

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of BGP, LLC t/a/ PA Transportation :
Services to transport as a common carrier, by :
motor vehicle, persons in paratransit service from : A-2021-3024182
points in the Counties of Dauphin, Lancaster, :
Lebanon, and York to points in the :
Commonwealth of Pennsylvania and return :

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Decision grants the Application filed by BGP, LLC t/a/ PA Transportation Services (BGP or Applicant) to transport as a common carrier, by motor vehicle, persons in paratransit service from points in the Counties of Dauphin, Lancaster, Lebanon, and York to points in the Commonwealth of Pennsylvania and return, be granted and that the Protest of Keystone Transportation, LLC, be dismissed. Applicant has met its burden of showing, by a preponderance of the evidence, that it is fit to render service and that granting the requested certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public. Further, Protestant has failed to rebut the presumption of financial and technical fitness on the part of the Applicant.

HISTORY OF THE PROCEEDING

On February 16, 2021, BGP filed an Application for approval to expand their territory as a paratransit service carrier in the Commonwealth of Pennsylvania.

On March 6, 2021, Notice of the Application was published in the *Pennsylvania Bulletin* (51 Pa.B. 1294).

On March 19, 2021, Keystone Transportation, LLC (Keystone or Protestant), filed a Protest to the Application.

On April 14, 2021, a hearing Notice for a telephonic hearing in this case was issued setting May 18, 2021, as the date for that hearing.

On May 18, 2021, a telephonic evidentiary hearing convened as scheduled. Bryce R. Beard, Esquire, appeared on behalf of the Applicant. Cory A. Leshner, Esquire, appeared on behalf of the Protestant. The Applicant presented the testimony of its principle, Hiren Patel, and introduced two exhibits that were received into evidence: Applicant's Exhibit No. 1, the Application for Authority, and Applicant's Exhibit No. 2, a proof of insurance. Protestant did not present the testimony of any witness nor did it offer any exhibits.

No briefs were filed by the parties who opted instead to provide oral argument at the conclusion of the evidentiary hearing.

On June 25, 2021, the court reporter filed a 54 page transcript with the Commission along with Applicant's exhibits. The record closed on that date.

This matter is now ready for adjudication.

FINDINGS OF FACT

1. The Applicant is BGP, LLC t/a/ PA Transportation Services, which holds authority from the Commission at Docket No. A-6418826 and is a registered Pennsylvania corporation.

2. Applicant's business address is: 2045 Westgate Drive, Suite100, Bethlehem, Pennsylvania.

3. Keystone Transportation, LLC, is the Protestant in this matter.

4. Keystone is a certificated carrier, authorized to provide paratransit service since 2017 from points in the counties of Dauphin, Cumberland, and York, to points in Pennsylvania, and return.

5. Keystone's authority is found at Docket No. A-6418669.

6. Hiren Patel, the principle of BGP, holds a Bachelor's degree in Finance from Baruch College and has taken various training courses in information technology, after which he worked with various technology and financial firms in the areas of programming and systems administration. Tr. at 6.

7. Mr. Patel oversees the entire operation of BGP, including compliance, training, driving, overseeing the building, and administering human resources, payroll, insurance and financing. Tr. at 7.

8. As of December 31, 2020, BGP has approximately \$750,000 in assets and about \$525,000 in liabilities. Tr. at 10; Applicant's Exhibit 1.

9. BGP has at least two vehicles available to meet its current needs in Lancaster County and surrounding areas for the exclusive use of adult daycare and has three additional vehicles available contingent upon the grant of authority. Tr. at 12; 27.

10. BGP currently leases office space, but it would look for permanent office space if it is able to expand its service. Tr. at 13.

11. BGP currently employs 15 drivers. Tr. at 14.

12. BGP maintains hiring standards for drivers including criminal background checks and a drug and alcohol policy. Tr. 14-15; 20-21.

13. BGP maintains current insurance coverage. Tr. at 17-18; Applicant's Exhibit 2.

14. BGP has had no formal proceedings before the Commission based on a violation of the Code or the regulations of the Commission. Tr. at 20.

15. Mr. Patel has never been convicted of any felony or crime of moral turpitude. Tr. at 20.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Applicant is the proponent of a rule or order and therefore bears the burden of proof. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, the Applicant must present evidence more convincing, by even the smallest amount, than that presented by the Protestant. *Se-Ling Hosiery v. Margulies, supra*.

If a party has satisfied its burden of proof, it must then be determined whether the opposing party has submitted evidence of "co-equal" value or weight to refute the first party's evidence. *Morrissey v. Pa., Dept. of Highways*, 225 A.2d 895 (Pa. 1967). Furthermore, any order of this Commission granting an application, in whole or in part, must be based on substantial evidence. The term "substantial evidence" has been defined by the Pennsylvania Courts as such relevant evidence as 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. *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.

Cmwlth. 1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A. 2d 96 (Pa. Super. 1960).

In order to provide motor carrier service in Pennsylvania, a person or entity must first obtain a certificate of public convenience from the Commission. 66 Pa.C.S. § 1101. Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a) provides in pertinent part:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for service, accommodation, convenience, or safety of the public. ...

In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted.

On December 7, 2017, the Commission issued a Final Revised Policy Statement and promulgated regulations that set forth the evidentiary criteria for evaluating a common carrier application. The applicable regulation, 52 Pa. Code § 41.14, now reads as follows:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications – statement of policy.

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 (emphasis original).

In this matter, the Applicant has applied for paratransit service. A telephonic evidentiary hearing was held on May 18, 2021, after which counsel for each party presented oral argument in lieu of briefs.

Summary of BGP's Argument

BGP is an existing paratransit carrier certified by the Commission to provide service in the Counties of Berks, Bucks, Lehigh, Montgomery, Northampton, and Philadelphia. BGP argued that it has proved, by the preponderance of the evidence, that BGP is technically and financially fit to serve the counties of Dauphin, Lancaster, Lebanon and York under Commission standards, and therefore BGP's Application should be granted. Findings of Fact Nos. 4, 6-15. Mr. Hiren Patel, the President and owner of the Applicant has been operating BGP since 2017. He plans to grow and expand his successful paratransit business into the neighboring counties to meet the paratransit needs of customers, mostly the adult elderly population, being transported to and from adult daycare centers to their homes while providing safe and reliable service to the public. Findings of Fact Nos. 9-10. BGP has immediate plans to deploy 24 drivers, equipment and lease office space from a centralized location in Mountville, Pennsylvania in order to support the instant Application into the expanded area. Tr. at 39-40.

BGP argues that Protestant, an economically-motivated party who is a direct competitor to BGP, failed to present any evidence to meet its burden of rebutting BGP's presumed fitness, let alone presenting substantial evidence that BGP is neither technically nor financially fit to serve Dauphin, Lancaster or Lebanon Counties. Tr. at 46.

Summary of Keystone's Argument

Keystone concedes that Applicant has satisfied its burden as it relates to Lancaster County, but argues that when viewed as a whole, the Applicant has not provided any evidence or any indication that it is prepared or has any plan to actively engage in transportation in Dauphin, Lebanon and York County. Keystone contends that service in Central Pennsylvania is geographically unique and that carriers from other portions of the Commonwealth regularly seek to enter the Central Pennsylvania market but fail because of their lack of local control. Keystone criticizes what it claims is the intent of Applicant to employ drivers from the eastern portion of the state and to house their operations temporarily at a location at which two vehicles will be stationed and will exclusively service that location, concluding that the public will not be able to utilize Applicant in Dauphin, Lebanon or York Counties as the vehicles they intend to utilize will be exclusively utilized by the adult day care in Lancaster County. Keystone asserts that this will harm the public and have a significant impact on Keystone and its affiliates if they are left, "to scramble to pick up the pieces when non-local carriers such as BGP do not meet the market demand that they say they're going to meet." Tr. at 49. Keystone criticizes BGP saying that it has no present plans to operate in Dauphin, Lebanon or York County, that they have no present plans to place any facilities in Dauphin, Lebanon and York County, and that they have no present plan to allocate any staff to Dauphin, Lebanon or York County. Tr. at 48-50.

Disposition

Section 1103(a) of the Code provides that an application for a certificate of public convenience should be granted only if the PUC finds 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). An applicant must also satisfy the specific requirements the PUC has

promulgated in its regulations at 52 Pa. Code § 41.14. BGP, as the party requesting approval of the Application, must prove by a preponderance of the evidence that the requirements of Section 1103(a) and Section 41.14 are met.

First, I note that Applicant already holds authority from the Commission. “For an existing carrier there is a rebuttable presumption of technical and financial fitness.” See *Application of Morgan Moving & Storage, Ltd.*, A-00104711F0001AMA (Order entered December 16, 2008) Citing, *V.I.P. Travel Services, Inc.*, 56 Pa. P.U.C. 625, 631 (1982); *see also Application of Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262 (1990); *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n.*, 601 A.2d 1308 (Pa. Cmwlth. 1991). Despite this presumption, Applicant provided evidence of its fitness through the testimony of its principle, Mr. Hiren Patel and Applicant’s Exhibits 1 and 2. I find the testimony of Mr. Patel credible. Taken as a whole, his testimony, supported by Applicant’s exhibits received into the record, demonstrates that the Applicant is fit to render the requested service.

