

Law Offices

VUONO & GRAY, LLC

310 Grant Street, Suite 2310

Pittsburgh, PA 15219-2383

John A. Vuono
William A. Gray
*Mark T. Vuono**
Dennis J. Kusturiss
Louise Vuono Schrage
William H. Stewart, III
Erica G. Wilson

**Also Admitted in Florida*

Telephone
412-471-1800

Facsimile
412-471-4477

www.vuonogray.com

Email Address
wgray@vuonogray.com

July 14, 2014

Re: Cindy's Carriages, LLC
Docket No. A-2014-2421548

Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
2014 JUL 17 AM 10:47
PA P.U.C.
SECRETARY'S BUREAU

Dear Ms. Chiavetta:

We enclose for filing with the Commission a signed original Protest in connection with the above application.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

as/139233

Enclosure

cc: Cindy's Carriages, LLC (w/enc.)(By Certified Mail)
Classy Cab, Inc.
Cranberry Taxi, Inc. t/d/b/a Veteran's Taxi

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2014-2421548

CINDY'S CARRIAGES, LLC

PROTEST AND REQUEST
FOR ORAL HEARING

RECEIVED
2014 JUL 17 AM 10:47
PA PUBLIC
UTILITY
COMMISSION
SECRETARY'S OFFICE

The motor carriers shown on Appendix A hereof (herein called protestants) protest the above application and request that the application be assigned for oral hearing and in support thereof respectfully represent as follows:

1. By this application, notice of which has been published in the Pennsylvania Bulletin, applicant seeks authority as set forth in Appendix A.
2. Protestants hold authority from this Commission at the docket numbers shown in Appendix A and the relevant authority is attached to the protest. Unless otherwise indicated in Appendix A, protestants will withdraw the protest only in the event an amendment is made which will totally eliminate the interest of the protestants.
3. Approval of this application is neither necessary nor proper for the service, accommodation, safety or convenience of the public since (a) protestants presently holds authority to provide service in the area affected by the application, (b) protestants and other existing carriers are providing adequate service to the public in the areas involved in the application, (c) there is no need for the service proposed by applicant and approval of the application will result in the diversion from existing carriers of revenue necessary to

sustain their existing operations, (d) the applicant does not possess the technical and financial ability to provide the proposed service and lacks a propensity to operate safely and legally, and (e) approval of the application will adversely affect protestants and other existing carriers which have a substantial investment in facilities and equipment and are willing and able to provide service in the application area.

4. Protestants request that the application be set for oral hearing and that applicant be required to prove by competent evidence the elements of proof required by statute. If an oral hearing is held, protestant will appear and present evidence in opposition to the grant of the application unless the application is amended so as to eliminate the interest as set forth in this protest.

WHEREFORE, protestants request that the granting of the application be withheld; the proceeding be assigned for oral hearing with leave to protestants to participate fully therein; and applicant be required to make available at the hearing competent witnesses for examination on all material and relevant facts bearing on the application.

Respectfully submitted,

CLASSY CAB COMPANY, INC.
CRANBERRY TAXI, INC. t/d/b/a VETERAN'S
TAXI

By: _____

William A. Gray, Esq.
Attorney for Protestants

VUONO & GRAY, LLC
310 Grant Street, Suite 2310
Pittsburgh, PA 15219-2383
(412) 471-1800

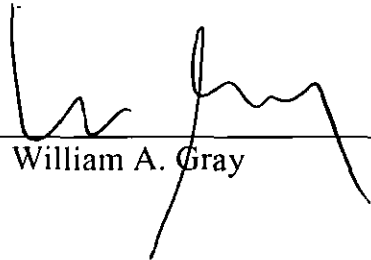
Dated: July 14, 2014

/139234

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the above protest and request an oral hearing upon applicant or upon applicant's attorney or representative as shown in the Pennsylvania Bulletin notice.

Dated at Pittsburgh, PA, this 14th day of July, 2014.



William A. Gray

RECEIVED

2014 JUL 17 AM 10:48

PA P.U.C.
SECRETARY'S BUREAU

Re: Cindy's Carriages, LLC
Docket No. A-2014-2421548

APPENDIX A

SCOPE OF AUTHORITY SOUGHT:

By application published in the Pennsylvania Bulletin on July 5, 2014, applicant seeks authority to operate as a common carrier, transporting:

Persons upon call or demand, to include a 20-mile radius centered on the intersection of 10th Street and East Carson Street, Pittsburgh, Allegheny County.

INTEREST OF PROTESTANTS:

1. Classy Cab Company, Inc., Sheraton Hotel/Northwest, 910 Sheraton Drive, Mars, PA 16046, 724-776-0044, holds authority at Docket No. A-00121579. A copy of the authority of Classy Cab is attached hereto. All of its authority is relevant to this application.

2. Cranberry Taxi, Inc., t/d/b/a Veteran's Taxi, Sheraton Hotel/Northwest, 910 Sheraton Drive, Mars, PA 16046 (724)776-0044 holds authority at Docket No. A-00119935. A copy of Cranberry Taxi's authority is attached hereto. All of its authority involving Allegheny County is relevant to this application.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 13, 2003

Commissioners Present:

**Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice-Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland**

Application of Cranberry Taxi, Inc., for the right to begin to transport persons upon call or demand (1) in the county of Butler, and (2) in the townships of Marshall and Pine, and the boroughs of Bradford Woods and Franklin Park, all in Allegheny County, provided that no right, power or privilege is granted to provide service within the limits of North Park, located in the townships of Pine and McCandless, both in Allegheny county; which is to be a transfer of the rights authorized under the certificate issued at A-00106305, F.3 to Star Limousine Service, Inc., t/a Cranberry Taxi, subject to the same limitations and conditions.

