

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of La Mexicana Express Service, LLC : A-2017-2590784
for the right to transport as a common carrier, by :
motor vehicle, persons upon call or demand, :
between points in Berks County :

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

Through record evidence La Mexicana Express Service, LLC (LME or Applicant) sustained its burden of proof for transport of persons upon call or demand by motor vehicle between points in Berks County. This Initial Decision grants the application of the Applicant.

HISTORY OF THE PROCEEDING

On February 6, 2017, LME filed an application to offer taxi service between points in Berks County with the Pennsylvania Public Utility Commission (Commission or PUC). The application requested a grant of a certificate of public convenience for approval of the following authority:

to transport, as a common carrier, by motor vehicle, persons, upon
call or demand service, between points in Berks County.

By Secretarial letter dated February 9, 2017, it was determined the application was deficient because the check for the filing fee was not payable to the Commonwealth of

Pennsylvania. The Secretarial letter provided direction to correct the deficiency within a timeframe for the application to be considered. The deficiency was corrected.

Notice of the application was provided in the March 18, 2017, *Pennsylvania Bulletin*, 47 Pa.B. 1717. Protests were due on or before April 3, 2017.

On March 30, 2017, Sean M. Cooper, Esquire, counsel for the following motor carriers:

Amigo Cab, LLC;
Express Taxi, LLC; and
Reading City Cab, LLC (RCC),

(collectively, Joint Protestants) filed a timely Protest to the application. The Joint Protestants alleged there was no need for the proposed service, and therefore, the application did not serve a useful public purpose or need but was a duplicate of already existing service to the detriment of the existing carriers.

By Hearing Notice dated May 31, 2017, an Initial Hearing was scheduled for July 13, 2017, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) Angela T. Jones as the presiding officer.

By Prehearing Order dated June 6, 2017, the undersigned provided the procedural rules of this proceeding. The undersigned also referenced the Commission final rulemaking at Docket No. L-2015-2507592 as germane to this proceeding. This final rulemaking eliminated the showing of public need for call or demand applicants and stated the Commission would not consider the effect that a new carrier might have on existing carriers. The undersigned stated that this final rulemaking was approved by the Independent Regulatory Review Commission on April 20, 2017, however, it was not effective until it was published.

On June 28, 2017, a Notice of Withdrawal and Entry of Appearance was filed with the Commission regarding this proceeding. The filing withdrew Mr. Cooper as the attorney

for the Joint Protestants and entered Anthony J. DelGrosso as the attorney for the Joint Protestants.

An Initial Hearing convened on July 13, 2017, as scheduled. The Applicant was represented by Mr. Olsen and presented five witnesses. The Applicant submitted the following 12 exhibits which were all admitted into the record:

- (1) Certificate of public convenience for paratransit service – Applicant Exhibit 1;
- (2) Certificate of public convenience for limousine service – Applicant Exhibit 2;
- (3) 2014 Assessment Report – Applicant Exhibit 3;
- (4) 2015 Assessment Report – Applicant Exhibit 4;
- (5) 2016 Assessment Report – Applicant Exhibit 5;
- (6) 2017 Profit & Loss Sheet – Applicant Exhibit 6;
- (7) Schedule of limousine vehicle fleet – Applicant Exhibit 7;
- (8) List of paratransit vehicle fleet – Applicant Exhibit 8;
- (9) List of drivers – Applicant Exhibit 9;
- (10) Written statement regarding compliance with Commission regulations for driver qualifications, hiring and training – Applicant Exhibit 10;
- (11) Written statement regarding vehicle maintenance – Applicant Exhibit 11; and
- (12) Written statement regarding facilities and operations – Applicant Exhibit 12

The Joint Protestants were represented by Mr. DelGrosso. The Joint Protestants did not present any witnesses or exhibits.

At the conclusion of the testimony, the parties discussed a schedule for briefing the issues presented in this proceeding. By Order dated July 14, 2017, the undersigned confirmed the agreed briefing schedule.

By Order dated July 28, 2017, the undersigned provided the parties with information that the final rulemaking mentioned above became effective June 3, 2017, when it was published in the *Pennsylvania Bulletin* at 47 Pa.B. 3099. The undersigned requested that the parties confirm whether this proceeding remained contested by a date certain. On August 3,

2017, the parties filed a joint letter confirming the proceeding remained contested in compliance with the July 28, 2017, Order.

Both the Applicant and the Joint Protestants filed Main Briefs in compliance with the briefing schedule. On October 6, 2017, the Applicant filed a Reply Brief in compliance with the briefing schedule. The Joint Protestants did not file a Reply Brief. The record contains 81 pages of transcribed testimony. The record closed when the Reply Briefs were due on October 6, 2017, as ordered in Order #2 dated July 14, 2017.

By Order dated October 25, 2017, the undersigned took official notice of the Applicant's insurance filed with the Commission and that there was no evidence of lapses in filed insurance with the Commission. The parties were given a date certain to provide alternative facts or a request to show the facts were not properly noticed. No party either provided alternative facts or requested to show the facts were not properly noticed. The official notice also reopened the record. The record closed on October 31, 2017, which was the deadline to challenge the notification.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Applicant is La Mexicana Express Service, LLC.
2. The Applicant has PUC authority to operate paratransit service in Berks County and has operated for three years since October 8, 2014. Tr. 31-34, 36-37, Applicant Exhibit 1.
3. The Applicant currently has PUC authority to operate limousine service in Berks County and has operated for two years since September 14, 2015. Tr. 31-32, 34-35, 37, Applicant Exhibit 2.

4. La Mexicana Express Service, LLC is owned by Mr. Daniel Caisaguano. Tr. 31.

5. Mr. Daniel Caisaguano is familiar with the Applicant's operations, finances, equipment, employees, drivers, safety, maintenance, and dispatching. Tr. 31.

6. On February 6, 2017, the Applicant filed a timely application for authority to provide call or demand service in Berks County.

7. On March 30, 2017, the Joint Protestants, who operate call or demand service, filed a timely protest to the Applicant's application.

Public Demand or Need¹

8. Fausto Antonio Rodriguez has lived in Reading, Pennsylvania for 24 years and needs call or demand service from West Reading, Sinking Spring, Wyomissing, Leesport and Exeter, which are all in Berks County to go to the hospital, medical appointments and restaurants. Tr. 12-14.

9. Mr. Rodriguez has a need for taxi service normally three times per week. Tr. 14.

10. Mr. Rodriguez has used the Applicant's paratransit service. Tr. 15.

11. Mr. Rodriguez prefers taxi service over the paratransit service because he does not have to call a couple of days ahead of time for the taxi service as he does with the paratransit service. Tr. 15-16.

¹ The PUC's rulemaking, which eliminates the showing of a public demand or need, went into effect on June 3, 2017. See, supra at 3. However, the Application was contested on March 30, 2017, when public demand or need was required to be demonstrated. This information on public demand or need is provided as it is part of the record.

12. Mr. Rodriguez has used Metro Taxi for call or demand service but was not satisfied with the response or wait times of an hour to an hour and a half. Tr. 17.

13. Although Mr. Rodriguez has a driver's license and a car, if his son or wife is using the car, he needs call or demand service for transportation. Tr. 17-18.

14. Jose Rafael Gonzalez has lived in Reading, Pennsylvania since 2008 and has a special needs eight-year-old daughter that requires medical attention at St. Joseph Hospital in Reading, Pennsylvania, and sometimes at Reading Hospital in West Reading, Pennsylvania. Tr. 20-21, 24.

15. Mr. Gonzalez also needs transportation to shop at the Berkshire Mall in Shillington, Pennsylvania. Tr. 21.

16. Mr. Gonzalez has used the Applicant's paratransit service and normally makes an appointment one day in advance of the service, but Mr. Gonzalez prefers call or demand service. Tr. 22.

17. Mr. Gonzalez has used Metro Taxi and Taxi Express, but found Metro Taxi to have about a 30-minute wait time before arriving and a smelly cabin which can irritate his special needs child. Tr. 24-25.

