

**COMMONWEALTH OF PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**IN RE: APPLICATION OF DOMINICANA TAXI EXPRESS, LLC,  
A LIMITED LIABILITY COMPANY OF THE COMMONWEALTH OF  
PENNSYLVANIA FOR CERTIFICATE OF PUBLIC CONVENIENCE**

**Docket No. A-2015-2471494**

**Assigned to: Elizabeth H. Barnes, ALJ**

**BRIEF OF PROTESTANTS  
READING METRO TAXI CAB INC., READING CHECKER CAB INC. and  
READING YELLOW CAB INC.**

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## II. HISTORY OF PROCEEDINGS

Dominicana Taxi Express, LLC, a Pennsylvania limited liability company filed an application with the Pennsylvania Public Utility Commission requesting the right to begin to transport as a common carrier by motor vehicle persons upon call or demand in the County of Berks, Pennsylvania. This was duly advertised in the Pennsylvania Bulletin on April 11, 2015, Pennsylvania Bulletin Reference 45 Pa.B. 1917.

Protests were filed by Grab-A-Cab, Reading Metro Taxi Cab Inc., Reading Yellow Cab Inc. and Reading Checker Cab Inc., all of which have call and demand rights in Reading and Berks County.

The matter was assigned to Administrative Law Judge Barnes and a Prehearing Order was issued on October 9, 2015 for an initial in-person hearing to be held on November 23, 2015. The hearing commenced on November 23, 2015 at 10:00 a.m. in Harrisburg, Pennsylvania. The Applicant presented various fact witnesses and the testimony of an expert witness in the field of business planning in an attempt to meet its burden.

The Applicant was represented by Russell E. Farbiarz, Esquire and A. Elizabeth Kraft, Esquire. The Protestant, Grab-A-Cab, was represented by William E. Lehman, Esquire but on November 20, 2015 Mr. Lehman provided notice that the Protestant, Grab-A-Cab was withdrawing its protest. The Protestants, Reading Metro Taxi Cab Inc., Reading Yellow Cab Inc., and Reading Checker Cab Inc., were represented throughout the proceedings by Stephen G. Welz, Esquire.

The hearing produced a record of 235 pages of testimony and 22 exhibits.

### **III. STATEMENT OF QUESTION INVOLVED**

- A. DID THE APPLICANT ESTABLISH BY A PROPONDERANCE OF CREDIBLE EVIDENCE THE EXISTENCE OF PUBLIC DEMAND OR NEED WITHIN THE PROPOSED SERVICE AREA?**
- B. DID THE APPLICANT DEMONSTRATE BY CREDIBLE, SUBSTANTIAL EVIDENCE THAT IT HAS SUFFICIENT CAPITAL, EQUIPMENT, FACILITIES, EXPERTISE AND OTHER RESOURCES TO PROVIDE TAXI CAB SERVICE THAT WILL SERVE A USEFUL PUBLIC PURPOSE BY ADDRESSING A DEMONSTRATED PUBLIC DEMAND OR NEED IN THE BERKS COUNTY COMMUNITY?**

### **IV. SUMMARY OF ARGUMENT**

The Applicant has the burden of proving by credible, substantial evidence that a public demand or need exists for service within the proposed territory or area generally served and that approval of the application will serve a useful public purpose, responsive to public demand or need. 52 Pa. Code §41.14 (a). Even though the applicant need not show the inadequacy of existing service in order to prove the existence of a public need or demand, the Commission can only make a finding of existing need or demand upon demonstration of the same by substantial evidence. Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Commission, 93 Pa. Cmwlth. Ct.601, 502 A.2d 762 (1985). The Applicant attempted, largely through hearsay testimony, to demonstrate need through the introduction of subjective, limited anecdotal evidence of occasional delays in existing taxi cab service in Berks County, especially during rush hours and snow storms. The

evidence offered was insufficient proof of need or demand because there was no evidence introduced to establish a nexus or connection between such evidence and any alleged increase in the demand or need for service in the proposed service area of the City of Reading. In addition, the limited anecdotal evidence adduced by the Applicant, even in a light viewed most favorable to the Applicant was only evidence of personal dissatisfaction by the witness with reasonable response times for call and demand service under the circumstances.

The Applicant not only failed to establish credible, substantial evidence of public demand or need within the proposed service area or that such proposed service would otherwise be proper, but also failed in a variety of ways to offer substantial credible evidence that it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested as required by 52 Pa. Code §41.14 (b). Elite Indus., Inc. v. Pennsylvania Public Utility Commission, 574 Pa. 476, 832 A.2d 428 (2003); Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 99 Pa. Cmwlth. Ct. 420, 512 A.2d 1359 (1986).

The Applicant failed to establish credible, substantial evidence of sufficient technical expertise and experience to serve the territory requested, evidence of a suitable facility from which to operate the proposed enterprise, evidence of sufficient and continuous insurance coverage or evidence of an appropriate plan to comply with the Commission's Driver and Vehicle Safety regulations and service standards.

The Applicant presented no witnesses or evidence beyond its principals' unsupported and uncorroborated testimony in support of their claimed ability to own and

operate a taxi cab company, train and manage drivers and other personnel and comply with the safety and reporting requirements of the PUC. In addition, the Applicant failed to present any witness or evidence to confirm or support its principal's (Pedro E. Ramirez) own claims of employment experience in the taxi cab business, which he admitted was actually not a call and demand taxi cab but a car service in Brooklyn, New York, and 15 months with a car service in Reading, Pennsylvania. The other principal, Xiomara Rodriguez, claimed to have no experience with the operation or management of a taxi cab business. Her experience, by contrast, was limited to 6 years of driving a 9 passenger school van for the Berks County Intermediate Unit in the Berks County area and similar, previous work in Brooklyn, New York. In short, viewed in the best possible light, the testimony provided by the Applicant's principals demonstrated that both are without managerial experience of any kind or had such narrow experience in non-managerial roles that they are inexperienced for all practical intents and purposes and therefore unqualified to perform the duties for which his testimony was offered.

The Appellant's evidence of current and future financial ability and "other resources to serve the territory requested" consisted of their testimony and that of an expert business planner who relied on the information sourced from the principals themselves. In each case the offered testimony intentionally commingled personal assets and resources with those reported for the Applicant in an attempt to enhance the appearance of a very thinly capitalized start-up entity with minimal assets.

The Applicant's "expert" testimony from the business planner and the business plan that he prepared and submitted into evidence is inherently defective and insufficient

for its intended purpose because the flaws in the testimony and analysis are numerous and obvious. Significantly, although the witness claimed to have life experience with a taxi cab company it became quickly evident that his actual experience was driving for an airport shuttle service and contract transportation service for senior citizens to attend medical appointments. Indeed, he admitted no actual experience with call and demand metered taxi service. Instead, he relied and therefore he admittedly based the entirety of his opinions on information provided solely by the Applicant's principal, unidentified and unreferenced sources generally described as "industry benchmarks" and personal assumptions of need based on his review of demographics available on Wikipedia as well as other, unidentified sources. Of further significance is the fact that the planner's testimony revealed that his projections of revenue were based on assumptions directly in conflict with the evidence offered by the Applicant.

The Applicant failed to prove through substantial credible evidence that it had a suitable facility from which to base its operations, the vehicles and equipment necessary for proper operation of a taxi cab business, any reliable idea of the cost of acquiring the same or capable and experienced persons employed or otherwise identified as ready to be employed in the operation of the business. Instead, the Applicant's minority owner, Xiomara Rodriguez, testified that the business would simply be operated from her home and produced a Zoning Permit from the City of Reading that expressly limited the hours of approved operation from 8:30 a.m. to 10:00 p.m. despite the Applicant's stated intention to operate 24 hours daily. Ms. Rodriguez claimed that she was orally advised by a representative of the city that she could amend her application but the same was purely

hearsay and she admitted that no such notation appeared on the permit or on any other document. Such evidence, taken as a whole, is clearly insufficient to establish that the Applicant has sufficient facilities to serve the territory requested as provided in 52 Pa Code §41.14 (b) (1).

The Protestants presented credible and substantial evidence through the testimony of Curtis Stricker, the President of all three protestants, on the basis of actual experience that explained peak demand times throughout the week, vehicle maintenance practices and the absence of receipt of any complaints regarding service or the condition of any taxi cab from any of the witnesses who testified on behalf of the Applicant or from the PUC. He also testified to the presence and availability of bilingual, Spanish speaking drivers (17 out of a total of 58), the presence of 8 telephone operators and 6 dispatchers, all of whom are bilingual, and the procedure that is employed to directly and effectively communicate with a Spanish-speaking passenger who may be having difficulty communicating with a non-Spanish speaking driver.