A-00119935

William A. Gray for applicant

ORDER

BY THE COMMISSION:

This matter comes before the Commission upon applications for permanent and temporary authority filed June 17, 2003. Public notice of the applications was given in the Pennsylvania Bulletin of July 19, 2003. No protests were filed.

The unopposed application is certified to the Commission for its decision without oral hearing. The record before us relative to the request for transfer consists of a statement of Robert C. DeLucia, president of Cranberry Taxi, Inc. (Cranberry Taxi or applicant).

DISCUSSION AND FINDINGS:

Robert C. DeLucia is president and sole shareholder of Star Limousine Service, Inc., (Star or transferor). He set forth in his statement that Star is unable to secure insurance to cover just its limousine operation. The circumstance that created this problem is that Pittsburgh International Airport (airport) requires carriers picking up at the airport to have insurance coverage in the amount of \$1.5 million, well in excess of the \$35 thousand minimum coverage required by the PUC.

The Commission has been made aware of the insurance problems that face carriers that hold both limousine and call or demand service. Insurance underwriters have told carriers that because they could be held civilly liable to the limits of the limo policy (\$1.5 million required by the airport), they would not insure the cabs at the lower minimum.

Mr. Delucia believes that the only financially feasible way that the call or demand and the limousine services can continue to operate, is through the transfer of the call or demand authority to a separate entity.

The new corporation, Cranberry Taxi, Inc., will acquire the same vehicles presently operated by Star. The same personnel will also operate and dispatch the vehicles. The call or demand authority is being transferred for the consideration of \$1.00.

The applicant has submitted a balance sheet dated September 19, 2003, showing total assets of \$26,975.00, total liabilities of \$25,975.00, leaving owners equity of \$1,000.00.

Cranberry Taxi, Inc. currently operates the call or demand service under a grant of Emergency Temporary Authority adopted August 7, 2003. The applicant was required to file a Form E, evidence of insurance, before it could begin providing the emergency temporary authority. A Form E, evidence of insurance, has been filed with the Commission to cover the call or demand operation. Since the applicant has a Form E, evidence of insurance on file with the PUC, we will not require the filing of a new Form E, evidence of insurance, since this is neither an expansion of territory nor a new class of service.

The authority to be transferred has been operated by the transferor; therefore, it is presumed that there is a continuing need, which may be overcome only by evidence to the contrary. In re: Bverly, 270 A.2d 186 (Pa 1970); Hostetter v. Pa. P.U.C., 49 A.2d 862

(Pa. Super 1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

After complete review of the record, we find:

1. The applicant has the equipment, experience and fitness to provide the proposed service.
2. Approval of the unopposed application is necessary for the continued accommodation and convenience of the public;
THEREFORE,

IT IS ORDERED: That the unopposed application, be and is hereby approved granting the following rights:

1. To transport as a common carrier, persons upon call or demand in the county of Butler, and
2. To transport as a common carrier, persons upon call or demand in the townships of Marshall and Pine, and the boroughs of Bradford Woods and Franklin Park, all in Allegheny County, provided that no right, power or privilege is granted to provide service within the limits of North Park, located in the townships of Pine and McCandless, both in Allegheny county;

subject to the following general conditions:

1. That the authority granted herein to the extent that it duplicates authority now held or subsequently granted to the applicant shall not be construed as conferring more than one operating right.
2. That the approval hereby given is not to be understood as committing the Commission, in any proceeding that may be brought before it for any purpose to fix a valuation on the property and/or rights to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefore, or equal to any value that may be placed thereon by the applicant, or to approve or prescribe rates sufficient to yield a return thereon.

IT IS FURTHER ORDERED: That the applicant shall not provide any service granted in this order until the following is submitted to the Commission:

1. A tariff establishing just and reasonable rates.

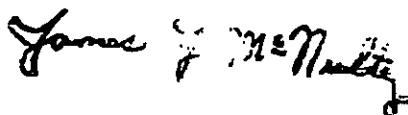
IT IS FURTHER ORDERED: That upon compliance with the requirements herein before set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That the temporary authority application filed in this proceeding be and is hereby dismissed as moot.

IT IS FURTHER ORDERED: That upon compliance with the requirements of this order, the authority granted Star Limousine, Inc., t/d/b/a Cranberry Taxi, under the certificate issued at A-00106305, F.3, shall be canceled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive style with a small flourish at the end.

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 13, 2003

ORDER ENTERED: NOV 18 2003

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 21, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Application of Cranberry Taxi, Inc., d/b/a
Veterans Taxi, for amendment to its
common carrier certificate, which grants
the right, *inter alia*, to transport persons,
by motor vehicle upon call or demand in the
county of Beaver: SO AS TO PERMIT the
transportation of persons upon call or demand
in the county of Allegheny.

A-2010-2168756

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Airlines Acquisition Co., Inc., t/d/b/a Airlines Transportation Company; Airport Limousine Service, Inc., t/d/b/a Checker Cab; Pittsburgh Cab Company, Inc., t/d/b/a Metro Taxi; Ray Ray Cab Company, LLC; and the Yellow Cab Company of Pittsburgh (collectively, Protestants) filed on November 23, 2011, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L.

Dunderdale, issued November 3, 2011. Cranberry Taxi, Inc. d/b/a Veterans Taxi (Applicant) filed Replies to Exceptions on December 2, 2011.

History of the Proceeding

On February 22, 2010, the Applicant filed an application seeking approval to amend its common carrier certificate so as to expand the call and demand service to include Allegheny County. The Application was published in the *Pennsylvania Bulletin*, 40 Pa. B. 2205, on April 24, 2010, and sought the following authority:

For amendment to its common carrier certificate, which grants the right to transport as a common carrier, persons upon call or demand in the county of Butler; and to transport as a common carrier, persons upon call or demand in the townships of Marshall and Pine, and the boroughs of Bradford Woods and Franklin Park, all in Allegheny County, provided that no right, power or privilege is granted to provide service within the limits of North Park, located in the townships of Pine and McCandless, both in Allegheny County; **SO AS TO PERMIT** persons upon call or demand in the county of Allegheny.¹

On May 6, 2010, the Protestants filed timely protests.

On February 8, 2011, the Office of Administrative Law Judge (OALJ) scheduled a hearing for April 7, 2011. On February 9, 2011, ALJ Dunderdale issued a Prehearing Order.

On March 3, 2011, the ALJ conducted an informal teleconference with the Parties to discuss discovery disputes. At that time, the Parties agreed the initial hearing

¹ Applicant further moved at the administrative hearing on May 4, 2011 to have the application amended to show Cranberry Taxi's new trade or business name, "Veterans Taxi", and the caption has been amended to show "d/b/a Veterans Taxi".

scheduled for April 7, 2011, should be converted into a prehearing conference and two days of hearings should be scheduled within approximately thirty days of the prehearing date.

On March 4, 2011, the OALJ issued a Corrected Hearing Notice in which the hearing scheduled for April 7, 2011, was converted into a Prehearing Conference. The OALJ also rescheduled the hearing to be conducted over two days, on May 3, 2011, and May 4, 2011.

On April 7, 2011, ALJ Dunderdale conducted a prehearing conference at which the Parties discussed various procedural and evidentiary matters, including an oral motion made by the Applicant's counsel to preclude the Protestants from asking the Applicant's President questions about a conviction for mail fraud.

On April 8, 2011, the presiding officer issued the Third Interim Order directing the Applicant to render its oral Motion in Limine in writing by April 14, 2011, and giving the Protestants until April 21, 2011, to file written responses to the Motion. The Parties were also directed to provide a complete list of witnesses to each other by April 19, 2011, and to provide a copy to ALJ Dunderdale by May 2, 2011.

On April 26, 2011, ALJ Dunderdale issued a Fourth Interim Order in which she granted the Applicant's Motion in Limine.

The initial hearing was held as scheduled on May 3, 2011, and on May 4, 2011. The Applicant was represented by counsel, presented the testimony of twenty-six individuals, and offered nine exhibits that were admitted into the record. The Protestants were represented by counsel, provided the testimony of two witnesses, and offered twelve exhibits that were admitted into the record. The transcript of the hearing consists of 576 pages.

The Applicant and the Protestants submitted briefs on July 1, 2011, and July 13, 2011, respectively, and reply briefs on July 27, 2011. On August 1, 2011, the ALJ issued an Interim Order Closing the Hearing Record.

In an Initial Decision, issued November 3, 2011, ALJ Dunderdale approved the Application. As previously indicated, the Protestants filed Exceptions on November 23, 2011. The Applicant filed Replies to Exceptions on December 2, 2011.

Discussion

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In the Initial Decision, ALJ Dunderdale made seventy-four Findings of Fact and reached seven Conclusions of Law. I.D. at 4-18, 26. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, the Applicant is the party seeking affirmative relief from the Commission, and therefore it is the party with the burden of proof. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

In *Se-Ling Hosiery*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

ALJ’s Recommendation

The ALJ analyzed the Application according to the evidentiary criteria set forth in Section 41.14 of the Commission’s Regulations, 52 Pa. Code § 41.14, which is used by the Commission in determining whether to approve applications seeking motor carrier authority. Section 41.14 provides the following:

- (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
- (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

The ALJ determined that the evidentiary criteria had been met in this case and that the Application should be approved. I.D. at 26, 27. The ALJ found that the record established a public need for consistent satisfactory taxicab service in Allegheny County which was not currently being met by the public utilities operating in that service territory. I.D. at 23. With regard to the Applicant's financial fitness, the ALJ concluded that, since the Applicant's ability and fitness were established and settled when it was authorized to operate in its current service territory, in the absence of contrary proof, it

must be concluded that those elements continued to exist. The ALJ stated that the Applicant is a certificated carrier in good standing with the Commission and that the Applicant provided sufficient evidence to show it was able and likely to secure the necessary financing in addition to operating in compliance with the Commission's Rules and Regulations. Moreover, the ALJ found that the Protestants did not produce evidence to show that the Applicant's entry into the market would endanger or impair the Protestants' operations. I.D. at 25.

