

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:  
APPLICATION OF  
LA MEXICANA EXPRESS SERVICE, LLC  
NUMBER A-2012-2329717  
A-6415209

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PETITION FOR RECONSIDERATION

AND

EXCEPTIONS OF APPLICANT

OF

APPLICANT

TO

ORDER OF THE COMMISSION

ADOPTED MAY 22, 2014, ENTERED MAY 22, 2014

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*(Document Filed Electronically)*

Dated: June 5, 2014

Filed By:

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Comes now, La Mexicana Express Service, LLC, a Pennsylvania limited liability company, with address at 1044 Union Street, Reading, PA 19604 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with 66 Pa. C.S. §§703(f) and 703(g) and 52 Pa. Code §§ 5.41 and 5.44 of the Regulations of the Pennsylvania Public Utility Commission (“Commission”), files this, its Petition For Reconsideration And Exceptions to the Order of the Commission, adopted May 22, 2014 and entered May 22, 2014, (“Order”) in the above entitled proceeding.

I  
HISTORY OF THE PROCEEDING

For the purposes of this Petition and Exceptions, Applicant adopts the history of the proceeding set forth in the first full paragraph of the Order under the heading “BY THE COMMISSION.”

Also, for the purposes of this Petition and Exceptions, Applicant adopts the discussion and findings set forth in the second and third full paragraphs of the Order under the heading “DISCUSSION AND FINDINGS”, *but takes exception to and requests reconsideration of the findings set forth in the first, fourth, fifth, sixth, and seventh (last) full paragraphs of the Order under the heading “DISCUSSION AND FINDINGS” of the Order.*

## II RECONSIDERATIONS AND EXCEPTIONS

**1. Applicant requests reconsideration of and excepts to the last sentence of the first full paragraph of the Order under the heading “DISCUSSION AND FINDINGS” to the extent that Applicant did provide a balance sheet attached to Applicant’s February 12, 2014 Verified Statement/Business Plan showing and indicating \$10,000.00 cash on hand and \$25,000.00 lines of credit, plus available vehicle assets worth \$15,000.00, with no current or long term liabilities, to establish the business and commence operations.**

Applicant submitted a Verified Statement/Business Plan (with exhibits) of Daniel S. Caisaguano, dated February 12, 2014, amending Applicant’s application and Mr. Caisaguano’s prior verified statements in this application proceeding. As stated and set forth in item 11 of the February 12, 2014 Verified Statement/Business Plan, Applicant submitted a Statement of Financial Position (Balance Sheet) as of December 31, 2013 showing \$10,000.00 Cash on hand; \$25,000.00 available from credit lines and credit cards; and \$15,000.00 in motor vehicle equipment for a total of \$50,000.00 in assets and “0” current or long term liabilities, inasmuch as Applicant has not begun operations and had no expenses or income. The Balance Sheet and financial information set forth in item 11 was further amplified by the statement’s Exhibit 2, in which the formula for projected gross weekly income of \$1,000.00 was provided.

**2. Applicant requests reconsideration of and excepts to the last sentence of the fourth full paragraph of the Order under the heading “DISCUSSION AND FINDINGS” to the extent that Applicant did prove it has the requisite financial fitness to establish the business and commence operations.**

Applicant submitted a Verified Statement/Business Plan (with exhibits) of Daniel S. Caisaguano, dated February 12, 2014, amending Applicant’s application and Mr. Caisaguano’s prior verified statements in this application proceeding. As stated and set forth in item 11 of the February 12, 2014 Verified Statement/Business Plan, Applicant submitted a Statement of Financial Position (Balance Sheet) as of December 31, 2013 showing \$10,000.00 Cash on hand; \$25,000.00 available from credit lines and credit cards; and \$15,000.00 in motor vehicle equipment for a total of \$50,000.00 in assets and “0” current or long term liabilities, inasmuch as Applicant has not begun operations and had no expenses or income. The Balance Sheet and financial information set forth in item 11 was further amplified by the statement’s Exhibit 2, in which the formula for projected gross weekly income of \$1,000.00 was provided.