18. Mr. Gonzalez found Taxi Express drivers do not drive well. Tr. 25.

19. Mr. Louise Manuel Jose Batista has lived in Reading, Pennsylvania since 2002 and has a two-year-old daughter that needs taxi service for dentist appointments in West Reading and medical appointments in Reading at St. Joseph Hospital. Tr. 27-28.

20. Mr. Batista needs transportation to shop at the mall in Shillington, Pennsylvania.

21. Mr. Batista uses the Applicant's paratransit service about four times a week. Tr. 28.

Technical and Financial Fitness

22. The Applicant earned intrastate revenue in 2014 for its passenger authority. Tr. 36, Applicant Exhibit 3.

23. The Applicant earned intrastate revenue in 2015 for its passenger authority. Tr. 38, Applicant Exhibit 4.

24. The Applicant earned intrastate revenue in 2016 for its passenger authority. Tr. 39, Applicant Exhibit 5.

25. Mr. Caisaguano's daily duties as the owner include: (1) check the work schedule; (2) check the condition of the vehicles; (3) answer the telephones; (4) talk with employees; and (5) oversee finances. Tr. 40.

26. Mr. Caisaguano's daughter, Erendira Caisaguano, assists him with the finances, the office operations, the upkeep of vehicles, and the qualification of drivers. Tr. 40, 50, 64-65.

27. Erendira Caisaguano is employed by her father as a manager and dispatcher of LME. Tr. 66.

28. The Applicant has an estimated net income of \$13,947.00 for the first quarter of 2017. Tr. 41-42, 68-70, 73-75, Applicant Exhibit 6.

29. The Applicant has a fleet of 26 vehicles for limousine service. Tr. 43, 73 Applicant Exhibit 7.

30. The Applicant has at least five vehicles for paratransit service. Tr. 43, 73, Applicant Exhibit 7.

31. The Applicant will use four of the vehicles in the fleet to provide taxi service if the authority is granted. Tr. 44, Applicant Exhibit 8.

32. The Applicant has five drivers. Tr. 45, Applicant Exhibit 9.

33. The Applicant upholds all Commission regulations regarding qualification and training of drivers including drug and alcohol testing and criminal background checks. Tr. 46-48, 61, 67, Applicant Exhibit 10.

34. The Applicant complies with the Commission regulations regarding appropriate maintenance of the vehicles in his fleet. Tr. 49-50, 61, 67, Applicant Exhibit 11.

35. The Applicant maintains facilities, equipment and records as required by the Commission regulations. Tr. 51-52, 61, 67, Applicant Exhibit 12.

36. The Applicant has never received a cease and desist order, a formal complaint or committed a violation of the Commission's statutes or regulations. Tr. 52, 67.

37. The Applicant will operate 24 hours per day over the course of all seven days in the week. Tr. 53-54.

38. The Applicant will lease his vehicles to the drivers, so the drivers will be paying for use of the vehicles over a specified time. Tr. 54, 58.

DISCUSSION

In this Application, the Applicant has requested the Commission to grant it authority to provide call or demand service in Berks County. The Joint Protestants opposed the

Application. The issue in this proceeding is whether the Applicant sustained its burden of proof that it has the technical and financial fitness and operates safely and legally to warrant approval of its Application.

A. Burden of Proof

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

B. Preliminary Issue

In the Main Brief of the Joint Protestants they stated that at the time the instant Application was filed, RCC had a pending application for authority with the Commission at Docket No. A-2016-2524649. M.B. at 2. Joint Protestants also contended that the Applicant questioned whether RCC had proper standing to protest the Application. *Id.* Joint Protestants provide no citation for this assertion.

Section 5.101(a)(7) of Title 52 of the Pennsylvania Code (Commission’s regulations) states,

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

* * *

(7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101(a)(7)(Emphasis in original). Section 5.101(d) of the Commission’s regulations states, in relevant part, “Preliminary objections shall be filed as a separate document

and within the same 20 days provided in § 5.61...” 52 Pa.Code § 5.101(d). The preliminary objections should be filed within 20 days of the date of service of the protest. 52 Pa.Code § 5.61(a).

An inspection of this docket shows no preliminary objection was filed. As there is no objection to the standing of any protestant, the preliminary issue raised by Joint Protestants is moot and will not be addressed any further.