Positions of the Parties

In their first Exception, the Protestants aver that the ALJ erred in finding that the Applicant had demonstrated need throughout the entire area for which authority was sought. They state that the Applicant provided hearsay testimony from multiple witnesses, mostly hotel employees, regarding service issues, as opposed to need, with respect to taxis at downtown Pittsburgh hotels. Exc. at 1. They also state that almost every witness related testimony that dealt with the downtown area exclusively and did not cover the broader Allegheny County area, which consists of over 700 square miles. *Id.* at 2. Further, the Protestants aver that an Applicant must make an effort to at least demonstrate need "generally" throughout the area sought to be serviced and, in this case, the Applicant did not "generally" demonstrate need outside a one or two mile radius of the downtown courthouse in the City of Pittsburgh. They opine that the Applicant did not provide a group of witnesses that reflected a sampling of the public in the vast area of service requested. *Id.* at 3 (citing *Application of Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262 (1990)).

In response to the Protestants' argument that almost every witness related testimony which dealt with the downtown area exclusively, the Applicant replies that this statement is incorrect and misleading and seems to be an attempt to have any grant of authority limited to the downtown Pittsburgh area. R. Exc. at 6. The Applicant asserts

that it provided substantial testimony from individuals related to service outside the downtown area and provides extensive examples of such testimony. *Id.* at 6-7. In addition, the Applicant states that it presented service request evidence in Applicant's Exhibit 5, which reflected service requests during the period from April 6 through April 30, 2011, and all the requests originated outside of the downtown area, with the exception of one request originating in Station Square that may or may not be considered to be part of the downtown area. *Id.* at 7-8. The Applicant further averred that numerous witnesses who testified in support of the Application were not hotel employees. *Id.* at 9-10. Moreover, the Applicant provided information regarding witnesses who testified concerning a need for additional service to or from the Pittsburgh International Airport. The Applicant states that the Commission's decisions clearly establish that an applicant is not required to prove public demand or need for service from every point in a county, but rather is only required to demonstrate a cross-section of need and that it has met its burden of proof under Section 41.14(a) of the Commission's Regulations. *Id.* at 10.

In their second Exception, the Protestants state that the ALJ erred in finding that the Applicant was fit to provide service. The Protestants believe that the financial statements and records produced by the Applicant were in such disarray as to amount to evidence of a lack of fitness, regardless of the content of the exhibits. They assert that the best the Applicant could do was to produce financial statements and tax returns that conclusively demonstrated that it had not made a profit in five of the last six years and was in dire financial condition. Exc. at 4. They also state that the expert testimony of their witness, Mr. John Holt, showed that every objective analysis indicated that the Applicant was not a viable ongoing business, that it would be a candidate for bankruptcy, and that the Applicant was surviving on the basis of cash infusions and inter-company loans which it could not repay. *Id.* at 5. Furthermore, the Protestants assert that the Applicant's own accountant, Mr. Peter Ferraro, was not qualified as an expert in this case, never rendered an opinion within a reasonable degree of accounting certainty, and

had no answer for the Applicant's ongoing viability other than to say that the owner had not filed for bankruptcy and was, therefore, still a viable entity. *Id.* at 7.

In response, the Applicant avers that the Protestants ignore in their Exception the well-established principle that an applicant, having previously been found fit to hold authority from the Commission, is presumed to remain fit to hold additional authority in the absence of proof to the contrary. R. Exc. at 11 (citing *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *Application of Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262 (1990); *Re V.I.P. Travel Service, Inc.*, 56 Pa. P.U.C. 625 (1982)). The Applicant avers that, as such, it does not bear the burden of proving that it possesses the technical, financial, and legal fitness to hold the authority sought as 52 Pa. Code § 41.14(b) otherwise would require. R. Exc. at 12. The Applicant asserts that the Protestants have failed to rebut the presumption that the Applicant is financially fit to provide the proposed service. *Id.* at 14.

The Applicant asserts that it has earned a profit in five of the past seven years of operation, including earning a profit in 2010. *Id.*; Tr. at 65-66. It states that none of the four companies licensed by the Commission which are owned by the President and owner of the Applicant has ever filed for bankruptcy, ceased operating for any period of time because of financial problems, been sued by a bank for not being able to make any payments on vehicle loans, failed to timely make insurance premium payments, been unable to buy a vehicle because of financial inability, been unable to provide service because of financial problems, been unable to properly maintain vehicles because of financial problems, or been unable to operate any vehicles because of financial problems. R. Exc. at 12; Tr. at 66-67. It also states that the President and owner of the Applicant will guarantee any loans required by the Applicant if necessary and has done so in the past because he has a very good credit rating. R. Exc. at 12; Tr. at 68.

Furthermore, the Applicant avers that while the Protestants argue that the Applicant and its sister companies have shareholder and inter-company transactions that distort the financial picture of the Applicant, the Protestants' own expert admitted that the shareholder and intercompany loans were "basically a wash." R. Exc. at 13; Tr. at 458. The Applicant avers that, although the Protestants' expert initially opined that the Applicant was a prime candidate for bankruptcy, the expert later backed off that position on cross examination and also admitted that he was not aware of how long the Applicant had been in business, was not present when the President of the Applicant testified in this case, and does not know what he testified to. According to the Applicant, the Protestants' witness also admitted that he did not review any tax returns of the Applicant, other than the state tax returns which have very little information on them. R. Exc. at 13; Tr. at 441, 443, and 449. The Applicant also points out that its President testified that he has had discussions with financial institutions about purchasing twenty-five vehicles and there has been no indication that there will be any problem in financing these vehicles. R. Exc. at 13-14; Tr. at 53, 128. Lastly, the Applicant states that its accountant has been an accountant for approximately thirty years and works with an accounting firm in Pittsburgh. R. Exc. at 14; Tr. at 542-545. The Applicant's attorney also prepared a financial analysis that was introduced into evidence as Applicant's Exhibit 8 and set forth the expert's conclusions that, based upon his review of the Applicant's financial statements, the Applicant would be able to provide the additional service sought by this Application. R. Exc. at 14; Tr. at 544.

In their third Exception, the Protestants aver that the ALJ erred in finding that the Applicant was technically fit. They believe that the Applicant does not have a business plan, does not have its own dispatchers or its own facility, and does not have a written safety program. Exc. at 7; Tr. at 83, 112-114, 121-122, and 127-128. They aver that, even if the Applicant is able to obtain funding to place twenty five cabs on the road, this amount of cabs would be inadequate to service the entire Allegheny County area. Exc. at 7.

In reply, the Applicant states that its witness testified that it shares facilities with one of its related companies, uses mechanics and dispatchers employed by one of its related companies, and pays a management fee to the related company. R. Exc. at 15; Tr. at 61. It avers that it does not have any employee drivers because it uses independent contractor drivers in the same manner that Yellow Cab Company of Pittsburgh uses independent contractor drivers. R. Exc. at 15; Tr. at 56-57. The Applicant additionally avers that its vehicles are dispatched from the location it shares with Star Limousine, that it has a nearby maintenance facility in Cranberry Township which it uses for vehicle maintenance, and that it will also be conducting operations from a facility in Pittsburgh which it will share with its related companies. R. Exc. at 15; Tr. at 33-34, 36.

Furthermore, the Applicant asserts that its plan for operating the authority sought by this Application will be the same as its plan and procedures for operating under its existing authority, and that it has well-established procedures it has used since it first secured authority in 2003. The Applicant provides the following examples of its procedures which are part of the record: the Applicant runs motor vehicle reports on all prospective drivers and also does criminal background checks on its drivers; all of the Applicant's drivers are required to do a pre-trip inspection and post-trip inspection on their vehicles before and after every trip; the Applicant has a maintenance program in place which involves changing the oil and rotating the tires every 3,500 miles and doing a more extensive service every 5,000 miles; and the Applicant has maintained insurance coverage with the Commission since it first secured authority in 2003 and will maintain insurance coverage in the future using the same insurance company that it presently uses. R. Exc. at 15-16. The Applicant also states that it is in compliance with the Commission's Regulations and has not had any safety violations with the Commission in the past three years. R. Exc. at 16; Tr. at 60.

Disposition

Based upon our review of the record in this case, we shall deny the Protestants' Exceptions. First, we concur with the ALJ that the Applicant met its burden of establishing a public need for taxicab service in Allegheny County. As noted by the ALJ, an applicant may prove a public need or demand for its proposed transportation service through witnesses comprising a representative sampling of the public that will use the proposed service within the application territory. *See* I.D. at 21; *Application of Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262, 274 (1990). As explained in *Blue Bird*, the particular circumstances of each case will determine what constitutes sufficient evidence of a public demand or need for an applicant's proposed service. Additionally, the number of witnesses, which will comprise a cross section of the public on the issue of public demand or need for an applicant's proposed service, will necessarily vary with the circumstances of each case. Such factors as the extent of the applicant's intended operating territory, the population density of that territory and the scope of the requested operating authority are all items that should be considered. *Id.* at 274-275. Under the circumstances in this case, we find that the Applicant presented evidence from numerous witnesses that comprised a representative sampling of the public within the Allegheny County territory. We also agree with the Applicant that it provided substantial testimony from individuals related to service outside the downtown Pittsburgh area.

Moreover, we give weight to the testimony of the hotel employees who supported the Application. We note that appellate court and Commission decisions have held that when representatives of a business have knowledge of the transportation needs of the guests of a facility, they are competent to provide testimony in support of an application for service. *See, Limelight Limousine, Inc. v. Pa. PUC*, 570 A.2d 1378, 1380 (Pa. Cmwlth. 1990) (holding that the testimony of hotel representatives that their current transportation needs exceeded the service they were receiving was sufficient to support demand or need for additional service); *Application of Kevin D. Gilbride*, Docket No.

A-00111294F0002 (Order entered April 3, 1996). For these reasons, we find that the Applicant met its burden of proof under Section 41.14(a) of the Commission's Regulations, and accordingly, we deny the Protestants' first Exception.