Mr. Stricker also testified to the presence of other certificated taxi cab companies in the Reading and Berks County area with approximately 32 vehicles, including approximately 20 minivans with 7 passenger capacity, in addition to the 35 vehicles operated daily by the Protestants.

The only conclusion to be fairly drawn from the evidentiary hearing is that the Applicant failed to prove the existence of a public need or demand for service or that it has any real and present financial or practical ability to meet at least three of the first four criteria set forth in 52 Pa. Code §41.14 (b).

## V. ARGUMENT

The central issue of this case actually consists of two essential questions: (1) Is there a public need for such service? (2) Is the applicant capable of meeting that need within the context of subsection (b) of section 41.14? Because the Applicant utterly fails to sustain its burden with regard to these two essential questions it is not necessary to address what is normally the third essential question in subsection (c) of 41.14, namely: Does the evidence support a conclusion that a grant of authority sufficient to meet the demonstrated public need will not endanger or impair the operations of existing providers of such services to the extent that it would be contrary to the public interest?

Title 52 of the Pennsylvania Administrative Code, section 41.14, clearly sets forth the evidentiary criteria used to decide motor common carrier applications.

§41.14. Evidentiary criteria used to decide motor common carrier applications – statement of policy.

(a) An applicant seeking motor common carrier authority has a burden of establishing 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 the Public Utility Code), this title and the Commission's orders.

(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.

(d) *(Subsection (d) is omitted as inapplicable in the instant matter.)*

In cases interpreting the application of §41.14 by the Commission in various circumstances the Commonwealth Court has ruled that the applicants need not show the inadequacy of existing service in order to prove the existence of a public need or demand. Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Commission, 93 Pa. Cmwlt. Ct.601, 502 A.2d 762 (1985). Nevertheless, the Applicant must prove by a preponderance of the evidence that the requirements of §41.14 are met. Lehigh Valley Transp. Servs. v. Pa PUC, 56 A. 3d 49; Pa. Commw. LEXIS 289; 2012 WL 4800463. The Commission can only make a finding of existing need, demand or propriety upon demonstration of the same by substantial evidence and to that extent the applicant must meet its burden through the introduction of credible evidence that a need exists within the area generally served. Elite Indus., Inc. v. Pennsylvania Public Utility Commission, 574 Pa. 476, 832 A.2d 428 (2003); Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 99 Pa. Cmwlt. Ct. 420, 512 A.2d 1359 (1986).

The Commonwealth Court has further ruled that while the scope of the Court's review of a PUC decision is to determine whether the findings are supported by substantial evidence or whether there has been an error of law or constitutional violation, Yellow Cab Company of Pittsburgh v. Pennsylvania Public Utility Commission, 673 A. 2d 1015, 1996 Pa. Commw. LEXIS 107 (1996), the PUC must still follow its own regulations, and it is required to find and determine that the granting of a certificate

of public convenience is necessary or proper for the service, accommodation, convenience or safety of the public. Elite Indus., Inc. v. Pennsylvania Public Utility Commission, 574 Pa. 476, 832 A.2d 428 (2003).

Credible evidence has been defined by the Pennsylvania Supreme Court as “evidence sufficient to convince a reasonable mind to a fair degree of certainty” and “substantial evidence” as follows: 'Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion'. Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed. 126. 'Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established'. National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S.Ct. 501, 505, 83 L.Ed. 660. 'The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power'. National Labor Relations Board v. Thompson Products, Inc., 6 Cir., 97 F.2d 13, 15; National Labor Relations Board v. Union Pacific Stages, Inc., 9 Cir., 99 F.2d 153, 177. Citing Kaufman Construction Co. v. Holcomb, 357 Pa. 514, 517, 55 A.2d 534, (1947) 174 A.L.R. 189. Pennsylvania State Board of Medical Education and Licensure v. Schireson, 360 Pa. 129, 61 A.2d 343 (1948).

The applicable statute, 66 Pa. C.S. §1103 (a), provides that an application for a certificate of public convenience should be granted only if the PUC finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S. §1103 (a); Lehigh Valley, supra.

**A. THE APPLICANT FAILED TO ESTABLISH BY A PROPONDERANCE OF CREDIBLE EVIDENCE THE EXISTENCE OF PUBLIC DEMAND OR NEED WITHIN THE PROPOSED SERVICE AREA**

It is well established law in Pennsylvania that “in the context of 66 Pa. C.S. §1103 (a), a public demand/need for an applicant’s proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant’s proposed service within the territory encompassed by the application.” Ace Moving & Storage, Inc. v. PUC, 935 A.2d 75; 2007 Pa. Commw. LEXIS 596, citing In Re Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262, 274 (1990). Examining the evidence offered by the Applicant in the instant case one finds little or no credible evidence of actual need or demand for the service proposed by the application and a scarcity of representation of the public that will actually use the proposed service. The only evidence offered by the Applicant in support of public need or demand consisted essentially of the testimony of its members, Xiomara Rodriguez and Pedro E. Ramirez, each of whom admitted to having no personal experience using existing taxi cab services, and the limited anecdotal testimony from 3 lay witnesses. The first lay witness was Pedro A. Ramirez, the brother of Pedro E. Ramirez. His work history was the delivery of medical supplies in the New York City area and 2 years of experience driving for a car service in Brooklyn, New York, (N.T. 118-119), but no experience driving with a meter or in completing a log for the New York Taxi Commission. (N.T. 125-126) He was identified as one of the proposed drivers for the Applicant and he admits to owning his own vehicle. (N.T. 126) His testimony regarding personal experience with taxi service in the Reading area was limited to his experience

with delay when calling Reading Metro for service 30 minutes before his scheduled appointment at the destination (N.T. 126) and when trying to obtain taxi service during a snow emergency in the City of Reading (N.T. 127). Significantly, although he speaks only Spanish he expressed no difficulty with communication when calling Reading Metro for service. (N.T. 127-128).

The second lay witness was Lordes Alvelo, who speaks fluent English and had no personal difficulty with communication but complained of occasional delays in response time (N.T. 190-194, 196). The final lay witness was Perla Polanco, who complained of Reading Metro vehicles smelling of cigarette smoke, (N.T. 200) delays in response when she calls in the morning rush hour for service 30 minutes before her scheduled appointment at the destination (N.T. 201) and difficulty getting taxi service when it is snowing. (N.T. 202, 205) She admitted to having no personal language or communication difficulty and was concerned that her mother has occasional difficulty communicating with an English-only speaking driver. (N.T. 206-207) Otherwise she feels safe in the vehicle, is satisfied with the tariff rate (N.T. 200) and never registered a complaint with Reading Metro Taxi about cigarette smoke or a driver's chosen route. (N.T. 204)

Taken as a whole and without consideration of the credibility of such evidence, it is patently evident that the testimony of the 3 lay witnesses is neither substantial nor supportive of the Applicant's claim of public need or demand.

The direct testimony of the aforesaid Xiomara Rodriguez consisted, in pertinent part, of the following:

She is an unmarried adult woman who owns her own home at 1313 Moss Street in Reading and has lived in Reading for 12 years. (N.T. 9) She resides with her boyfriend/fiancé Pedro E. Ramirez. She drives school vans for children and has done that for 6 years. She previously did similar work for the Logan Bus Company in New York in Queens, Brooklyn and the Bronx. (N.T. 10) She described the Applicant, Dominicana Taxi, as a dream for her boyfriend/fiance, Pedro E. Ramirez, especially in the Hispanic community. She owns 49% of the LLC. (N.T. 13-14).

She admits that she has never utilized any other taxi services within the city of Reading but describes the Applicant's plan to offer bilingual drivers and dispatchers and 4x4 vehicles during inclement weather. (N.T. 20) The 4x4 vehicles she identified each has capacity for more than 4 passengers and the plan is to communicate with drivers via cell phone. (N.T. 21) Pedro E. Ramirez and Pedro A. Ramirez would be the drivers for the Applicant.

The Applicant plans to offer other services including appointments, airport, immigration and food delivery and the planned fare structure will be \$8 for 7-8 blocks within Reading and \$1.80 per mile outside the city. However, Ms. Rodriguez claims that the Applicant will use meters. (N.T. 22). She offered that the Applicant's business will be conducted from her home at 1313 Moss Street but offered no other detail on dedicated space or the amount thereof within the home. She described her responsibility with the Applicant as the management of the business of the company (N.T. 23) but provided no education, training or work history that would prove her ability or experience as a manager of any kind of business.

In describing her duties and hours of work with the Applicant the witness succeeded only in portraying a confusing and contradictory plan that reflects poor conceptualization of responsibility and an even weaker grasp of time management and priority of duty. For example she claimed that as the Primary Dispatcher she would be responsible for the dispatchers communicating with drivers and that the Applicant will have 2 cars to begin. (N.T. 24) However, she quickly adds that she will work from 6:00 a.m. to 6:00 p.m. *unless* she works as a substitute for BCIU but offers no suggestion on who would cover her duties as primary dispatcher when she is driving a school van for BCIU. (N.T. 25) On cross-examination she testified that her work as a dispatcher (or presumably a manager) on a daily basis from 6:00 a.m. to 6:00 p.m. would be dependent on when they need her at BCIU, (N.T. 69) obviously conveying the clear message that her primary responsibility will remain her employment at BCIU and not as manager or dispatcher for the Applicant. She then claims on cross-examination that she will manage, dispatch and have 2 others dispatching and working in office, especially if she's called to BCIU, and would also handle dispatch from 6:00 p.m. to 6:00 a.m. (N.T. 71 & 72) Clearly if the Applicant will have 5 employees, including Ms. Rodriguez as dispatcher and her boyfriend and his brother as drivers, the obvious conclusion is that the 2 remaining employees would be an office worker and another dispatcher whose work schedule would be adjusted at the whim of Ms. Rodriguez and her superiors at BCIU. (N.T. 73-74) Such an arrangement is clearly reflective of an unrealistic management plan or no plan at all.

**B. THE APPLICANT FAILED TO DEMONSTRATE BY CREDIBLE, SUBSTANTIAL EVIDENCE THAT IT HAS SUFFICIENT CAPITAL, EQUIPMENT, FACILITIES, EXPERTISE AND OTHER RESOURCES TO PROVIDE TAXI CAB SERVICE THAT WILL SERVE A USEFUL PUBLIC PURPOSE BY ADDRESSING A DEMONSTRATED PUBLIC DEMAND OR NEED IN THE BERKS COUNTY COMMUNITY**

Similar confusion reigns when one examines the Applicant's reported financial picture. Despite the clearly enunciated general rule in Pennsylvania that a corporation (or a limited liability company) shall be regarded as an independent entity even if, as in that case, its stock is owned entirely by one person, Kaites v. Department of Environmental Resources, 108 Pa.Cmwlt. 267, 529 A.2d 1148 (1987), the Applicant and its business planning consultant have seen fit to commingle the individual assets of the members of the LLC with the actual reported assets of the LLC in an obvious attempt to depict a stronger financial entity. The Applicant produced evidence of a bank account at Riverfront Credit Union with a reported balance of \$10,000 as of Nov 18, 2015, which is reportedly dedicated for start-up expense. (N.T. 26). The witness produced evidence of a second deposit account in her personal name at Metro Bank with a reported balance of \$8,024 that is "going to be made available to Dominicana Taxi Express" but as of the date of the hearing the funds remained in the witness' personal account. Moreover, if one reviews the LLC's Operating Agreement (Exhibit A-4) it becomes immediately evident in section 2.3 thereof that additional contributions of capital may be made only with the Member's unanimous approval which is then followed by the establishment of a maximum amount of additional contribution and an obligation on the part of every other member to contribute a pro rata share of the maximum based upon the Member's Ownership Interest. Therefore,

by the terms of their own Operating Agreement, any contribution of additional capital by Xiomara Rodriguez would have to be followed by an even greater amount of additional capital contribution from Pedro E. Ramirez, the owner of 51% of the membership interest up to the maximum contribution unanimously agreed upon; an obviously problematic situation that explains why the funds in Ms. Rodriguez' personal account remain her personal funds and should not be considered an asset of the Applicant LLC or an asset available to it.

The financial picture does not improve in clarity when one examines the other assets reported as belonging to the Applicant. Specifically the Applicant reports owning 2 vehicles, a 2008 Toyota Sienna and a 2008 Hyundai Tucson, which were reportedly "purchased" for the price of \$4200 and \$4600 respectively. The problem is that the Applicant offers contradictory evidence. Specifically, Ms. Rodriguez testified that Pedro E. Ramirez owns the Toyota Sienna that was purchased for \$4200 plus taxes and that is corroborated by Exhibit A-9, a Used Vehicle Order in the name of Pedro E. Ramirez, not the Applicant LLC. Under 52 Pa. Code §29.315 (a)(1) a vehicle owned by Mr. Pedro E. Ramirez cannot be utilized in the Applicant's business since it is neither owned by the Applicant nor leased from a non-driver owner. A leaseback arrangement is likewise prohibited by 52 Pa. Code §29.101 (f). Therefore, the vehicle cannot merely be designated a contributed asset to the LLC or a capital contribution of Mr. Ramirez and the Applicant would have to purchase the vehicle from Mr. Ramirez in order own it. Otherwise Pedro E. Ramirez could not be employed as a driver. One could argue that it could be purchased using the \$10,000 designated as start-up capital but such a transaction

would seriously reduce the already limited amount of available capital for start-up expenses nearly forty-five percent.

Moreover, there is substantial doubt that title to the vehicle has ever been transferred from the dealers. Indeed, if one carefully examines Mr. Ramirez' testimony on cross-examination it becomes evident that the transaction has not been finalized because no sales tax has been charged or paid and at best, the dealer is holding the money and title to vehicle pending a determination of the Applicant's request for authority. (N.T. 114-116) A strong presumption of no sale and no ownership by the Applicant of any vehicle arises from Mr. Ramirez' disclosure that the Hyundai Tucson remains in the dealer's possession. (N.T. 114) That presumption is reinforced by the absence of any registration information from the Pennsylvania Department of Transportation as well as the absence of any confirming evidence of sale by the used car dealers who were identified by the Applicant.

The remaining record in this case is not only devoid of evidence of public need, personal management ability and business experience but replete with evidence of false assumptions of authority, operational revenue and expense, all leading to unsustainable conclusions by a witness identified as an expert in business planning.

Although both members of the Applicant testified that they are familiar with the PUC regulations governing operation of a call and demand taxi service the subsequent testimony and the stipulations they eventually had to enter in the record make it painfully obvious that neither they nor their business planner had even a passing understanding of the authority sought by the Applicant or how it is required to conduct its business. Specifically Ms. Rodriguez testified that in addition to regular call and demand service the

Applicant intends to make deliveries like food delivery service. (N.T. 44) After admitting on cross-examination that she was unfamiliar with the term “expressage” as it appears in the Code she acknowledged that such practice is prohibited by 52 Pa. Code, Section 29.313. (N.T. 45) Despite such testimony the anticipated revenue from “expressage” activities remained unchanged in the business plan (Exhibit 21) but was described by the business planner as “negligible” at \$1700 per year. (N.T. 153).

Ms. Rodriguez asserted that no other taxi cab company servicing the area had capability of handling more than 4 passengers yet on cross-examination admitted that she never bothered to check with any company to make such a determination. (N.T. 47) Similarly, she had no direct knowledge of a lack or absence of bilingual drivers, dispatchers or other employees of existing certificated taxi cab operators in the area. (N.T. 48).

Another example of the Applicant’s ignorance of applicable Code provisions is found in the testimony of Ms. Rodriguez and her co-member, Pedro E. Ramirez, when they repeated the Applicant’s intention to provide airport transportation or group/party transportation when in reality the Applicant never sought such authority in its application. (N.T. 49-51). Again, despite the subsequent stipulation that the Applicant would have to apply for such authority in the future the business planner failed to adjust his projections or his report (Exhibit 21) to reflect the substantial reductions in revenue that would result from the deletion of such activities.

Ms. Rodriguez further claimed familiarity with the tariff provisions of the Code yet the Applicant proposes a flat tariff of \$8.00 for the first 7 or 8 blocks of travel in the city

and \$1.80, presumably per mile, for travel beyond the base distance. (N.T. 67) Incredibly she also claimed that 6 months prior to the hearing she was informed by a PUC employee, Robert Bingaman, that the Applicant wouldn't be required to employ meters until the business "was bigger or more private" because it was a small business. N.T. 67-69. Such a claim not only patently contradicts the absolute requirement of meters set forth in 52 Pa. Code §29.314 (b), it flies in the face of all logic and slanders the PUC employee. Needless to say Mr. Bingaman was not produced or even listed as a witness for the Applicant.

The Applicant offered the testimony of Thomas Loughlin, a self-described "early-stage venture consultant" who helps devise business plans for start-up companies. (N.T. 130) Mr. Loughlin is not an accountant but he holds an MBA degree and has prepared business plans for various small start-up companies in various other industries. He was accepted by the court as an expert in business planning. (N.T. 145).

By his own admission the sole source of financial information about the Applicant was Mr. Ramirez and Ms. Rodriguez. The witness claimed to have life experience with a taxi cab company but during voir dire examination it became quickly evident that his actual experience was driving for an airport and train station shuttle service and contract transportation service for senior citizens to attend medical appointments for a period of 4 years. Indeed, he admitted no actual experience with call and demand metered taxi service (N.T. 136) or any experience with a client applying for common carrier authority before the PUC. (N.T. 142-143) Instead, he relied and therefore he admittedly based the entirety of his opinions on information provided solely by the Applicant's members, unidentified

and unreferenced sources generally described as “common size” “industry benchmarks” and personal assumptions of need based on his review of demographics available on Wikipedia as well as other, unidentified sources. Of further significance is the fact that the planner’s testimony revealed that his projections of revenue were based on assumptions directly in conflict with the evidence offered by the Applicant, namely, sources of revenue and authorized activities.

Mr. Loughlin’s conclusion of need or growing demand was based entirely on his conclusion of population trends from the various on-line sources he claims to have referenced. He reported his demographic research of Reading as revealing 41% white, 10% African American, 56% Latino and a smaller percentage of Asians, all totaling 107+% of the population (N.T. 146) and on that basis of his experience years ago while in Los Angeles he assumes that demand will continue to grow. (N.T. 147). Unfortunately, Mr. Loughlin could not identify all of the certificated taxi cab companies in the area nor all of the licensed car services in the Reading—Berks County area, made no independent investigation or effort to learn the same and admittedly relied entirely on what was reported to him by Mr. Ramirez and Ms. Rodriguez. (N.T. 172-175). Undaunted, he boldly concluded that the Latino population is underserved strictly on the basis of population growth. (N.T. 177 - 178)

The expert witness testified that he reviewed no Code provisions governing call and demand service, including tariffs and permitted activities, and therefore he accepted at face value the anticipated revenue sources reported by the Applicant. He also accepted the report of personal assets owned by Xiomara Rodriguez as assets in his projections for the

Applicant despite the fact that it is a separate entity. (N.T. 167-168) He clearly made no analysis of projected revenue on the basis of metered taxi service and admitted that when considering alternative methods of charging for services, instead of reviewing the applicable tariff provisions of the Code he talked with people regarding the “surge pricing” practice of Uber, “which doesn’t apply here”. (N.T. 169).

Interestingly, although he knew from the beginning that the Applicant planned to utilize drivers as employees at a fixed hourly wage rate of \$12 (N.T. 25) and would have at least 3 other employees on the rolls he failed to consider the substantial cost of workers’ compensation insurance premiums in his cost calculation. (N.T. 181 - 182) He incorrectly reported insurance costs at \$6000 annually when the actual evidence of the quote produce by the Applicant reflected a cost of \$14,206 annually. (N.T. 182-183). He also failed to allow for the absence of revenue originally projected from event transportation and airport transportation, the latter of which was projected to produce revenue of \$101,870 in the first year. (N.T. 170).

Even with these glaring examples of inaccuracies and omissions Mr. Loughlin not only refused to acknowledge or amend the projections in the business plan but insisted on applying a presumed annual growth rate of 5% per month or 60% annually. Of course, on re-cross examination he admitted that the growth rate he applied was the growth rate he identified for all “Main Street start-ups”, not just taxi start-ups.” (N.T. 187)

In short, Mr. Loughlin did exactly what he was hired to do, namely, make the Applicant look promising and profitable on the basis of information supplied by the Applicant. Unfortunately, he declined to review the provided information critically,

declined to research or obtain information with respect to the governing law, failed to include accurate material facts in his analysis and refused to adjust his rosy projections despite the acknowledgment of discredited, omitted and inaccurate facts

## **VI. CONCLUSION**

The evidence and testimony presented by the Applicant fails to demonstrate by substantial credible evidence the existence of a public need, demand or propriety in the public interest for additional taxi cab service in the proposed territory of Reading and Berks County, and fails to demonstrate by substantial credible evidence that approval of the application will serve a useful public purpose. The Applicant has further failed to demonstrate by substantial credible evidence that it is capable of meeting the criteria of 52 Pa. Code §41.14 (b) for providing the proposed service safely and legally.

Respectfully submitted,

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/s/

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