

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:  
APPLICATION OF  
LA MEXICANA EXPRESS SERVICE, LLC  
NUMBER A-2017-2590784

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REPLY BRIEF  
  
OF  
  
APPLICANT

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Dated: October 6, 2017

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Comes now, La Mexicana Express Service, LLC, a Pennsylvania domestic limited liability company, with address at 500 South 15<sup>th</sup> Street, Reading, PA 19602 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission (“Commission”) and pursuant to the July 14, 2017 Briefing Schedule, Order #2, of the Hon. Angela T. Jones, ALJ, files this, its Reply Brief, in the above entitled proceeding.\*

I  
REPLY TO STATEMENT OF THE CASE

In many respects, Joint Protestants’ Statement of the Case is correct regarding the procedural history of the instant proceeding, but differs from Applicant’s Main Brief in its respective treatment of the of the detail of the history of this proceeding. Therefore, Applicant submits that the correct and more accurate Statement Of The Case - History Of The Proceeding is that set forth on pages 3 through 5 of Applicant’s Main Brief dated September 15, 2017.

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\*References to the record in this proceeding will be governed by the following abbreviations:  
Tr. = Transcript of oral hearing and page number; Ex. = Exhibits received into evidence

II  
REPLY TO PRELIMINARY ISSUES/ STANDING OF JOINT PROTESTANTS

Applicant did not question whether any of the Joint Protestants had standing to protest. Moreover, Joint Protestants did not include the required “Statement of Questions Involved” section in their Main Brief. Therefore, Applicant submits that the proper Statement Of Questions Involved, to be adopted herein by the Honorable Administrative Law Judge, is that set forth on page 10 of Applicant’s Main Brief dated September 15, 2017.

III  
REPLY TO SUMMARY OF ARGUMENT

Applicant disagrees with Joint Protestants’ Summary of Argument. Joint Protestants’ Summary of Argument only accurately summarizes Joint Protestants’ Argument regarding the issues of Applicant’s fitness to meet service demands. However, it is Applicant’s position that it has satisfied the Commission’s prior and revised criteria set forth in 52 Pa. Code § 41.14. First, Applicant has demonstrated that approval of the instant application will serve a useful public purpose responsive to a public demand and need. Secondly, Applicant, an existing operating carrier without any safety or compliance complaints from this Commission, has demonstrated it possesses the technical and financial ability to provide the proposed service in a continuous safe and lawful manner. Thirdly, there was no testimonial or documentary evidence presented by Joint Protestants: (a) that their operations would be endangered or impaired contrary to the public interest by a grant of the instant application; or (b) that Applicant lacks the technical or financial ability to safely and lawfully operate a taxi service in Berks County when, in fact, it presently operates an authorized paratransit and limousine service in Berks County safely and lawfully.

IV  
REPLY TO JOINT PROTESTANTS' DISCUSSION

A. Reply to Burden of Proof and B. Reply to Statutory and Evidentiary Requirement

Applicant understands and acknowledges its burden of proof that 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; and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. 52 Pa. Code § 41.14(b). The Commission will grant motor carrier passenger authority upon establishment of technical and financial ability to provide the proposed service safely, reliably, and legally. Pennsylvania Public Utility Commission Doc. No. L-2015-2507592, 47 Pa.B. 3099. Applicant La Mexicana Express Service, LLC sustained the burden of establishing by a preponderance with substantial evidence that it possesses the technical and financial ability to provide the proposed service.

The Joint Protestants, as the parties challenging the application, bear “burden of rebutting the presumption that Applicant is technically and financially fit to provide service in the expanded service area,” but they did not present any evidence contradicting Applicant’s presumed technical and financial fitness. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the carrier has a propensity to operate legally. Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, 56 A.3d 49, 58 (Pa.Comwlth. 2012); South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992).

C. Reply to Applicant’s technical and financial failure to demonstrate argument

Applicant possesses the technical and financial ability to provide the proposed service.