We additionally agree with the ALJ that the Applicant is technically and financially fit to provide the proposed service, particularly because the Applicant's ability and fitness were established when it was authorized to operate in its current service territory, and in the absence of contrary proof, it must be concluded that those elements continue to exist. As noted by the ALJ, the Applicant is a certificated carrier in good standing with the Commission and has provided sufficient evidence to show it is able and likely to secure the necessary financing in addition to operating in compliance with the Commission's Rules and Regulations. In *Blue Bird*, the Commission stated as follows:

Where, as in the case of *Blue Bird*, a motor carrier applicant already possesses a certificate of public convenience issued by this Commission and is seeking merely to expand its certificated authority, the applicant is presumed to be technically and financially fit.

Blue Bird at 285. We do not believe that the Protestants have presented enough evidence to overcome this presumption of fitness, particularly in light of the evidence the Applicant has presented, as discussed in detail in its Replies to Exceptions. For example, the Applicant provided testimony to show that its owner and President has operated taxicab services for over twenty years without financial difficulty, without failure to timely make insurance premium payments, without problems obtaining financing for new vehicle purchases, and without major safety and compliance issues. The Applicant has also provided sufficient evidence to demonstrate that it has established procedures in place for operating the authority it is seeking, which procedures are similar to the procedures it has used since it first secured authority in 2003. Accordingly, based on the record before us, we shall deny the Protestants' second and third Exceptions that relate to the Applicant's fitness.

Conclusion

We have reviewed the record as developed in this proceeding, including the ALJ's Initial Decision and the Protestants' Exceptions, as well as the Applicant's Replies to Exceptions. Premised upon our review of the record, and consistent with this Opinion and Order, we shall deny the Protestants' Exceptions, adopt the ALJ's Initial Decision, and grant the Application; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed on November 23, 2011, by Airlines Acquisition Co., Inc., t/d/b/a Airlines Transportation Company; Airport Limousine Service, Inc., t/d/b/a Checker Cab; Pittsburgh Cab Company, Inc., t/d/b/a Metro Taxi; Ray Ray Cab Company, LLC; and the Yellow Cab Company of Pittsburgh are denied.
2. That the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued November 3, 2011, is adopted.
3. That the Application of Cranberry Taxi, Inc., d/b/a Veterans Taxi, at Docket No. A-2010-2168756, be and is hereby approved.
4. That the certificate issued to Cranberry Taxi, Inc., d/b/a Veterans Taxi, at A-0011993, be amended to include the following rights:

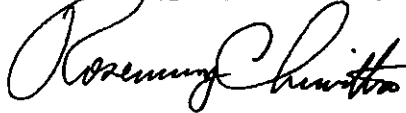
To transport as a common carrier, persons upon call or demand in the county of Allegheny.

5. That Cranberry Taxi, Inc., d/b/a Veterans Taxi, shall not engage in any transportation granted herein until Cranberry Taxi, Inc., d/b/a Veterans Taxi, submits to the Commission a tariff establishing just and reasonable rates.

6. That the authority granted herein, to the extent it duplicates authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

7. That in the event Cranberry Taxi, Inc., d/b/a Veterans Taxi, has not, on or before sixty days from receipt of this Opinion and Order, complied with the requirements set forth above, the Application shall be dismissed without further proceedings.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 21, 2012

ORDER ENTERED: June 21, 2012

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 11, 2005

Commissioners Present:

**Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick**

Application of Classy Cab Company, Inc.,
Mars, Butler County, a corporation of the
Commonwealth of Pennsylvania, for the
transfer of all of the call or demand
operating rights of Personal Transport, Inc.,
t/d/b/a PT Transport, under the certificate
issued at A-00117078, subject to the same
limitations and conditions.

A-00121579

Vuono & Gray, LLC by William A. Gray for the applicant.
Malone Middleman by Paul S. Guarnieri for protestants: Yellow Cab Company of Pittsburgh and
Airport Limousine Service, Inc., t/d/b/a Checker Cab.

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 3, 2005. Public notice of the application was given in the *Pennsylvania Bulletin* of March 26, 2005 with protests due by April 18, 2005. The application was opposed by the two above-mentioned carriers. The protested proceeding was referred to the Office of Administrative Law Judge on May 11, 2005 for handling. Both protests were withdrawn upon reconsideration without restrictive amendment. On June 3, 2005, the matter was referred back to the Bureau of

Transportation and Safety for handling under modified procedure. Additional information was requested by letter dated June 15, 2005; the information was received on June 27, 2005. The now unopposed application is certified to the Commission for its decision without oral hearing.

DISCUSSION AND FINDINGS

Classy Cab Company, Inc. (applicant or Classy) seeks to commence providing call or demand service by acquiring through transfer, the call or demand rights held by Personal Transport, Inc., t/d/b/a PT Transport. The president of applicant, Robert D. DeLucia, is also affiliated with Star Limousine Service, Inc. and Cranberry Taxi, Inc. Both companies hold authority from the Commission. This operation is described as a start-up high-end taxicab company that proposes to fill the niche between luxury limousine service and low-level cab service.

Operations will be conducted from facilities located at 910 Sheraton Drive, Mars, Butler County. Communication will be by cellular phones and communications with drivers will be by cell phone and/or two-way radios. The drivers will be employees of the applicant. Employees will be fully trained, drug tested and uniformed. Criminal background checks will be performed on all prospective drivers. The fleet initially will consist of two London Executive Sedans which are the highest end models of the world famous London Style Taxis. Applicant anticipates that ten taxicabs will be in service in the first six months. The vehicles will be maintained to the highest standards.