C. Relevant Legal Principles

Any Commission order granting an application, in whole or in part, must be based on substantial evidence. *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm’n*, 337 A.2d 922, 925 (Pa.Cmwlth. 1975). Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

The term “substantial evidence” has been defined by the various Pennsylvania courts as being such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

Pursuant to the Public Utility Code (Code), 66 Pa.C.S. § 1102(a) states that “it shall be lawful to provide service as a public utility only after applying for and obtaining a certificate of public convenience from the Commission.” More specifically at 66 Pa.C.S. § 1103(a), an application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for service, accommodation, convenience or safety of the public.” In order to make these determinations, the Commission, in a policy statement, set forth

the criteria to be taken into consideration. These factors are found in the Commission regulations at 52 Pa.Code § 41.14; and they are:

§ 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 demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

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

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

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

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

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

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

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

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

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service).

The Commission stated that it promulgated the transportation regulatory policy statement at 52 Pa.Code § 41.14, “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262, 274 (1990) (“*Blue Bird*”).

1. Public Demand or Need

In the final rulemaking at *Reduce Barriers to Entry for Passenger Motor Carrier*, Docket No. L-2015-2507592 the Commission,

acknowledged benefits of increased competition among passenger motor carriers and advances in technology, [and found] it appropriate to reduce the current barriers to entry for qualified applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will service a useful public purpose, responsive to a public demand or need.

47 Pa.B. 3099. This final rulemaking became effective on June 3, 2017, when it was published. Consequently, there is no requirement in this proceeding for the Applicant to comply with 52 Pa.Code § 41.14(a) (serve a useful public purpose, responsive to public demand or need). The Commission also stated that service territory restrictions are not necessary and unless otherwise requested, a successful passenger carrier is granted authority statewide. *Id.*

Although, the Applicant applied for authority to provide call or demand service on February 6, 2017, the proceeding for the authority occurred on July 13, 2017, which was a month after the publication of the final rulemaking to eliminate demonstration of public demand or need by the Applicant. Furthermore, the Joint Protestants did not contest the evidence that was presented by the Applicant regarding public demand or need.

I find that the requirement to show public demand or need to substantiate a useful public purpose is not required.

2. Lack of Propensity to Operate Safely and Legally

In order to approve an application for a certificate of public convenience, following Commission precedent, the Commission must find that an applicant has sustained its burden of proving, by substantial evidence, the requisite technical and financial fitness and propensity to operate safely and legally. Subsection 41.14(b) of the Commission's regulation at 52 Pa.Code § 41.14(b) states that an application may be denied if the record shows that the applicant lacks a propensity to operate safely and legally.

The Applicant holds authority to operate paratransit service in Berks County and has operated as a certificated motor carrier with paratransit authority for three years since October 8, 2014. Tr. 31-34, Applicant Exhibit 1. The Applicant holds authority to operate limousine service in Berks County and has operated its limousine authority since September 14, 2015. Tr. 34-35, Applicant Exhibit 2. The Applicant "is entitled to a 'continuing presumption regarding its fitness to operate,' which includes a presumption that the carrier has a propensity to operate legally." Applicant M.B. at 12, citing *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm'n*, 56 A.3d 49, 58 (Pa.Cmwlt. 2012), *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa.Cmwlt. 1992).

The record evidence fails to show that the Applicant has operated illegally or unsafely. The record evidence shows that the Applicant has complied with the Commission reporting regulations. Applicant Exhibits 3, 4, 5. The record evidence shows that the Applicant has never received a Commission cease and desist Order, a formal complaint or committed a violation of the Commission's statutes or regulations. Tr. 52, 67. The Joint Protestants did not contend that the Applicant lacked a propensity to operate safely or legally.

I find based on the evidence that the Applicant operates safely and legally.

