



THE LAW OFFICE OF:

**ANTHONY
J. DELGROSSO**

**PO Box 62405
Harrisburg, PA 17106**

P:717-836-0055
F:717-833-0755

AJDelGrosso@gmail.com

Pa Id. #316760

March 9, 2018

VIA Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Eagle Ride Taxi Cab, LLC
Docket Number: No. A-2017-2621976

Dear Secretary Chiavetta:

Enclosed is the Main Brief submitted for filing on behalf of Joint Protestants, EZ Taxi, LLC, Express Taxi, LLC, Reading City Cab, LLC, and Amigo Cab, LLC, in the above referenced matter. Copies of the Brief are being served upon the persons in the manner set forth on the Certificate of Service attached to it.

Should you require any additional information or have any inquiries with respect to the above filing, please contact me immediately. Thank you for your assistance.

Very truly yours,

Anthony J. DelGrosso

AJD/Enclosure

Cc: David A. Salpa, J.
Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of	:	Commission Docket No.
Eagle Ride Taxi Cab Limited	:	A-2017-2621976
Liability Company	:	

MAIN BRIEF OF JOINT PROTESTANTS EZ TAXI, LLC; EXPRESS TAXI, LLC; and AMIGO CAB, LLC

NOW COMES Joint Protestants EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC; (“Joint Protestants” or “Protestants”), and Pursuant to the February 6, 2018 Briefing Order of the Honorable Administrative Law Judge David A. Salapa (“ALJ Salapa”) file this Main Brief in opposition to the Application of Eagle Ride Taxi Cab, LLC (“Applicant”).

I. PROCEDURAL HISTORY

On or about August 21, 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 exchanged, ALJ Salapa conducted the initial hearing in this matter on February 6, 2017. A briefing schedule was established at the conclusion of the hearing and Joint Protestants respectively file this Main Brief in accordance with that Briefing Order.

II. SUMMARY OF ARGUMENT

Applicant has failed to offer substantial evidence to demonstrate that it is financially fit to operate. Applicant’s financial statements and evidence concern only the personal mean’s of Applicant’s sole member, David A. Tenwha. Applicant admits that the service will rely on the existing assets of Mr. Tenwha’s other business(es), however, applicant has not offered any financial evidence demonstrating that Mr. Tenwha’s other ventures are capable of financially

supporting the additional financial burden of the proposed call and demand service. Furthermore, Applicant has also indicated that it has a propensity to operate illegally, by proposing to solicit and service customers through the use of digital applications and networks to facilitate pre-arranged rides.¹

III. 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

¹ Applicant appears to propose to operate as a "Dual Motor Carrier" (as defined in 66 Pa. C.S. § 102) servicing both persons in call or demand and transportation network carrier services but has not detailed any intention to seek additional authority from the Commission to operate as such.

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.

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 the requisite financial fitness to operate the taxicab service.

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 the taxicab business from an office facility at 439 North Duke Street, Lancaster, Pennsylvania, which is currently used for his accounting business. N.T. 13. Applicant also admits that he will be utilizing the employees of his other business(es) to support the taxicab operation. N.T. 15-17, 34, 41. However, Applicant has not put forth any evidence demonstrating the financial fitness of his other business(es) sufficient to show they are capable of supporting the taxicab operation. Applicant's Statement of Financial Position (Exhibits No. 6) only reflects the financial position of its sole member, Mr. David Tenwha, and not the financial position of the Applicant itself. N.T. 37-39. Furthermore, Applicant admits that Exhibit No. 6 does not include the assets and liabilities of Mr. Tenwha's other businesses upon which the cab company will rely. N.T. 40.

Applicant has selectively put forth financial evidence demonstrating the assets of Mr. Tenwha, while excluding evidence of liabilities that relate to his other businesses. Because Applicant has testified extensively about the nature and extent to which the taxicab operation will rely on the support of Mr. Tenwha's other ventures, the Applicant cannot meet its burden of proof without proffering a complete accounting of the financial fitness of these other ventures upon which the taxicab business will rely. The only evidence regarding the financial fitness of Mr. Tenwha's other business(es) was his statement that his accounting service, BS and DS, is "successful and profitable". N.T. 12.