Applicant has submitted ample evidence of its technical and financial ability to provide the

proposed service in the form of amount and types of vehicles it utilizes in its authorized intrastate operations; the type and amount of vehicles is presently has available for use in the proposed operation if this application is granted; a description of its equipment maintenance and safety program; a description of its facilities and communications network; a description of its drivers, office, dispatching, and equipment maintenance personnel; a description of its driver qualifications and training program; and a description of its financial condition showing sufficient assets and income to conduct present and the proposed operations. Since Applicant is already an authorized motor common carrier of persons in Berks County, it obviously has the appropriate type and amount of insurance it presently has in effect and on file with the Commission for the protection of the public. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant, regarding its technical and financial ability and propensity to provide the proposed service in a safe and lawfully manner, was sufficiently established during the hearing and was not successfully attacked by the Joint Protestants.

Moreover, no showing has been made of any propensity by Applicant to operate in other than a lawful and safe manner. There has been no evidence of unlawful activities, no evidence of any complaints filed against Applicant by the Commission, and no evidence that Applicant lacks the propensity to operate safely and lawfully.

It is well settled that in order for the Commission to conclude that an Applicant lacks a propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an Applicant has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission. Application of Central Transport, Inc., Docket No. A-00108155 (Order entered June 26, 1992). The Joint Protestants, as the parties challenging the application, bear the “burden of rebutting the presumption that Applicant is

technically and financially fit to provide service in the expanded service area,” but they did not present any evidence contradicting Applicant’s presumed technical and financial fitness. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the carrier has a propensity to operate legally. Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, 56 A.3d 49, 58 (Pa.Cmwlth. 2012); South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992). The phrase “lacks a propensity to operate safely and legally means a persistent disregard for, flouting, or defiant attitude toward the Code, or the orders and regulations of the PUC.” “An applicant’s inadvertent or isolated violation of the Code or its certificate does not demonstrate that it is naturally inclined or had an innate tendency to operate unsafely or illegally.” Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, supra.

The evidentiary facts of record establish that Applicant has operated in Berks County since October 8, 2014 as a certificated motor common carrier of persons in paratransit and limousine service by this Commission without complaint; will disqualify drivers that do not comply with the law; and commenced and continued with the instant application proceeding clearly demonstrates Applicant’s propensity to operate lawfully and safely.

Applicant filed Annual Assessment Reports with the Commission showing Applicant had gross operating revenues in its paratransit and limousine operations for the years 2014, 2015, and 2016. (Tr. 35-39; Applicant’s Ex. 3, 4, and 5). Applicant’s revenues and expenses for the period of January 1, 2017 through March 31, 2017 depicts a net income of \$15,947.00 for this period. (Tr. 41-42; Applicant’s Ex. 6). Applicant has approximately \$40,000.00 in its business account for cash on hand, and is aware of additional costs will be incurred for the proposed taxi operation. (Tr. 54-55).

Applicant presently utilizes the equipment listed on Applicant's Ex. 7 for its existing operations. (Tr. 43-44; Applicant's Ex. 7). These vehicles are maintained pursuant to the rules and regulations of the Pennsylvania Public Utility Commission; undergo a mechanical check every 2,000 miles; are checked by the driver before and after every trip, and have periodic maintenance performed by a mechanic. (Tr. 49; Applicant's 11). Applicant proposes to operate or lease the five (5) vehicles described on Exhibit 8 as taxi vehicles if the authority sought in this application is granted by the Commission. (Tr. 44, 54; Applicant's Ex. 8).

Presently, Applicant utilizes the services of the drivers, dispatchers, and office staff for its operations as set forth on Exhibit 9. (Tr. 45; Applicant's Ex. 9). The drivers utilized by Applicant possess current and valid licenses in compliance with applicable Commission regulations, are at least twenty-one (21) years old, comply with Applicant's specific testing and training qualifications, are subject to applicable motor vehicle/driver history and criminal background searches, are subject to alcohol and drug testing, and are familiar with transporting persons in Berks County. (Tr. 46-48; Applicant's Ex. 10). The drivers Applicant will use for the proposed taxi service will be contractor drivers, paying Applicant for the use of the vehicle for specified period of time. (Tr. 58)

Applicant's existing facilities are located at 500 South 15<sup>th</sup> Street, Reading, PA 1962; at 1044 Union Street, Reading, PA 19604; and a rented garage at 900 Nichols Street, Reading, PA. At the South 15<sup>th</sup> Street and at the 1044 Union Street addresses, Applicant has facilities for offices dispatching, and parking equipment. (Tr. 51, 53; Applicant's Ex. 12). Dispatching and communications with the public are performed through a network consisting of telephones, cell phones, internet connections, e-mail, and facsimile machines. (Tr. 51; Applicant's Ex. 12). Currently, Applicant operates five (5) days a week, from 7:00 AM to 5:00 PM, but proposes to

operate twenty-four hours (24) a day, seven (7) days a week, hire additional staff, if the authority sought is granted and as needed. (Tr.53-54

