concern itself with the well being of the taxi industry and its effect on the public interest, and may be concerned that the taxicab sales prices recently achieved may be too high relative to the returns achievable for taxi owners and drivers, with the risk that new taxicab license owners may risk a “rude surprise” when they come to retire or sell.

And, of course, TCB should take into account the implications of a fare increase for taxis, one driven, at least in part, by the entry of Avion’s shuttle service. It will be ironic if, in the end, taxi fares for Winnipeg are increased for all users as a result of Avion’s new shuttle service, a service that will primarily benefit airport-hotel travellers, and, to a lesser degree, tourism and the general economy.

As the Board has no jurisdiction over TCB, PUB simply seeks TCB’s review of the aforementioned matters and issues (through a public proceeding), with a subsequent

issuance of the results of its review, with reasons. PUB cannot and does not dictate any particular outcome(s), and provides this recommendation with the hope that TCB will exercise its mandate ahead of Avion's service commencing in the interests of both the public and the taxicab industry.

In short, the Board is not prepared to give the "green light" to Avion ahead of actions required of Avion and the WAA. The actions required of WAA are reasonable: WAA is Avion's parent company, and Avion's only directors are also the two most senior executives of WAA.

It is not reasonable to "upset" the ground transportation marketplace further (it already having been impacted by the decision to triple the number of executive cars serving the airport and the recession) by allowing a new service, the shuttle, to be provided without having some assurance that the new service will be carried on for a reasonable length of time prior to being eligible for discontinuance. Three years is not an abnormal length of time to determine if a new service will be able to meet its owner's financial expectations. Three years is not an unreasonable length of time to determine whether the traveling public will use the service in sufficient volumes to allow it to continue.

Also, to require WAA to provide that assurance is not unreasonable. Avion was not prepared to file its audited financial statements, though WAA's publicly issued and audited report was available. Avion's services rely on WAA, those services now primarily being the provision of security and parking at the airport. If WAA wants Avion to offer or not offer a service, Avion is bound to act accordingly. WAA should provide PUB the assurance that Avion's shuttle service will stay in service for at least three years.

Based on the evidence, the Board is not convinced that the shuttle service will generate the revenues and net income forecast by Avion. The Board is also not convinced that the traveling public, given a choice between traveling by taxicab direct to a downtown hotel or going there by way of a shuttle, which will stop up to 8 times before reaching the traveller's destination, will sufficiently choose to go by way of shuttle to save, say \$5 (or

from nothing to actually paying more, if the traveller is accompanied by one or two other persons) will choose to go by way of shuttle to allow the shuttle to be profitable – that is, given full disclosure of the nature and costs involved of each of a traveller's ground transportation choices.

The Board is also not convinced that Avion should be prevented from giving its plan a chance, although it is convinced that the opportunity should not come at an exorbitant cost to taxicab owners and drivers.

Hence, PUB's recommendation involve TCB, seeking that TCB hold a public hearing to consider whether taxicab fares should be amended, and/or other actions undertaken.

Presumably, fares should provide for a reasonable living for taxi drivers and a reasonable return on investment for their owners. Clearly, the advent of three times the previous level of executive cars serving the airport has affected the revenue and income prospects for taxicab owners and drivers. Clearly, the potential advent of an airport/downtown hotel shuttle service will also have a negative impact on taxicab owners and drivers. Both of these developments and the decrease in general business related to the recession, will affect all taxicab owners and drivers, not only Unicity's or those providing airport service.

At the hearing, TCB's Executive Director confirmed that fares are amended on application by the taxi industry and after consideration by TCB, and that applications generally look to changed circumstances, such as increased fuel or vehicle costs. Fairly recently, an application was brought, and rejected, for a surcharge on fares leaving the airport, to recognize the concession fee of \$1.65 per trip paid WAA by Unicity. While the Board's understanding is that TCB generally does not give reasons for its decisions, nor share its analyses and rationale, PUB suggests that, at least in this case, TCB amend its approach so as to provide a more appropriate level of transparency as to its decisions and as to the factors leading to decisions.

PUB will not substitute, nor has the jurisdiction to do so, its judgment as to whether current fare levels are correct, whether 30 more executive cars should have been allowed to serve the airport, or whether transfer/sales values for taxicabs exceeding \$250,000 are reasonable from an economic perspective. These matters appear to be best considered by TCB.

All that said, before PUB allows Avion to implement its shuttle, PUB will provide TCB an opportunity to review events, circumstances and this Order, and consider whether it will hold a public hearing and whether taxi fares should be increased to ensure taxi owners and drivers have an opportunity to earn a reasonable living and a reasonable return on their investment.

And, while doing that, the Board suggests that TCB consider whether it should be allowing taxicab business license transfers at the level of prices recently obtained, and/or whether it has the authority to restrict transfer sales values, to protect the prospective purchasers and, in the end, the public interest, and, if so, whether it should exercise that authority.

In reviewing taxicab fares, PUB also suggests that TCB use the authority provided it by its governing legislation and regulations to determine, with a reasonable degree of certainty, what is the average and range of net incomes being realized by taxicab owners and drivers. Unicity/Duffy's declined to place specific information on average annual taxicab revenues and costs, detailed by category, on the record, and left PUB to reach its own conclusions based on what was on the record – estimates of taxicab driver earnings as published by government (from its occupational outlook surveys) and from the single number provided by Unicity/Duffy's.

Other Comments

Avion never considered the impact its proposed shuttle service would have on the taxicab industry; its focus was and is on “customer choice” and the well being of its financial situation and that of its parent, WAA. This is clear from the earlier decisions made by

Avion and WAA – first, to seek approval of a shuttle service from TCB, and then, upon that bid being rejected by TCB, seeking an agreement with the City to operate its proposed fixed-fare shuttle service.

Avion's parent company, WAA, also did not consider the implications for the taxi industry of its decisions, including the initial decision to ban limousines and the final decision to restrict operating opportunities for limousines at the airport, and then to work towards and achieve a higher number of executive cars to serve the airport. (In making a choice between an executive car and a taxicab, travellers balance the additional cost of an executive car, approximately 50% more than a taxi fare to downtown, against the more "luxurious" nature of an executive car as compared to a regular taxicab. Other factors important to the traveller's choice are the availability of taxicabs and executive cars at the curb, how many passengers are intending to occupy the vehicle, and whether the fare is "personal" or "business" – who is the ultimate payer for the service.)

While neither Avion nor WAA is obliged to consider the implications for taxicab owners and drivers of its decisions, given the risk that taxicabs could reduce their level of service to the public, which could lead to a reduction in service and service at a higher cost for travellers, these firms should. The implications for taxi owners and drivers of Avion operating an airport-downtown shuttle service, projected to reduce taxi trips to and from the airport by in the range of 120,000 annually, is material, and ground transportation issues are important to the interests of travellers.

TCB's regulation of the taxicab industry would best be modified, and include more requirements for data from the industry and more transparency in TCB processes and decisions.

Although it initially received Avion's application and rejected it, it not only changed its view on jurisdiction, but also indicated it had no objection to the service. This indication, followed by TCB increasing the number of executive car licenses (in response to WAA's pursuit of having more executive cars and reduced limousine service at the airport), was

not in the best interests of taxicabs. Neither was TCB's earlier rejection of the taxi companies' effort to have a fare surcharge be instituted to recover a portion of the per trip concession fee required of taxis by WAA.

The economics of the taxi industry, from the perspective of taxi owners, is problematic, ahead of any implementation of an airport-downtown shuttle service. Evidence at the hearing, not disputed by Avion, indicated that taxi trips from the airport in 2009 have already been negatively impacted by a dramatic increase in executive car service and the recession, and that the reaction of the taxi owner-drivers has been to drive longer each day and week to allow for the generation of sufficient net income to meet their obligations.

With the implementation of the application, and based on Avion's projections, the Board assumes 130,000 or so trips to and from the airport will be "taken" from taxis and "transferred" to Avion's shuttle service. Given that the overall annual number of Winnipeg taxi trips appears to be in the area of 3 million, Avion's shuttle is expected to reduce the overall revenue of the taxi industry by approximately 5%.

A "further" reduction in expected annual taxi revenue, following the reduction likely associated with the advent of a tripling, from 16 cars to 46, of the number of executive cars serving the airport, and the effect of the recession on the overall transportation business, may well represent a much higher percentage loss in net income to the taxi industry than it will with respect to gross revenue.

While the evidence as to the average net income for a taxi was sparse, drawing on the information that was available, the Board concludes that the average taxi earns before tax (the Board understands most taxis are held within incorporated companies, with many of these companies having more than one owner) in the area of \$75,000.

The Board also accepts that the average driver-owner works between 12 and 18 hours a day, up to seven days each week, and that for most taxis they are in service for at least two shifts each day, to generate that level of net income. On an hourly basis, this level of

return is less than the minimum wage, and the overall net return does not take into account the significant investment held by taxi owners in their vehicles and their medallion licenses.

Both Unicity/Duffy's and the Board's witness, the Executive Director of TCB, advised that medallion licenses have recently been sold for in excess of \$300,000, with the recent peak sale being \$205,000 for a one-half share of a Duffy's cab business (suggesting a price of in excess of \$400,000 for one medallion license). The sales value of a medallion license, in the case of a Duffy's and Unicity taxis, has increased steadily over the past ten years, from in the range of \$50,000 to, most recently, in excess of \$300,000 to a peak of just over \$400,000.

Only a portion of the cost is subject to amortization for income tax purposes, being the investment represented in the value of the taxi itself. The "lion's share" of recent medallion license sales is represented by "goodwill", which, as the Board understands, is not amortized against net income for income tax purposes. So, whether represented by actual annual financial costs or by the "opportunity value" of money, there is a heavy cost associated with investing up to \$400,000 to acquire a taxicab.

TCB could or should consider whether a "price bubble" exists, and whether new purchasers are undertaking a major risk that might not be in their best interest, one dependent upon a "daisy chain" of purchasers/vendors to keep the value up. PUB is confident that both it and TCB, and taxi owners, do not seek "musical chairs" when such large investments are at stake.

Costs and Appeals

In accordance with its Act, PUB will assess costs resulting from this hearing in a separate order, to follow.

As a significant portion of the costs to be assessed will be assigned to Avion, as a condition of approval to operate, the Board will require that any costs assessed Avion be paid before approval is effective.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website, www.pub.gov.mb.ca.

7.0 IT IS THEREFORE ORDERED THAT:

1. Avion Services Corporation (Avion) may operate an airport/downtown hotel fixed-fee shuttle service, pursuant to Avion's agreement with the City of Winnipeg (City), subject to the following conditions:
 - a) On or before April 1, 2010, Avion will file an updated business plan meeting with the Public Utilities Board's approval, to be secured prior to service commencing;
 - b) Without restricting the generality of the requirement, Avion's updated business plan should be supported by financial projections for the first three years of service; a draft schedule indicating the "airport return" time duration; the number, make, model and cost of the shuttle vehicles to be purchased; Avion's contract with WAA and contracts with the downtown hotels to receive the service; a plan to accommodate disabled passengers; insurance coverage details; driver trainer program; etc.

(The Public Utilities Board suggests that Avion officials work with Board staff to best ensure the updated business plan will address all of the likely concerns of the Public Utilities Board.)
 - c) On or before April 1, 2010, the Winnipeg Airport Authority provide the Public Utilities Board a written undertaking that, upon final approval being provided by the Public Utilities Board, it will ensure Avion implements and operates the shuttle service for at least three years;
 - d) On our before April 1, 2010, the Winnipeg Airport Authority provide the Public Utilities Board its planned design and commitment to implement signage and other information particulars within and outside the airport terminal, satisfactory to the Public Utilities Board, setting out the various

ground transportation means available to persons leaving the airport terminal, and the expected price or range of prices for such services;

- e) On or before April 1, 2010, the Winnipeg Airport Authority provide the Public Utilities Board with assurance that the current ratio at terminal curb between taxicabs and executive cars (that being 4 cabs for each executive car) will not change without the approval of the Public Utilities Board; and
 - f) On or before April 1, 2010, the costs levied by the Public Utilities Board against Avion be paid in full.
2. Once commenced, Avion may not materially vary its shuttle service (number and type of vehicles, schedule, destinations, pricing, etc.) without first obtaining the approval of the Public Utilities Board.
 3. Avion commence its service no earlier than April 1, 2010 and no later than July 1, 2010.
 4. Following commencement of its shuttle service, Avion is to file with the Public Utilities Board its annual audited financial statements (which may be filed in confidence), no later than six months following the end of Avion's fiscal year, with the shuttle service's segmented results outlined therein.
 5. On a triennial basis, pursuant to a process to be established by the Public Utilities Board, Avion will apply to the Public Utilities Board for approval of continuance, termination or revision of the shuttle service operation.

8.0 IT IS THEREFORE RECOMMENDED THAT:

1. In keeping with the spirit and intent of this Order, the Manitoba Taxicab Board should hold a public hearing ahead of the commencement of Avion's shuttle service, and preferably prior to April 1, 2010, to consider revising Winnipeg taxi fares, and, in that proceeding, take into account the findings and the various circumstances and issues set out in this Order, as well as the following factors:
 - a) the Manitoba Taxicab Board's previous decisions to reject Unicity's application for a surcharge on fares from the airport and to license 30 additional executive cars for airport service, and the effect on taxicab revenues and net incomes resulting from that decision;
 - b) the implications of additional seasonal cars being licensed for operation for five months of each year on taxicab owners' and drivers' returns;
 - c) the probability of Avion operating an airport-downtown hotel shuttle service on taxicab revenues and net income;
 - d) the average net income of a taxicab owner and driver, considering the current value of a "medallion" license and the number of hours of work for the average owner-driver and driver; and
 - e) whether recent taxicab license sales values reflect the economic reality of taxicab ownership, or if sales values have reached unsustainable and unreasonable levels -- levels based on factors other than the economics of taxicab ownership and bearing the risk of a purchaser experiencing a significant capital loss on a subsequent sale of a purchased license.
2. The Manitoba Taxicab Board issue its decision, with reasons, prior to either the commencement of Avion's shuttle service or April 1, 2010, whichever date is the earlier.

THE PUBLIC UTILITIES BOARD

“GRAHAM LANE, CA”

Chairman

“GERRY GAUDREAU, CMA”

Secretary

Certified a true copy of Order No. 137/09
issued by The Public Utilities Board

Secretary