Further, Applicant submitted a projected income statement (Exhibit #7) which detailed the projected revenue and expenses for the taxicab operation. Applicant testified that it intends to operate from 6a.m. to 10p.m. at least six days per week. N.T. 15, 34. Applicant also testified that it will have a dispatcher available on call for all the hours that it is open for business. N.T. 41. When Mr. Tenwha was asked to explain the basis for the \$600 projected monthly wages expense on Exhibit #7, he responded that the basis for this number was because he already had existing employees (for his other businesses) which were already paid and he only needed to account for an additional \$2.50 per hour over their hourly rate to pay them for the extra work they do for Eagle Ride. N.T. 42 Given Applicant's prior testimony concerning his hours of operation, it intends to operate for at least 14 hours per day or 84 hours per week (6x14). Even considering Applicant's explanation that the wage figure of \$600 monthly is based only the apportioned additional wage rate of \$2.50 per hour, this would represent additional wages of \$210.00 per week (84 x \$2.50). Taken over course of the entire year, this would represent \$10,920 in annual apportioned wages, or \$3,720 more than the \$7,200 reported by Applicant on Exhibit 7. This is not an insubstantial amount especially considering that Applicant was already projecting a loss in the amount of \$3,228

for its first year of operation. Applicant's testimony concerning the basis for the projections clearly demonstrate the inaccuracy of the figures represented in Exhibit #7. When viewed together with the questionable inclusion (or exclusion) of finances on Exhibit #6, Mr. Tenwha's financial background notwithstanding, the Applicant has not demonstrated that it possesses the financial fitness to sustain the taxicab operation and both Exhibits #6 and Exhibits #7 should be excluded from consideration.

2. Applicant has indicated that it intends to solicit and service customers by way of a digital network but has not sought concurrent authority to operate as a "Dual Motor Carrier".

When evaluating an application, the Commission, may withhold operating authority if the record demonstrates that the applicant lacks a propensity to operate safely and legally. 52 Pa. Code §41.14(b). Applicant is seeking authority to operate as a "call and demand" taxicab service. Call and demand services are generally classified in 52 Pa. Code § 29.13(2) "Call or demand service. Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, when the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both." Section 29.13 was amended under the Public Utility Code, 66 Pa. C.S. § § 501, 1102, 1103 and 1501. These amendments provided for a new classification of carrier – the Transportation Network Company – which is defined as "A person or entity licensed by the commission to operate a transportation network service in this Commonwealth and that uses a digital network to facilitate prearranged rides." 66 Pa. C.S. Section 102.

Applicant testified that it intends to solicit and service customers who request services by way of electronic mail, social media, and the WhatsApp Messenger Application. N.T. 15-16; Applicant Exhibit No. 2, Section 3. Applicant also submits that it will install the WhatsApp

application on each of its driver's mobile phones, which will transmit messages with Google map waypoints of a particular customer's location. Ibid.

Applicant has affirmatively indicated its intention to operate similar to a network transportation company but has not sought approval from the Commission to operate as such. It does not appear that Applicant is even aware of the requirement to register as a Network Transportation Company in order to operate as it has proposed, let alone indicated its intention to seek approval to operate as a "Dual Carrier" as defined in 66 Pa. C.S. Section 102. Therefore, Applicant has demonstrated that it intends to operate without regard to the established conditions and regulations promulgated by the Commission. For this reason, Joint Protestant's respectfully submit that Applicant has demonstrated a propensity to operate illegally.

V. CONCLUSION

Applicant has failed to meet its evidentiary burden under 52 Pa. Code § 41.14(a) and (b) of the Public Utility Commission's Regulations. Specifically, Applicant has not put forth substantial evidence upon which a fact finder can determine that it is financially capable of operating the taxicab business given that Applicant has not presented any evidence regarding the financial fitness of the other entities with which Applicant's business will be inextricably intertwined. Furthermore, Applicant's proposed method of operation and solicitation of customer requests does not comport with the type of authority sought by the Applicant, and as a result, demonstrates the Applicant's propensity to operate illegally.