Also, Applicant addressed the availability and affordability of vehicle insurance in item 9 of Mr. Caisaguano’s February 12, 2014 Verified Statement/Business Plan, wherein it was stated that Applicant received quotes of \$120.00 per month per vehicle (with a \$500.00 down payment) to insure vehicles from Access Insurance – People’s Choice Svcs LLC of Norristown, PA. This is the same insurance company that presently insures the three vehicles which Applicant intends to utilize upon commencing operations, and this vehicle and insurance information was also provided in item 7 and Exhibit 4 of Mr. Caisaguano’s February 12, 2014 Verified Statement/Business Plan. Obviously, vehicle insurance is presently in place and there are no burdensome additional costs to securing vehicle insurance to commence operations.

Surely, the foregoing is not the “substantial amount for insurance coverage” stated in the fourth full paragraph of the Order. Moreover, it is error to assume that garage rental space for two to three vehicles will exceed the present assets and projected weekly gross income stated by Applicant.

**3. Applicant requests reconsideration of and excepts to the misstatements and erroneous assumptions contained in the fifth full paragraph of the Order under the heading “DISCUSSION AND FINDINGS” to the extent that Applicant did provide evidence of ownership of the 2004 Ford Explorer vehicle and there no facts were presented to assume or raise concerns about Applicant rendering limousine service.**

Applicant submitted a Verified Statement/Business Plan (with exhibits) of Daniel S. Caisaguano, dated February 12, 2014, amending Applicant’s application and Mr. Caisaguano’s prior verified statements in this application proceeding. As stated and set forth in item 7 of the February 12, 2014 Verified Statement/Business Plan, Applicant submitted a description of the vehicles to be utilized upon a grant of the instant application and commencement of operations. Evidence of these vehicles’ existence and ownership (including insurance) was also provided in Exhibit 4 to the February 12, 2014 Verified Statement/Business Plan. Exhibit 4 also contained ownership verification of the 2004 Ford Explorer on the third and fourth pages of this exhibit.

No facts were provided to support the Order’s “concern that Applicant would provide service which is more in the nature of limousine service.” It is incredulous and erroneous to state and assume without any factual underpinning that, while the Commission’s regulations do not prohibit the use of sedan vehicles in paratransit service, Applicant might use sedan vehicles in other than paratransit service, such as limousine service.

**4. Applicant requests reconsideration of and excepts to the misstatements and erroneous assumptions contained in the sixth full paragraph of the Order under the heading “DISCUSSION AND FINDINGS” to the extent that the person responsible for the safe and legal operations of Applicant’s operation lacks the propensity to ensure safe and legal operation.**

Once again, as argued above in Point No. 3, no facts or legal argument have been presented to substantiate the Order’s assumption that the nature and number of Mr. Caisaguano’s motor vehicle code violations result in Applicant’s lacking the propensity to ensure safe and legal operations. First, the violations attributed to Mr. Caisaguano are not for violations of this Commission’s regulatory code, rules or orders, but for some motor vehicle speeding and traffic signal violations. While Applicant does not intend to minimize motor vehicle code violations, they are not violations of this Commission’s rules, orders, or regulations occurring while Applicant was performing any operations under this Commission’s jurisdiction.

Second, the motor vehicle code violations attributed to Mr. Caisaguano in the Order conflict with the “no criminal record” search results provided by the Pennsylvania State Police in Exhibit 6 to Applicant’s February 12, 2014 Verified Statement/Business Plan.