3. Technical and Financial Fitness

Subsection 41.14(b) of the Commission's regulation at 52 Pa.Code § 41.14(b), also requires that an applicant prove its technical and financial ability to provide the proposed service.

a. Contested Fitness Factor—Sufficient Capital, Equipment, Facilities and Other Resources for Proposed Service Territory

The Applicant intends to operate in the applied service territory 24 hours a day and seven days per week. Tr. 53-54. The Applicant also will use about four of its existing vehicles to provide call and demand service. Tr. 44, Applicant Exhibit 8. The Applicant intends to use his same business facilities for the call or demand service if the Application is approved. Tr. 53-54. The Applicant will hire additional staff for the proposed call or demand service if the additional hours of operation warrant additional staffing. Tr. 54. The Applicant plans to lease his vehicles to the drivers for the call and demand service, and therefore, would not be paying a salary to the drivers. Tr. 58.

The Joint Protestants contested whether the Applicant showed it has sufficient capital, equipment, facilities and other resources necessary to service the territory requested. Joint Protestants M.B. at 6. The Joint Protestants asserted, "Applicant has limited capital equipment, and facilities of its own when considering the additional strain that operating a call and demand service throughout Berks [C]ounty would entail." Joint Protestants M.B. at 6. The Joint Protestants stated, "[the] Applicant recognized that it will incur additional expenditures as a result of the increase in authority; however, [it does] not have any documents demonstrating what their estimated increase in revenues, expenses would entail." *Id.*, at 6-7. The Joint Protestants concluded that the Applicant has no new or additional assets to contribute to the call or demand service. *Id.*, at 7.

The Joint Protestants contended that the additional volume of operation on the Applicant's existing equipment and facilities currently used for paratransit and limousine will yield safety and reliability risks on the proposed call and demand service and will negatively

impact the quality and resources for the Applicant's existing authority. *Id.* Joint Protestants assert that the Applicant failed to show a clear idea of the additional expenses necessary to operate call or demand service, and therefore, has failed to meet its burden to show financial fitness. *Id.*

In *Application of Eazor Express, Inc.*, 53 Pa.PUC 374 (1979) the Commission stated more emphasis is placed on economic analysis than on protecting existing carriers from competition. Applicant M.B. at 16. There is nothing in the record that shows the Applicant's existing business will be negatively impacted by providing call or demand service. There is nothing in the record that shows the Applicant requires more than its current capital, equipment, facilities and other resources to subsume the additional call or demand authority. Joint Protestants provide no substantial evidence to show that the safety and reliability of the Applicant's existing authority will suffer if it should add the call or demand service authority. Joint Protestants provide no economic analysis to support the claims and assertions that the Applicant's existing equipment and facilities is insufficient to sustain the additional authority of call or demand service.

Joint Protestants offer conjecture over evidence to rebut whether the Applicant has sufficient capital, equipment, facilities and other resources for call or demand authority as proposed in its Application. I find that the Joint Protestants make assertions without substantial evidence. Therefore, I find that the Joint Protestants arguments are not persuasive.

I find that the Applicant has shown by substantial evidence sufficient capital, equipment, facilities, and other resources necessary to service the requested service territory to satisfy the evidentiary criteria at 52 Pa.Code § 41.14(b)(1). Therefore, I find that the Applicant has sustained its burden of proof regarding sufficiency of equipment, facilities and other resources to operate the proposed call or demand service.

b. Uncontested Fitness Factors

i. Sufficient Expertise to Serve Territory Requested

The Applicant has provided paratransit service in the requested service territory since October 8, 2014. Tr. 31-34, 36-37, Applicant Exhibit 1. The Applicant has provided limousine service in the requested service territory since September 14, 2015. Tr. 31-32, 34-35, 37, Applicant Exhibit 2. The Applicant has reported earned intrastate revenue for all three years that it has had authority to operate in the requested service territory. Applicant Exhibits 3, 4, 5. The Applicant and its potential drivers are familiar with the proposed service areas because they have served it through the Applicant's existing authority. The Joint Protestants have not disputed that the Applicant has sufficient expertise to serve the requested service territory.

I find that the record evidence supports the Applicant satisfied the factor at 52 Pa.Code § 41.14(b)(2)(expertise to service proposed territory). Therefore, I find that the Applicant has sustained its burden in proving its expertise to provide call or demand service as proposed.

ii. Sufficient and Continuous Insurance Coverage

The Applicant shows an insurance liability expense for the first quarter of 2017 in the amount of \$11,220.00. Applicant Exhibit 6. The Commission has evidence of insurance liability that was filed on April 3, 2017, and was effective March 29, 2017. The Protestants did not dispute that the Applicant has sufficient and continuous insurance coverage.