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

Date: March 9, 2018

Respectfully Submitted,



Anthony J. DelGrosso, Esq.
Law Office of Anthony J. DelGrosso
PO Box 62405
Harrisburg, PA 17106-2405
P: 717.836.0055 | F: 717.833.0755
ajdelgrosso@gmail.com
Counsel for Joint Protestants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : Commission Docket No.
Eagle Ride Taxi Cab Limited : A-2017-2621976
Liability Company :

CERTIFICATE OF SERVICE

Pursuant to the Commission's Rules of Procedure, I hereby certify that on this 9th day of March, 2018, I served the following parties with the foregoing *Main Brief of Joint Protestants* via the means listed below:

Via Email and U.S. First Class Mail:

Eagle Ride Taxi Cab Limited, Limited Liability Company
c/o: Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellot, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101

Via Email:

The Honorable David A. Salapa
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105
dsalapa@pa.gov

Date: March 9, 2017

Respectfully Submitted,



Anthony J. DelGrosso, Esq.
Law Office of Anthony J. DelGrosso
PO Box 62405
Harrisburg, PA 17106-2405
P: 717.836.0055 | F: 717.833.0755
ajdelgrosso@gmail.com
Counsel for Joint Protestants

PROPOSED FINDINGS OF FACT

1. Applicant is Eagle Ride Taxi Cab, LLC. On or about August 30, 2017, Applicant filed an application for authority to provide call or demand service within an airline distance of 15 miles of the City of Lancaster.
2. The Commission caused notice of this application to be published in the Pennsylvania Bulletin Dated September 30, 2017 at 47 Pa.B. 6155.
3. The notice stated that the deadline for filing protests was October 16, 2017.
4. On October 12, 2017, EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC filed their joint protest.
5. Joint Protestants EZ Taxi, LLC and Express Taxi, LLC; Reading City Cab, LLC, and Amigo Cab, LLC provide call or demand service in Lancaster County and filed a timely Protest to the Application.
6. Eagle Ride is a domestic limited liability company created on June 15, 2017 and registered with the Pennsylvania Department of State at Entity No. 6568708. N.T. 9.
7. Mr. David A. Tenwha is the owner and manager of Eagle Ride.
8. Mr. Tenwha also owns and operates an accounting service, Business Support and Development Services, LLC (“BS and DS”), which currently employs six people.
9. Applicant intends to operate the taxicab business from an office facility at 439 North Duke Street, Lancaster, PA, which is currently used for Mr. Tenwha’s accounting business. N.T. 13.
10. Applicant intends to operate from 6:00 a.m. until 10:00 p.m., at least six days per week. N.T. 15, 34, 41.

11. Applicant intends to solicit customer requests and facilitate rides by using various digital network applications including social media, email, and the WhatsApp mobile application. N.T. 15-16; Applicant Exhibit No. 2, Section 3.
12. Applicant intends to utilize employees currently employed by the accounting business operated by Mr. Tenwha. N.T. 15-17.
13. Applicant presented a “Statement of Financial Position”, however, Mr. Tenwha admits that the statement shows only personal assets and liabilities and not the assets and liabilities of Applicant or his other accounting business. N.T. 37-39, Applicant Exhibit No. 6.
14. Applicant also offered a projected revenue/expense statement demonstrating that Applicant expects a financial loss of \$3,228 in the first year of operation. Applicant Exhibit No. 7.
15. Applicant believes that because he will be utilizing employees from his accounting business, he will only incur additional wages of \$600 month for services those employees perform for the taxi business, or \$2.50 per hour extra. N.T. 46-47.
16. Applicant will employ a dispatcher to be on call during all hours of operation. N.T. 41.
17. Applicant’s projected monthly wage expense of \$600.00, is substantially less than the additional \$2.50 per hour, considering that the taxi service proposes to operate at least 84 hours per week.
18. Applicant’s Exhibit #7, does not show the projected income and expenses for the other business with which Applicant intends to share employees.
19. Applicant does not currently, and have not previously, held any certificates of public convenience for transportation.

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 financial fitness to provide the proposed service because it has admitted it will rely upon the assets of another business but has not provided any evidence of the financial fitness of the other business.
7. Applicant failed to demonstrate that it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
8. Applicant has demonstrated a propensity to operate outside the scope of the requested authority for call and demand service and has proposed to operate similar to a Transportation Network Company.
9. The Application currently under consideration should be denied for failure to meet the requirements of 52 Pa. Code § 41.14.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of	:	Commission Docket No.
Eagle Ride Taxi Cab Limited	:	A-2017-2621976
Liability Company	:	

ORDER

AND NOW, this _____ day of _____, 2017, it is hereby ORDERED and DECREED that the Application of Eagle Ride Taxi Cab, LLC, to provide call or demand service within 15 air radius miles of the city of Lancaster, is hereby DENIED and DISMISSED for failure to demonstrate the financial ability to reasonably and safely provide the operating authority requested in accordance with 52 Pa. Code §41.14.

BY THE COURT:
