

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMISSION**

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**Administrative Law Judge  
Angela T. Jones, Presiding**

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**Application of**

**La Mexicana Express Service, LLC**

**:**

**Docket No. A-2017-2590784**

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**MAIN BRIEF  
OF**

**JOINT PROTESTANTS:**

**EXPRESS TAXI, LLC, READING CITY CAB, LLC, and AMIGO TAXI LLC**

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Anthony J. DelGrosso, Esquire  
PA Attorney ID#316760

*Attorney for Joint Protestants*

LAW OFFICE OF ANTHONY J DELGROSSO

PO Box 1726

Lancaster, PA 17608

P: 717.836.0055 | F: 717.833.0755

ajdelgrosso@gmail.com

DATED: September 15, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : Commission Docket No.:  
La Mexicana Express Service LLC : A-2017-2590784  
:

**MAIN BRIEF OF JOINT PROTESTANTS EXPRESS TAXI LLC, AMIGO CAB, LLC  
AND READING CITY CAB, LLC**

NOW COME, Joint Protestants Express Taxi LLC, Amigo Cab, LLC, and Reading City Cab, LLC (“Joint Protestants” or “Protestants”), and Pursuant to the Briefing Order of the Honorable Administrative Law Judge Angela T. Jones (“ALJ Jones”) file this Main Brief in opposition of the Application of La Mexicana Express Service, LLC (“Applicant”).

**I. STATEMENT OF THE CASE**

On or about February 6, 2017, Applicant filed an Application for Motor Carrier of Persons upon Call or Demand (Taxi Service) (the “Application”). Notice of the Application was subsequently published in the Pennsylvania Bulletin and timely protests were filed by Joint Protestants.

After pleadings and discovery were completed, ALJ Jones conducted the initial hearing in this matter on July 13, 2017. At the conclusion of the hearing, a briefing schedule was established. Joint Protestants respectively file this Main Brief in accordance with that briefing schedule

**II. PRELIMINARY ISSUES / STANDING OF JOINT PROTESTANTS**

At the time of filing of this protest, and as noted at the hearing, Protestant Reading City Cab, LLC, had a *pending* application for authority with the Commission at Docket No. A-2016-2524649. Applicants questioned whether Reading City Cab, LLC, had proper standing to protest. In the *Application of Carriage Limousine Services, Inc.*, Docket No., A-00108361, F.1,

Am-B, Administrative Law Judge Robert P. Meehan thoroughly discussed the issue of a protestant's standing to protest an application for a certificate of public convenience. In his Initial Decision dated October 12, 1994, which became final by operation of law (Order entered December 23, 1994), ALJ Meehan said:

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. See, *Application of Glen Alsace Water Company*, 45 PA PUC 472 (1971)

The controlling principle is that a protestant must have some operating rights in actual, or potential, conflict with the authority sought by an applicant to have the requisite standing to protest the application. See *Application of K & F Medical Transport, LLC*, A-2008-2020353, ALJ Veronica Smith, Initial Decision dated April, 25, 2008. In this case the Applicant is seeking authority for call and demand service in Berks County. Likewise, Protestant Reading City Cab, LLC, had a pending application for authority to operate call and demand service in Berks County and therefore was in potential conflict when the Protest was filed. Furthermore, Reading City Cab, LLC, was recently granted a certificate of public convenience and is now in actual conflict with the authority sought by Applicant.

### **III. SUMMARY OF ARGUMENT**

Joint Protestants assert that the Application should be denied because the Applicant has failed to demonstrate sufficient financial and technical fitness necessary to provide the proposed service under the requested authority.

Applicant has failed to demonstrate that it is technically and financially fit to provide the proposed service. The scope of the requested authority extends far beyond the technical and

financial capabilities of the applicant. The owners and managers of Applicant currently operate a paratransit and limousine service in the proposed territory. Applicant proposes to share facilities and vehicles with its other services. Permitting applicant to expand its authority to call and demand, without a sufficient showing of the technical and financial ability to operate the service in proposed territory, brings the great risk that Applicant will be unable to meet the demands of the public and offer uninterrupted service safely and reliably. See *Application of Amigo Cab, LLC*, A-2015-2475776 (Application dismissed where Applicant managers and owners operated other call and demand services at time of application but found to have lacked technical and financial fitness to serve the requested authority safely and reliably.)