Mr. Caisaguano of Applicant testified there is a need for the taxi service in Berks County proposed by Applicant, is not aware of the Commission filing any complaints against Applicant, and affirmed that Applicant will comply with the Commission's rules and regulations applicable to taxi service. (Tr. 52). Erendira Caisaguano assists her father, Daniel Caisaguano, as a manager and dispatcher in running the business of Applicant. (Tr. 65-66). She is familiar with Applicant's operations, finances, equipment, and operating authority. (Tr. 66). Applicant complies with all applicable Commission rules and regulations, and no complaints have been filed against Applicant by the Commission regarding Applicant's fitness or safety to her knowledge. (Tr. 66-67). Ms. Caisaguano was present in the hearing room throughout the direct and cross-examination Daniel Caisaguano, the presentation of Applicant's exhibits, and she agreed with her father's testimony and adopted it verbatim. (Tr. 67-68).

Ms. Caisaguano explained that she prepared Applicant's Ex. 6 and stated the gas expense item on that exhibit should have been \$3,000.00, not \$1,000.00, resulting in a \$2,000.00 decrease for the three (3) month net income figure shown on Applicant's Ex. 6. (Tr. 68-69). Operating revenue of Applicant has increased for subsequent months in 2017, and expenses have stayed relatively the same. (Tr. 70). Ms. Caisaguano also corrected a typographical error on Applicant's Ex. 7 and 8. (Tr. 72, 75).

The vehicles listed on Applicant's Ex. 7, consists of between twenty (20) to thirty (30) limousine vehicles, operated by appointment, and Applicant has at least five (5) but not more than ten (10) paratransit vehicles, operated by appointment only and each traveling approximately 25 to 35 miles daily. (Tr. 73-74). The corrected \$3,000.00 gas expense item on Applicant's Ex. 6 is a

figure obtained after adding up gas receipts turned into Applicant and then rounding the amount off to arrive at the \$3,000.00 figure. (Tr. 76-77).

There can be no doubt possesses the technical and financial ability to provide the proposed service in a lawful and safe manner in compliance with Commission regulations. (Tr. 31-77; Applicant's Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12). The Joint Protestants did not submit any testimonial or documentary evidence at the hearing which demonstrated Applicant's lack of fitness or that a grant of the instant application would endanger or impair their operations contrary to the public interest. As a matter of fact, the Joint Protestants did not present any witnesses, exhibits, or the testimony of any witnesses in opposition to the instant Application at the July 13, 2017 hearing. (Tr. 77, lines 24-25).

Joint Protestants' merely stating in their protest or arguing in their brief that Applicant lacks financial or technical fitness to operate the proposed service does not factually establish such and does not rebut to presumption of Applicant's financial and technical fitness. Also, Joint Protestants herein appear to have lost sight of the fact that a certificate of public convenience issued by the Commission merely confers the right to do business as a regulated public utility, but it does not provide any guarantee that such business will be protected from competition, be successful, or always be available to the certificate holder.

Accordingly, while Applicant submits the evidentiary record in this proceeding establishes its technical and financial ability to provide the proposed service in a safe and lawful manner, and establishes that the approval of the instant application is in the public interest responsive to public demand and need, the evidentiary record is void of how a grant of the instant application will endanger or impair Joint Protestants' operations, or be contrary to the public interest.

V  
REPLY TO JOINT PROTESTANTS' CONCLUSION

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission's rules and regulations, and respectfully prays the Honorable Administrative Law Judge find as follows:

1. Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;

2. Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;

3. Joint Protestants' operations, or that of other carriers, will not be endangered or impaired by the grant of this application;

4. A grant of the authority sought herein is in the public interest; and

5. The record in its entirety supports a finding the application be granted in its entirety.

Dated: October 6, 2017

Respectfully submitted,

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APPENDIX A  
REPLY TO JOINT PROTESTANTS' PROPOSED FINDINGS OF FACT

While it agrees with Joint Protestants' Proposed Findings of Fact Nos. 1-6, 8, and 10, Applicant disagrees with the remainder of Joint Protestants' Proposed Findings of Fact, since such are without factual support or foundation in the evidentiary record of this proceeding, or they recite information not relevant to the issues involved in this application proceeding, such as Joint Protestants' timely filing of Protests or their individual carrier operations.

First, the authority sought and proposed by Applicant is for call or demand service between points in Berks County, not Berks and Lancaster Counties. Second, Applicant's operating witness stated that Applicant proposes to operate or lease the five (5) vehicles described on Exhibit 8 as taxi vehicles if the authority sought in this application is granted by the Commission. (Tr. 44, 54; Applicant's Ex. 8). Third, there was no testimonial or documentary evidence submitted regarding the population of Berks County. Moreover, Protestants did not present any witnesses or the testimony of any witnesses in opposition to the instant Application at the July 13, 2017 hearing. (Tr. 77, lines 24-25).

As to the Applicant's finances, Applicant filed Annual Assessment Reports with the Commission showing Applicant's gross operating revenues of its paratransit and limousine operations for the years 2014, 2015, and 2016. (Tr. 35-39; Applicant's Ex. 3, 4, and 5). Also, Applicant's revenues and expenses for the period of January 1, 2017 through March 31, 2017 depicts a net income of \$15,947.00 for this period, with only the amended \$3,000 gasoline expense being an estimate. (Tr. 41-42, 68-69, 5-77; Applicant's Ex. 6). 22. It was further stated that operating revenue of Applicant has increased for subsequent months in 2017, and expenses have stayed relatively the same; Applicant has approximately \$40,000.00 in its business account for cash on hand; and Applicant is aware of additional costs will be incurred for the proposed taxi operation. (Tr. 54-55).

Therefore, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Findings Of Fact are those set forth in Appendix A, on pages 18-23, and on pages 5 through 10 (under headings of Pertinent Testimony of Applicant, Supporting Public Witnesses, and Protestants) of Applicant's Main Brief dated September 15, 2017, and requests that same be adopted by the Honorable Administrative Law Judge.

APPENDIX B  
REPLY TO JOINT PROTESTANTS' PROPOSED CONCLUSIONS OF LAW

While Applicant agrees with Joint Protestants' Proposed Conclusions of Law Nos. 1-5, it disagrees with the remainder of Joint Protestants' Proposed Conclusions of Law because such are without factual support or foundation in the evidentiary record of this proceeding. If Protestants' Proposed Conclusions of Law had stated Applicant possesses the technical and financial ability to provide the proposed service lawfully and safely; and Applicant has sufficient capital, equipment, facilities, and other resources to provide taxi service in Berks County (the same territory in which Applicant already provides authorized paratransit and limousine services), then such would have been acceptable to Applicant. However, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Conclusions of Law are those set forth in Appendix B, on pages 24-26, of Applicant's Main Brief dated September 15, 2017, and requests that same be adopted by the Honorable Administrative Law Judge.

APPENDIX C  
REPLY TO JOINT PROTESTANTS' PROPOSED ORDER

Applicant disagrees with the Joint Protestants' Proposed Order, as such directly contradicts the entire record and evidence adduced in this proceeding, and such is without foundation in fact and law. Applicant submits that the proper Proposed Order to be adopted herein by the Honorable Administrative Law Judge is that set forth in Appendix C, on page 27, of Applicant's Main Brief dated September 15, 2017, and requests that same be adopted by the Honorable Administrative Law Judge.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document, Reply Brief of Applicant upon the persons listed below, electronically, in accordance with the requirements of 52 Pa. Code § 1.54, 52 Pa. Code § 1.59, 52 Pa. Code § 5.502, and Order #2 Briefing Schedule of the Hon. Angela T. Jones, ALJ:

Anthony Joseph DelGrosso, Esq., Law Office of Anthony J. DelGrosso, P. O. Box 1726, Lancaster, PA 17602 electronically; the Hon. Angela T. Jones, ALJ, Pennsylvania Public Utility Commission, Suite 4063., 801 Market St., Philadelphia, PA 19107 electronically; and Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 electronically eFiling the original.

Dated this 6th day of October, 2017.

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