

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : No. A-2015-2475776  
Amigo Cab, LLC :

**Applicant’s Petition for Reconsideration**

In accordance with 52 Pa. Code §5.44, Applicant Amigo Cab, LLC (“Amigo Cab” or “Applicant”), through its undersigned counsel, submits this timely Petition for Reconsideration in response to the denial/dismissal letter (the “November Letter”) that was issued by the Pennsylvania Public Utility Commission’s (the “Commission”) Bureau of Technical Utility Services (“BTS”) in the above-captioned matter on November 8, 2016. Applicant respectfully requests that the Commission overturn BTS’s decision to deny and dismiss Amigo Cab’s Application for call or demand authority and instead issue Applicant a Certificate of Public Convenience.

**Background**

On or around March 17, 2016, Amigo Cab filed an application to begin transporting passengers in call or demand service from points in Berks and Lancaster Counties to points in Pennsylvania and return. Several entities filed protests in response, however all protests were withdrawn by January 12, 2015. On March 3, 2016, Administrative Law Judge Dennis J. Buckley referred the unopposed application to the Commission’s Bureau of Technical Utility Services for disposition. *Interim Order Referring Case to the Bureau of Technical Utility Services for Disposition*, A-2015-2475776.

On June 8, 2016, Applicant submitted its *Business Plan of Applicant for Motor Carrier Authority* (“*Business Plan*”), verified statements, and other supplemental documentation to BTS. On June 22, 2016, BTS sent a letter to Applicant’s former counsel informing him that the business plan submitted on June 8, 2016, was incomplete because the verification was signed by Applicant’s corporate manager rather than Applicant’s sole owner. On June 30, 2016, Applicant re-filed its *Business Plan*, this time verified by Applicant’s owner, as requested by BTS.

On October 19, 2016, the undersigned counsel entered his appearance as Applicant’s new attorney. On November 8, 2016, BTS sent a letter to Amigo Cab denying its Application (the “Denial Letter”). In the Denial Letter, BTS listed only one reason for denying Amigo Cab’s Application: Amigo Cab’s Application demonstrated “that the applicant lacks the technical and financial ability to provide safe and reasonable service” as evaluated under 52 Pa.Code §41.14. BTS explained,

*“According to the applicant’s own Verified Statements, it possesses insufficient equipment to provide reasonable service in such a broad service area. Furthermore, the applicant lacks sufficient funds to purchase the number of vehicles which would be sufficient for providing reasonable service.”*

The Denial Letter provided no further reasoning regarding Applicant’s alleged lack of technical or financial fitness. BTS’s letter gave Applicant 20 days to file a responsive petition; the final day to respond is November 28, 2016. Applicant now timely files this Petition for Reconsideration.

## Legal Standard

Title 66 sets forth the procedure through which an Applicant can receive approval to begin offering public utility service. 66 Pa.C.S. §1103 states that the Commission shall grant a Certificate of Public Convenience to an applicant when the Commission determines that “such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”

To help evaluate applications for authority under Title 66, the Commission set forth, in a policy statement, a two-prong evidentiary analysis, which is codified at 52 Pa. Code §41.14. The first prong establishes what evidence must be presented by an Applicant to justify its entry into the market, while the second concerns the evidence that must be presented by a Protester who seeks to challenge the application.

Among other things, §41.14 requires that an applicant show that it is technically and financially fit to provide the service under the authority it has applied for<sup>1</sup>. An applicant is technically and financially fit when it has “sufficient technical and operating knowledge, staff and facilities to provide the proposed service and sufficient financial ability to provide **reliable and safe service.**” (emphasis added) *Yellow Cab Co. v. Pa. Pub. Util. Comm’n*, 673 A.2d 1015, 1019 (Pa. Cmwlth. 1996).

More specifically, the Commission uses six factors listed at §41.14(b) to analyze the evidence presented by an applicant. Of the six factors, BTS’s letter only challenges Applicant’s fitness under the first factor. That factor, §41.14(b)(1), asks an applicant to

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<sup>1</sup> §41.14 also requires a party to show that there is a public need for its proposed service. Since BTS did not raise the issue of public need in the Demand Letter, Applicant assumes that the verified service requests submitted to BTS as part of Applicant’s June 30, 2016, submission adequately illustrate that the proposed service is commensurate with public need for additional transportation carriers in Berks and Lancaster Counties.

demonstrate whether it has “sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.”

An applicant has the burden of proof under 66 Pa. C.S. §332(a). An applicant’s burden is satisfied when it can show, by a preponderance of the evidence, that it has met the requirements listed in §41.14. *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm’n*, 56 A.3d 49, 56 (Pa. Cmwlth. 2012). A preponderance of the evidence means “only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.” *Id.* at Fn. 6. This standard, sometimes referred to as the “more likely than not” standard, sets a very low bar for the party’s burden of proof.

If a party can establish by a preponderance of the evidence that it has met its burdens under §41.14, §41.14(c) states that the Commission “**will** grant motor common carrier authority commensurate with the demonstrated public need.” (emphasis added). §1103 shows a similar permissive stance; 66 Pa. C.S. §1103 states that the Commission **shall** issue a Certificate of Public Convenience if its statutory criteria are met. Accordingly, if a party satisfies §41.14’s criteria then the Commission will issue a Certificate under §1103.

## **Arguments**

In the instant case, BTS’s Denial Letter takes issue with Applicant’s ability to provide “reasonable service.” Applicant respectfully points out that the legal standard is not whether the service provided is reasonable, only that it is “reliable and safe.” *Yellow Cab* at 1019. Given the low bar set by the “by a preponderance of the evidence” standard,

Applicant argues that the information presented to BTS establishes that Applicant is, more likely than not, capable of providing **reliable and safe** services to its limited, two-county service area.

BTS gave two reasons for finding that Applicant was not technically or financially fit. First, BTS asserts that Applicant's own verified statements show that Applicant "possesses insufficient equipment to provide reasonable service." Applicant argues that this is a mischaracterization of the Amigo Cab's verified statements. Applicant's *Business Plan* states that:

*"Due to the increasing need of cab services in the Berks and Lancaster County area, Amigo Cab LLC does not believe such a fleet will be able to adequately serve the area, even including the other main operating cab companies servicing the area. As such, the intent of Amigo Cab LLC is to operate with its current fleet until it is able to obtain additional vehicles and drivers to **better service the demand** in the proposed service area."*

Applicant's statement is not an assertion that it lacks the vehicles to provide safe, reliable service. Applicant's statement means only what it says: There are more people seeking transportation by motor carrier in the proposed service area than there are vehicles available to provide the trips, among **every** carrier in the proposed service area including Amigo Cab.

Contrary to the meaning read into the statement by BTS, the perceived inability of a new carrier to fully satiate public need for transportation services does not equate to an admission that an applicant is unable to provide reliable and safe transportation. If that were true, the Commission would never approve a new carrier as this standard would be especially stringent. That is why the law only requires a carrier to be able to

establish that it can provide reliable and safe service. Applicant argues that the evidence submitted to BTS **has** established that it can provide reliable and safe service.

The implication underlying the law is that the Commission is in the best position to judge an Applicant's propensity for safe operation and technical/mechanical reliability, while the public is in the best position to determine (through the open, competitive market) whether a motor carrier's quality, general reliability, prices are appropriate. This implication is consistent with the Commission's recent decision to eliminate the "public need" factor currently listed under §41.14(a). In doing so, the Commission wrote in the Final Rulemaking Order (FRO):

“. . .public need or demand will be determined in the market place by competition among passenger carriers **in regard to price quality and reliability**, as well as the experienced demand for their services by consumers who may freely choose among those competing carriers.”

*Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23, and 29, L-2015-2507592* (Final Rulemaking Order, October 27, 2016, p. 5) (emphasis added). It is also consistent with the Commission's other prior statements, explaining that §41.14 was promulgated to eliminate "monopolistic protection" in order to promote healthy competition so that available transportation exists throughout the Commonwealth. *Application of Express Taxi, LLC*, A-2015-2475767 (Opinion and Order, May 5, 2016, p. 5 citing *In Re: Blue Bird Coach Lines, Inc*, 72 Pa. P.U.C. 262, 274 (1990)).

To that end, §41.14 is not intended to be used to evaluate the business/market viability of a new carrier; rather, it exists to ensure the carriers operate in a safe and reliable manner such that they present no danger to the public. BTS's insistence that two vehicles will not be able to service the proposed territory is nothing more than an

attempt to evaluate Applicant's business plans. Despite the statutory requirements, BTS did **not** offer any reasoning to explain why Applicant might pose a risk to its passengers or others, engage in unhealthy competition, or otherwise operate in a manner that is dangerous or counter to the public interest.

Very much to the contrary, the evidence presented to the Commission illustrates that Applicant's owner and manager are both acutely aware of how to run a safe and reliable transportation company. Applicant's owner, Saber Elnaggar, is familiar with the cab business; he has operated United Cab, LLC, another certificated call or demand carrier for three years. *Business Plan*, p. 4. Similarly, Applicant's president, Maher S. Ahmed, is also experienced; he has operated other certificated call or demand carriers since 2002. *Business Plan*, Ex. A. Mr. Saber also serves as the President of the Greater PA Taxi Cab Association, and has testified in that role before the Commission at public meetings regarding motor carrier transportation issues. *Business Plan*, p. 4 and Ex. A.

Curiously, one of Mr. Ahmed's other carriers, Express Taxi, LLC, applied for (and was granted) similar authority for the same two counties presenting similar evidence and a similar business plan, namely one of methodical expansion starting with 2 vehicles to an increasingly larger fleet as public need for Express Taxi's service grew. In that case, an ALJ found technical and financial fitness. The Commission agreed and issued Express Taxi a Certificate of Public Convenience. To this day, Express Taxi continues to successfully, safely, and reliably provide transportation services to the public. Application of Express Taxi, LLC, A-2015-2475767.

Applicant's service is similar to Express Taxi's service and will be carried out by almost identical persons in identical service territories using very similar vehicles and

facilities. Mr. Ahmed will be the primary day-to-day operator of Applicant's business and his business model has already proven successful, safe, and reliable. Denying Amigo Cab's application would create an inconsistency in application of §41.14.

In developing its plan, Applicant carefully and thoughtfully drew on the combined 16 years of expertise in the industry possessed by these two men. Applicant's June 30, 2016, submission to BTS shows that Applicant is ready, willing, and able to purchase, insure, and safely operate two vehicles as soon as its Application is approved. *Business Plan*, p. 4. Applicant's intention is to enter the market slowly over time while still addressing the public's immediate need for additional vehicles on the road. Rather than creating an unrealistic plan as many applicants do, Applicant has assessed the public's need for transportation and has developed a plan that will allow Amigo Cab to enter the market with a limited number of vehicles and satisfy an immediate need without compromising passenger safety or reliability<sup>2</sup>.

BTS's second reason for denial was that Applicant allegedly lacks the financial resources to acquire more vehicles in order to "reasonably" serve the proposed service area. However, Applicant's *Business Plan* illustrates that it plans to acquire vehicles as necessary and has the means to do so. Specifically, Applicant's plan includes purchasing 28 cabs over the next five years. *Business Plan*, Ex. E.

Notwithstanding the assertions made by BTS, Applicant and its owner *do* have the financial means to carry this plan forward. At the time the *Business Plan* was

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<sup>2</sup> All vehicles will be within 10 model years as required by the current regulations and will be visually inspected daily. *Business Plan*, p. 5. Vehicles will be maintained strictly pursuant to the maintenance recommendations for each vehicle. *Id.* Any maintenance or mechanical needs will be immediately addressed by in house mechanics. *Id.* All vehicles will also be inspected twice a year by a third-party inspection garage. *Id.*



submitted to BTS, Applicant had over \$15,000.00 available in liquid assets. *Business Plan*, Ex. D. Further, Mr. Elnaggar reported his estimated net worth as \$290,500, including \$30,500.00 in cash and a \$50,000.00 line of credit. *Business Plan*, Ex. F. Mr. Elnaggar is fully committed to personally ensuring that Amigo Cab has the finances to ensure that the business can provide safe, reliable transportation.

Finally, in addition to the cash reserves of the business and its owner, Applicant has three letters of credit from Keystone Auto Group, LLC, Adam Auto Group, and Yasse Auto Sales, LLC, which indicate that the three companies will extend financing to Applicant to purchase vehicles as necessary up to dollar amounts of \$80,000, \$50,000, and \$40,000, respectively. Applicant argues that the availability of over \$80,000 in liquid assets and \$170,000 through lines of credit should dispel the notion that Applicant is unable to obtain additional vehicles. These letters are included for the Commission's review as Appendix A of this document. Mr. Elnaggar's financial reserves along with Amigo Cab's expected revenues and available purchase financing will easily allow applicant to purchase additional vehicles as planned over the next five years.

## **Conclusion**

The law requires an applicant to be technically and financially fit such that the carrier will be able to provide safe and reliable transportation. Applicant's owner, Mr. Elnaggar, and manager, Mr. Ahmed, drew on their considerable knowledge of the industry to come up with a plan. Their plan will allow Applicant to provide enough vehicles to satisfy an immediate public need for transportation in Berks and Lancaster Counties, while ensuring that Applicant is only operating as many vehicles as it has the resources to do so in a safe and reliable manner.

Applicant has shown that its service is necessary to help satisfy public demand for Call or Demand services in Berks and Lancaster Counties. Furthermore, Applicant is technically fit to provide the proposed service, and is financially able to purchase additional vehicles, staff, and equipment as is necessary to do so in a safe, reliable manner. Accordingly, Applicant has met its burden as required under §41.14 and respectfully requests that the Commission overturn BTS's decision and instead issue a Certificate of Public Convenience to Applicant.