Applicant has not produced evidence demonstrating sufficient capital, equipment, and facilities necessary serve the requested area safely and reliably. Further, Applicant has failed to offer sufficient financial documentation to support its assertion that it is financially fit to operate and has failed to demonstrate that it can obtain sufficient and continuous insurance coverage for the service. Thus, Applicant has failed to demonstrate the financial and technical ability to operate safely and reliably within the requested service area pursuant to 52 Pa. Code §41.14.

#### **IV. DISCUSSION**

##### **A. Burden of Proof**

Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, Applicant has the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J Lansberry, Inc. v. Pa. P. U C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon

substantial evidence. 2 Pa. C.S. § 704; *Mill v. Pa. P. U C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P. UC.*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. P. UC.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

### **B. Statutory and Evidentiary Requirements**

In order to provide motor carrier service in the state of Pennsylvania, a person or entity must first obtain a certificate of public convenience from the Pennsylvania Public Utility Commission. 66 Pa. C.S. § 1101. A certificate of public convenience shall only be granted if the certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa. Code 1103(a). The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. *Id.*

The evidentiary criteria adopted by the Commission for deciding motor carrier applications are found in Section 41.14 of the Commission's Regulations, 52 Pa. Code § 41.14:

*(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.*

*(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.*

**C. Applicant failed to demonstrate that it possesses the technical and financial ability to provide the proposed service.**

The second prong of the Commission's test for approval of motor vehicle applications is spelled out in 52 Pa. Code § 41.14(b). The full text reads as follows:

*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.*

52 Pa. Code § 41.14(b).

***1. Applicant failed to demonstrate that it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.***

The first criteria the Commission examines to determine an applicant's technical and financial fitness is whether it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested. 52 Pa. Code § 41.14(b)(1).

In the current proceeding, Applicant asserts that it intends to operate within the requested territory "24/7". (Tr at 53-54) Applicant intends to share facilities, drivers, and vehicles with its current paratransit and limousines (Tr. at 60 and Exhibit 8). Applicant further testified that it currently and intends to have four vehicles service the call and demand needs for Berks County (Tr. at 44)

Applicants "Income / Profit & Loss" financial statement reflects that it has earned revenues of \$46,400 and incurred \$30,453 in expenses for the first three months of 2017. See Exhibit 6. Applicant admitted that the "Income / Profit & Loss" is not actually an accurate statement but merely an estimate. Applicant also admitted that it did mistakenly underestimate the amount of gas expense for the first three months of 2017 and it should have been \$3,000 for gasoline expense. (Tr. at 69.)

Based on the record evidence, Applicant has limited capital, equipment, and facilities of its own when considering the additional strain that operating a call and demand service throughout Berks county would entail. Applicant recognized that it will incur additional expenditures as a result of the increase in authority; however, they do not have any documents

demonstrating what their estimated increase in revenues, expenses would entail. See (Tr at 55) Rather, applicants have relied on their prior financial statements, which they admit are only estimates, to support their financial ability to conduct call and demand service without any additional assets.

It does appear that Applicants have no new or additional assets to contribute to the call and demand service which are not already in use for their other operating authorities. Spreading the Applicants assets out, not only runs the risk of allowing an unsafe and unreliable call and demand service to operate, but also has the potential to negatively impact the quality of service offered in Applicants paratransit and limousine authority. Without a clear idea of what the estimated additional expenses of operating a call or demand service would result, the applicant has failed to meet its burden of demonstrating financial fitness. Applicant has failed to demonstrate that it possesses sufficient capital, equipment, facilities and other resources necessary to serve the territory requested. Taken together, the financial statements submitted and the verbal testimony does not demonstrate evidence financial fitness beyond a preponderance of the evidence.

## **V. CONCLUSION**

The Application of La Mexican Express Service, LLC to provide call or demand service in Berks County is neither necessary nor proper for the service, accommodation, convenience, or safety of the public. Applicant has failed to meet its evidentiary burden under Section 41.14 (b) of the Public Utility Commission's Regulations. Accordingly, the Application of La Mexicana Express Services, LLC at Docket No. 2017-2590784 should be denied.

WHEREFORE, for the reasons set forth above, Joint Protestants respectfully request that the pending Application be denied.

9/15/17  
Date

Respectfully Submitted,



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Anthony Joseph DelGrosso (#316760)  
Law Office of Anthony J. DelGrosso  
PO Box 1726  
Lancaster, PA 17602  
717.836.0055 | ajdelgrosso@gmail.com

*Counsel for Joint Protestants*

## **PROPOSED FINDINGS OF FACT**

### **The Parties**

1. Applicant is La Mexican Express Service, LLC On or about February 6, 2017, Applicant filed an application for authority to provide call or demand service in Berks County
2. Joint Protestants Express Taxi LLC; Amigo Cab LLC; and Reading City Cab LLC provide call or demand service in Berks Counties and filed a time Protest to the Application.

### **Fitness**

3. Applicant La Mexicana Express Service, LLC is owned and managed by Daniel Caisaguano.
4. Mr. Caisaguano also owns and operates a paratransit and limousine service which has a grant of authority for Berks County.
5. Applicant intends to share facilities and vehicles with his current paratransit and limousine services.
6. Applicant intends to operate call or demand service 24/7.
7. Applicant currently only has four vehicles which it intends to use in service throughout all of Berks and Lancaster Counties. See Exhibit 8 and (Tr at p. 44.)
8. Applicant currently uses the vehicles intended for use in his taxi service, for his paratransit and limousine services (Tr. at 60 and Exhibit 8)
9. Applicant does not own any vehicles that are intended to be solely used for his call and demand service.
10. Applicant currently employs five drivers. (Exhibit 9)
11. Berks County has a population of over 400,000 persons respectively.

12. Applicant submitted an “Income / Profit & Loss” financial statement purporting to show the income of the applicant for the first 3 months of 2017. See Exhibit 6.

13. Applicant admits that it has not provided any documentation demonstrating the expected increase in operating expenses resultant from expanding to a call and demand service. (Tr. at 55, 13-16)

14. Applicants “Income / Profit & Loss” financial statement is not an actual income statement but rather an “estimate” of revenue and expenses. (Tr. at 75-77)

## **PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. Applicant has the burden of proof in this proceeding and the duty to establish facts by a preponderance of the evidence. 66 Pa. C.S. § 332(a).
3. An applicant seeking motor common carrier authority must obtain a certificate of public convenience from the Commission. 66 Pa. C.S. § 1101.
4. A certificate will only be granted "if the Commission shall find or determine 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).
5. The evidentiary criteria adopted by the Commission for deciding motor carrier applications are contained in Section 41.14 of the Commission's Regulations, 52 Pa. Code § 41.14.
6. Applicant failed to demonstrate that it possesses the technical and financial ability to provide the proposed service in accordance with 52 Pa. Code § 41.14.
7. Applicant failed to demonstrate that it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
8. The Application currently under consideration should be denied.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : Commission Docket No.:  
La Mexicana Express Service LLC : A-2017-2590784

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, it is hereby ORDERED and DECREED that the Application of La Mexicana Express Service, LLC, to provide call or demand service in the County of Berks is hereby DENIED and DISMISSED for failure to demonstrate the technical and financial ability to provide safe and reasonable service in accordance with 52 Pa. Code §41.14..

BY THE COURT:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : Commission Docket No.:  
La Mexicana Express Service LLC : A-2017-2590784

**CERTIFICATE OF SERVICE**

Pursuant to the Commission's Rules of Procedure, I hereby certify that on this date I served the following parties with the foregoing *Main Brief In Opposition* via the means listed below:

**Via E-mail and Regular Mail:**

Kenneth A. Olsen, Esq.  
33 Philhower Road  
Lebanon, NJ 08833  
kolsen53@earthlink.net

Date: 9/15/17

Respectfully submitted,



Anthony J. DelGrosso, ID# 316760  
Law Office of Anthony J. DelGrosso  
PO Box 1726  
Lancaster, PA 17608

P: 717.836.0055 | F: 717.833.0755  
ajdelgrosso@gmail.com

*Counsel for Joint Protestants*