Robert C. DeLucia, founder, president and CEO of Classy has been in the transportation field since the mid-1970s when he operated an independent trucking company. In 1983 Mr. DeLucia started Star Limousine as the owner, salesman, dispatcher, manager and driver with a single limousine that has grown to 18 vehicles and 40 drivers with four dispatchers. In 1990 he acquired a taxi license for Butler County and a few years later started Cranberry Taxi, which has tripled its fleet size. He has received numerous awards for outstanding service and is involved in numerous professional organizations concerning transportation.

W. David Slomski, Esquire and COO of Classy has been a practicing attorney since 1980, the same year he received his Juris Doctor Degree from the University of Pittsburgh. Mr. Slomski's practice concentrated in general business law and provides an emphasis on service in the transportation industry. He served as general counsel for 20 years for a major national trucking company. He has considerable experience with commercial real estate development, public and private financing of commercial real estate, as well as experience with the formation and management of corporations. He has been director of the business development counsel for the Pittsburgh Urban Redevelopment Association and a member of the American Bar Association, Pennsylvania Bar Association, Allegheny County Bar Association, Association of Transportation Practitioners and the American Truck Lawyers Association.

Applicant currently does not have a balance sheet. The transferee has made preliminary arrangements to secure private placement financing with a minimum of 35 accredited investors to be followed by public offering financing. So far, Mr. DeLucia states he has received money from five investors and has received commitments from ten other investors who have not yet paid their money. Applicant expects to raise up to one million dollars from the 35 investors.

In view of the foregoing paragraph regarding the possibility of a public offering, the Applicant is directed to review Section 1901 of the Public Utility Code, 66 Pa. C.S. §1901, and the Commission's Regulations at 52 Pa. Code §§3.601 and 3.602 to determine if the filing of a securities certificate is necessary and inform the Commission of the determination within 30 days of entry of this Order.

The total consideration for the rights is \$20,000.

The authority to be transferred has been operated by the transferor; therefore, it is presumed that there is a continuing need, which may be overcome only by evidence to the contrary. In re: Bverly, 270 A.2d 186 (Pa. 1970); Hostetter v. Pa. P.U.C., 49 A.2d 862 (Pa. Super 1947). Since the record is void of any such evidence, this presumption of continuing public need applies in this transfer proceeding.

A review of the record before us indicates that the applicant possesses the requisite vehicles, technical expertise, experience, equipment, facilities, sufficient capital and other resources necessary to provide the proposed service.

We find:

1. The applicant is fit, willing and able to provide the service proposed.
2. Transfer of the authority is in the public interest and is necessary for the continued accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the transfer application be and is hereby approved and that a certificate be issued granting the following right:

To transport, as a common carrier, by motor vehicle, persons, upon call or demand, in the city of Pittsburgh, Allegheny County;

Subject to the following conditions:

That no right, power or privilege is granted to provide service from points in the cities of McKeesport and Duquesne, the boroughs of White Oak, Versailles, East Pittsburgh, East McKeesport, Wilmerding and Wall and the townships of North Versailles, Allegheny County, and the cities of New Kensington, Arnold and

Lower Burrell, Westmoreland County, to the city of Pittsburgh,
Allegheny County.

subject to the following general conditions:

1. That the operating authority granted herein, or now held, or subsequently granted to the applicant to the extent that it is duplicative, shall not be construed as conferring more than one operating right.
2. That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the property and/or right(s) to be acquired by applicant from the present certificate holder equal to the consideration to be paid therefor, or equal to any value that may be placed thereon by applicant, or to approve or prescribe rates sufficient to yield a return thereon.
3. That the certificate holder shall not transfer, sell or in any way convey any of its outstanding capital stock to any individual, partnership, corporation or any other entity, without the prior filing of an application and approval thereof by the Commission under Section 1102(a)(3) of Title 66, PA C.S.A.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation granted in this application until the following is submitted to the Commission:

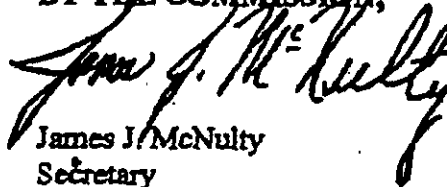
1. Form E, as evidence of Bodily Injury and Property Damage Liability Insurance.
2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of entry of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with this order, the right granted the transferor, Personal Transport, Inc., v/d/b/a PT Transport at A-00117078 be canceled and the record be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large, sweeping initial "J".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 11, 2005

ORDER ENTERED: AUG 12 2005

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 8, 2007

Commissioners Present:

**Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli**

Application of Classy Cab Company, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport persons, upon call or demand, in the city of Pittsburgh, Allegheny County; subject to the following conditions: that no right, power or privilege is granted to provide service from points in the cities of McKeesport and Duquesne, the boroughs of White Oak, Versailles, East Pittsburgh, East McKeesport, Wilmerding and Wall and the townships of North Versailles, Allegheny County, and the cities of New Kensington, Arnold and Lower Burrell, Westmoreland County, to the city of Pittsburgh, Allegheny County: SO AS TO PERMIT the transportation of persons, upon call or demand, in the county of Butler and in the townships of Marshall and Pine, and the boroughs of Bradford Woods and Franklin Park, all in Allegheny County; subject to the following conditions: that no right, power or privilege is granted to provide service within the limits of North Park, located in the townships of Pine and McCandless, both in Allegheny County.