Third, Applicant has not commenced any operations under this Commission’s jurisdiction to be found in violation of any such rule, order, or regulation, and Applicant has already stated that Mr. Caisaguano will not be a driver for Applicant, but just its is sole member providing financial, equipment, and other support. Applicant has verified under oath that it will establish programs to ensure safe and lawful operations in compliance with this Commission’s rules and regulations regarding vehicles, drivers, rates, insurance, etc. Upon a grant of the authority sought herein by Applicant, the Commission will certainly have the jurisdiction to

police Applicant's operations for safe and legal operations in compliance with Commission's rules and regulations.

Fourth, even though no prior unlawful operations of Applicant have been demonstrated, it must be remembered that a motor carrier applicant's prior unlawful conduct or operations do not, per se, preclude the Commission granting from granting authority subsequently. Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Cmwlt. 1996). Here, Mr. Caisaguano's alleged prior motor vehicle code violations are wrongly being attributed to Applicant in order to deny Applicant's instant application that is presently unopposed and supported by thirteen (13) public need witnesses, even when Mr. Caisaguano will not be a driver and Applicant has not commenced operations.

**5. Applicant requests reconsideration of and excepts to the misstatements and erroneous assumptions contained in the seventh full paragraph of the Order under the heading "DISCUSSION AND FINDINGS" to the extent it states Applicant has still failed to demonstrate any business or education to operate a transportation service, the financial ability to provide the proposed service, and lacks the propensity to operate safely and legally as required under 52 Pa. Code § 41.14(b).**

Once again, as argued above in Point Nos. 1 through 4, no facts or legal argument have been presented to substantiate the Order's finding that Applicant has failed to demonstrate any business or education to operate a transportation service. The February 12, 2014 Verified Statement/Business Plan, and Applicant's two prior verified statements, contained specific information and exhibits regarding Applicant's business and education to operate a paratransit service safely and lawfully. However, the Order did not contain any facts or legal argument to substantiate this erroneous conclusion.

Moreover, as argued above in Point Nos. 1 and 2, no facts or legal argument have been presented to substantiate the Order's finding that Applicant does not have the financial ability to provide the proposed service. The February 12, 2014 Verified Statement/Business Plan, and Applicant's two prior verified statements, contained sufficient and adequate information and exhibits regarding Applicant's finances and assets to be utilized upon a grant of the authority sought herein. The Order's findings to the contrary are erroneous and not substantiated by the record herein.

Furthermore, as argued above in Point No. 4, no facts or legal argument have been presented to substantiate the Order's finding that Applicant lacks the propensity to operate safely and legally, especially when Applicant has not commenced operations, and has not been found to have violated any Commission rule, order, or regulation

### III CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission's rules and regulations, and respectfully prays the Commission:

- (a) reconsider its Order;
- (b) reconsider the Order's discussion and findings that Applicant lacks the propensity to operate safely and legally;
- (c) grant Applicant's within Petition;
- (d) find that Applicant has provided sufficient and adequate proof of its financial fitness, of its propensity to operate safely and lawfully, and of need (in the form of thirteen public witnesses) for this unopposed application; and
- (e) and approve the granting of the instant unopposed application (as restrictively amended)

Dated: June 5, 2014

Respectfully submitted,

s/ Kenneth A. Olsen  
KENNETH A. OLSEN  
33 Philhower Road  
Lebanon, New Jersey 08833  
(908) 832-9207  
PA ID No. 29681  
Attorney for Applicant

### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document, Applicant's Petition For Reconsideration and Exceptions to Order adopted and entered May 22, 2014, upon the persons listed below, electronically and via first class mail, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54, 52 Pa. Code § 1.59, and 52 Pa. Code § 5.502:

The Hon. Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission,  
P. O. Box 3265, 2<sup>nd</sup> Floor, Keystone Bldg., 400 North Street, Harrisburg, PA 17105-3265  
electronically and the original; and no further copies on any other party inasmuch as the instant application is unopposed.

Dated this 5<sup>th</sup> day of June, 2014

s/ Kenneth A. Olsen  
KENNETH A. OLSEN  
Attorney for Applicant