I find that there is substantial evidence which supports the Applicant satisfied the factor at 52 Pa.Code § 41.14(b)(3)(sufficient and continuous insurance). Therefore, I find that the Applicant through the record evidence has sustained its burden in proving it has sufficient and continuous insurance.

iii. Appropriate Driver and Vehicle Safety Plan

The Applicant abides with Commission regulations concerning driver hiring, qualification, and training. The Applicant performs background checks of the drivers, which includes standards for licensing, driver age, driver safety checks, driver criminal history checks, alcohol and controlled substance abuse policies. Applicant Exhibit 10. The Applicant also has a vehicle preventative maintenance plan which checks vehicle age, vehicle mechanical parts and vehicle service standards in compliance with Commission requirements. Applicant Exhibit 11. The Joint Protestants did not challenge whether the Applicant had an appropriate driver and vehicle safety plan.

I find that there is substantial evidence which supports the Applicant satisfied the factor at 52 Pa.Code § 41.14(b)(4)(appropriate driver and vehicle safety plan). Therefore, I conclude that the Applicant has sustained its burden in proving it has an appropriate driver and vehicle safety plan.

iv. Record of Compliance

The Applicant has never received a cease and desist Order, a formal complaint or committed a violation of the Commission's statutes or regulations. Tr. 52, 67. The Joint Protestants did not provide any evidence that the Applicant failed to comply with any Commission regulation, order or statute.

I find that there is substantial evidence which supports the Applicant satisfied the factor at 52 Pa.Code § 41.14(b)(5)(record of compliance). Therefore, I conclude that the Applicant has sustained its burden to prove it has a record of compliance with the Commission's regulations, statutes and orders.

v. Criminal Record and Moral Turpitude

There is nothing in the record that shows the Applicant's owner or its drivers has a criminal record or that the Applicant or its drivers has been involved in any criminal activity and is under the supervision of the court or correctional institution. The Joint Protestants did not provide any evidence to show the Applicant or its drivers was involved in any criminal activity.

I conclude that the Applicant has sustained its burden to prove it has no criminal record or activity of moral turpitude to bar its fitness for the proposed application.

c. Disposition

The record evidence supports a finding that the Applicant is technically and financially fit.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 1101.

2. The Applicant met its burden of proving technical and financial fitness. 52 Pa.Code § 41.14(b).

3. The Joint Protestants failed to sustain their burden that the Applicant lacks the propensity to operate safely and legally. *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm'n*, 56 A.3d, 49, 58 (Pa.Cmwlth. 2012), citing 52 Pa.Code § 41.14(b).

4. By Commission rulemaking there is no requirement that an applicant show a proposed call or demand service provides a useful public purpose or is responsive to a public demand or need. *Reduce Barriers to Entry for Passenger Motor Carriers*, Docket No. L-2015-2507592, published in 41 Pa.B.3099 (June 3, 2017).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Application of La Mexicana Express Service, LLC seeking call or demand service at Docket No. A-2017-2590784 is hereby approved granting the following rights:

for the right to transport as a common carrier, by motor vehicle, persons upon call or demand, between points in Berks County.

2. That the Joint Protest filed by Amigo Cab, LLC; Express Taxi, LLC; and Reading City Cab, is denied.

3. That La Mexicana Express Service, LLC shall not engage in any transportation granted herein until the following is submitted to the Commission:

- a. Form E evidence of bodily injury and property damage liability insurance, and
- b. A tariff establishing just and reasonable rates.

4. That upon completion of the requirements set forth above, a Certificate of Public Convenience is to be issued for the instant limousine service authority evidencing approval for the right to operate as described above.

5. That La Mexicana Express Service, LLC shall comply with the provisions of the Public Utility Code. 66 Pa.C.S. § 101 *et seq.*

Dated: November 1, 2017

/s/

Angela T. Jones
Administrative Law Judge