A-00121579,
F. 1, Am-A

Vuono & Gray, LLC, by William A. Gray, for the applicant.

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed April 20, 2007. Public notice of the application was given in the *Pennsylvania Bulletin* of May 12, 2007, with

protests due by June 4, 2007. No protests were filed. The unopposed application is certified to the Commission for its decision without oral hearing.

By letter dated June 19, 2007, the verified statements were requested to be submitted by July 19, 2007. Applicant requested an extension of time to file its verified statements and was granted until August 18, 2007 to do so. The requested information was received August 17, 2007. Subsequent review of applicant's verified statement raised additional questions which were addressed by a letter to applicant's attorney on September 14, 2007, with the information being received September 24, 2007.

DISCUSSION AND FINDINGS

Classy Cab Company, Inc., (applicant or Classy Cab) seeks to amend its common carrier certificate at A-00121579. Robert C. DeLucia, is the president and sole owner of Classy Cab and is also affiliated with Star Limousine Service, A-00106305, Air Star Transportation & Limousine Service, Inc., A-00123147 and Cranberry Taxi, Inc., A-00119935.

Mr. DeLucia has over 20 years experience in the transportation industry. Classy Cab received call or demand authority on September 9, 2005. To date, no complaints have been instituted against applicant. It maintains offices and dispatches equipment from the Sheraton Hotel/Northwest, 910 Sheraton Drive, Mars, Butler County and 908 Vinial Street, Pittsburgh, Allegheny County. Vehicles are stored at both facilities. Business records are maintained at the offices in the Sheraton Hotel. Operating hours are 24 hours per day, seven days per week.

Applicant currently employs five office employees, including dispatchers and approximately 20 drivers. It does not anticipate hiring any additional drivers. However, hiring standards are in place, which include requiring drivers to be at least 24 years of age and have a driving record acceptable to applicant's insurance carrier. Applicant also has a driver training program which requires prospective drivers to review and familiarize themselves with the company's policy and procedure manual and road testing with a senior driver. Driver license status is checked annually by obtaining Motor Vehicle Reports from the Pennsylvania Department of Transportation. A drug and alcohol policy includes pre-employment, random, reasonable suspicion and post-accident testing.

Classy Cab currently has six vehicles, ranging from model years 2004 through 2007. A vehicle safety program includes periodic safety meetings and preventive maintenance every 5,000 miles. Applicant ensures compliance with PUC regulations by operating vehicles that are clean and sanitary and have heating and air conditioning systems in proper working order.

Applicant has evidence of bodily injury and property damage liability insurance on file to cover its current operations; however, the Commission will require a new filing to cover the amended rights granted herein.

Applicant's most current balance sheet as of June 30, 2007 shows total assets of \$204,326, total liabilities of \$236,357 and a negative owner's equity of \$32,031. Owner's equity is comprised of retained earnings, common stock and net income. The negative equity is a result

of start-up expenses from the first year of operation. However, for the period January 1, 2007 to June 30, 2007, applicant earned a profit of \$1,979.98 for operations and the income statement for the six months ending June 30, 2007 also shows increased profits of \$7,496.64 compared to the same six month period in 2006. Approval of this proposed service will result in increased business, which should also improve applicant's profitability.

Support for the service was provided by 11 witnesses residing in the territory requested.

A review of the record before us indicates that the applicant possesses the requisite vehicles, technical expertise, experience, equipment, facilities, sufficient capital and other resources necessary to provide the proposed service.

We advise the applicant to become familiar with the requirements of 52 Pa. Code as applicable to the operation of a common carrier as authorized by this grant of authority. Failure to comply with all applicable requirements may subject the carrier to penalties, including fines, suspension of operating rights or cancellation of authority. Title 52 of the Pennsylvania Code may be accessed at www.pacode.com.

We find:

1. Applicant seeks to amend its right to provide call or demand service and no protests were filed.
2. The application is supported by 11 witnesses representing the requested service area.
3. Applicant has the equipment, ability and fitness necessary to render the service.
4. The evidence of record is sufficient to establish necessity for the service.
5. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the right under the certificate issued September 9, 2005, shall be amended to include the following right:

To transport, as a common carrier, persons, upon call or demand, in the county of Butler and in the townships of Marshall and Pine, and the boroughs of Bradford Woods and Franklin Park, all in Allegheny County; subject to the following conditions: that no right, power or privilege is granted to provide service within the limits of North Park, located in the townships of Pine and McCandless, both in Allegheny County.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation authorized by this order until the following is submitted to the Commission:

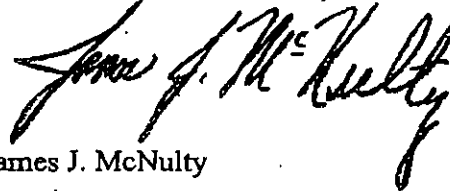
1. A Form E, as evidence of bodily injury and property damage liability insurance.
2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements above set forth, a certificate will issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of entry of this Order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 8, 2007

ORDER ENTERED: NOV 08 2007

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Law Offices

VUONO & GRAY, LLC

310 Grant Street, Suite 2310
Pittsburgh, PA 15219-2383

TO:

Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265