Date: 11/28/2016

Respectfully submitted,

  
Sean M. Cooper, Esq.  
ID# 320940  
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F: 855.559.5291  
[Sean@cooperlawpa.com](mailto:Sean@cooperlawpa.com)

# Exhibit A

KEYSTONE AUTO GROUP, LLC

620 S. 13<sup>th</sup> Street  
Harrisburg, PA 17104  
717-773-5452

November 25, 2016

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Harrisburg, PA 17105-3265

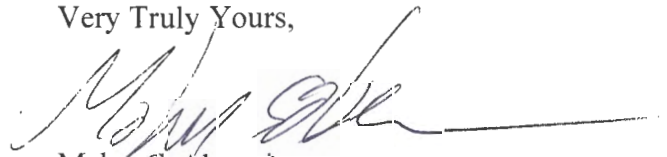
**RE: Amigo Cab LLC**  
**A-6317547**  
**A-2015-2475776**

Dear Rosemary Chiavetta:

Please allow this letter to serve as confirmation that we are willing to provide financing for vehicles purchased by Amigo Cab, LLC in an amount up to but not exceeding \$80,000.00. We have worked with the owner of Amigo Cab, LLC for years and he has always remained current on his obligations to us.

Should there be any questions or concerns, please do not hesitate to contact us. Thank you for your time and consideration.

Very Truly Yours,



Maher S. Ahmed

Adam Auto Group  
4601 Carlisle Pike  
Mechanicsburg, PA 17050  
717-234-9999

November 25, 2016

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

**Subject: Amigo Cab LLC**  
**A-6317547**  
**A-2015-2475776**

Dear Rosemary Chiavetta:

Please allow this letter to serve as confirmation that we are willing to provide financing for vehicles purchased by Amigo Cab, LLC in an amount up to but not exceeding \$50,000.00. We have worked with the owner of Amigo Cab, LLC for years and he has always remained current on his obligations to us.

Should there be any questions or concerns, please do not hesitate to contact us. Thank you for your time and consideration.

Kindest Regards

Walid Shalan  
Owner

A handwritten signature in black ink, appearing to read 'W. Shalan', is written over a horizontal line that extends to the right.

**Yasse Auto Sales, LLC  
2705 S. Front Stt.  
Steelton, PA 17113  
717-939-7206**

November 25, 2016

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P.O. Box 3265, Harrisburg, PA 17105-3265

**Subject: Amigo Cab LLC  
A-6317547  
A-2015-2475776**

Dear Rosemary Chiavetta:

Please allow this letter to serve as confirmation that we are willing to provide financing for vehicles purchased by Amigo Cab, LLC in an amount up to but not exceeding \$40,000.00. We have worked with the owner of Amigo Cab, LLC for years and he has always remained current on his obligations to us.

Should there be any questions or concerns, please do not hesitate to contact us. Thank you for your time and consideration.

Kindest Regards

 **Yasse Ben Slimane**  
~~Yasse's Auto Sales LLC~~  
8633789

Yasse Slimane  
Owner

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : No. A-2015-2475776  
Amigo Cab, LLC :

**VERIFICATION**

I, Cory Leshner, on behalf of Amigo Cab LLC, hereby verify that the statements made in the foregoing *Petition* are true and correct to the best of my knowledge, information and belief. I understand that the statements in the foregoing document are made subject to the penalties of 18 Pa.C.S. §4909 relating to unsworn falsification to authorities.

11/28/16  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Cory Leshner  
Amigo Cab LLC

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : No. A-2015-2475776  
Amigo Cab, LLC :

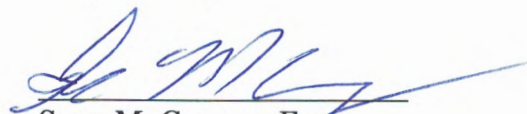
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served original and true copies of the foregoing *Petition* upon the party listed below by depositing a copy of the same in the United States Mail, first class, postage prepaid, and addressed as follows:

|   |   |
|---|---|
| <b>Bureau of Technical Utility Services</b><br>Pennsylvania Public Utility Commission<br>Commonwealth Keystone Building, 3rd Floor<br>400 North Street<br>Harrisburg , PA 17120 | <b>Office of the Consumer Advocate</b><br>555 Walnut Street<br>Forum Place, 5th Floor<br>Harrisburg, PA 17101-1923          |
| <b>Bureau of Investigation and Enforcement</b><br>PO Box 3265<br>Commonwealth Keystone Building<br>400 North Street, 2nd Floor West<br>Harrisburg, PA 17105-3265                | <b>Office of Small Business Advocate</b><br>Commerce Building<br>300 North Second Street, Suite 202<br>Harrisburg, PA 17101 |

Date: 11/28/2016

Respectfully submitted,



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# PENNSYLVANIA

## PUBLIC UTILITY COMMISSION

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