Protestant Keystone offered no witnesses nor any documentary evidence to rebut the presumption of fitness on the part of the Applicant, nor in its cross-examination of Mr. Patel did the Protestant provide such a rebuttal. Keystone has, therefore, not rebutted the presumption of fitness. See *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm’n.*, 56 A.3d 49 (Pa. Cmwlth. 2012).

Keystone’s contention that the public will be harmed by the grant of authority to BGP is entirely conjectural and unsupported by any evidence of record. Keystone’s arguments also miscast BGP’s plans and present those plans as frozen in time rather than as a progression, which is not a correct characterization. BGP was very clear that its physical expansion is contingent on the grant of additional authority and will be gradual. This is not uncommon in motor carrier proceedings. The fact is that BGP demonstrated that it has the financial and technical fitness to render that expanded service. The assertion that BGP will fail and that Keystone and other carriers will have to, “scramble to pick up the pieces,” is opinion unsupported by any evidence. Keystone’s argument in this regard is based on a somewhat convoluted premise, not supported by any evidence, that the prospective physical location of

BGP's drivers and facilities would preclude efficient or even viable operations. This contention is only theoretical, and Keystone did not produce any sort of evidence—such as a factually based case study—to support the theory. The contention sounds ominous, but it is without substance.

The Applicant has presented a case in which it has established by a preponderance of the evidence that it is financially and technically fit to render the service for which it has requested authority, and the Application will be granted. The Applicant is an established motor carrier with experience in the type of paratransit service it offers. Applicant is just seeking to expand its operating area. The Applicant is not required, as the Protestant argues, to have available the vehicles, infrastructure and staff required to serve the area of expanded operations. The Applicant need only show (and here, has shown), the financial and technical fitness to accomplish that expansion. The presumption of technical and financial fitness was not rebutted by the Protestant in that the Protestant failed to demonstrate that the Applicant lacks the financial and technical fitness necessary to render service, therefore, the Protest is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and parties to, this case. 66 Pa.C.S. §§ 1101, 1103.

2. The proponent of a rule or order carries the burden of proof. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc den.*, 602 A.2d 863 (Pa. 1992).

3. The Applicant has the burden of proving it meets the legal standard for evaluating an application for common carrier authority under the Public Utility Code. 66 Pa. C.S. §§ 102, 1101-1103.

4. For an existing carrier there is a rebuttable presumption of technical and financial fitness. *Application of Morgan Moving & Storage, Ltd.*, A-00104711F0001AMA

(Order entered December 16, 2008) (citing, *V.I.P. Travel Services, Inc.*, 56 Pa. P.U.C. 625, 631 (1982)).

5. The Applicant has proved by a preponderance of the evidence that it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested. 52 Pa. Code § 41.14(1).

6. The Applicant has proved by a preponderance of the evidence that Applicant and its employees have sufficient technical expertise and experience to serve the territory requested. 52 Pa. Code § 41.14(2).

7. The Applicant has proved by a preponderance of the evidence that it 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. 52 Pa. Code § 41.14(3).

8. The Applicant has proved by a preponderance of the evidence that it has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards in Chapter 29 (relating to motor carriers of passengers). 52 Pa. Code § 41.14(4).

9. The Applicant has established, by a preponderance of the evidence, that it is in compliance with the Public Utility Code, the Commission's regulations, and the Commission's orders. 52 Pa. Code § 41.14(5).

10. The Applicant has established, by a preponderance of the evidence, that its principle has not 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(6).

11. Applicant has met its burden of showing, by a preponderance of the evidence, that it is fit to render service and that granting the requested certificate of public

convenience is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103.

12. The Protestant has failed to rebut the presumption that Applicant is financially and technically fit to render service. *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm'n*, 56 A.3d 49 (Pa. Cmwlth. 2012).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Application of BGP, LLC t/a/ PA Transportation Services to transport as a common carrier, by motor vehicle, persons in paratransit service from points in the Counties of Dauphin, Lancaster, Lebanon, and York to points in the Commonwealth of Pennsylvania and return at Docket No. A-2021-3024182 is granted.

2. That the Protest Keystone Transportation, LLC, at Docket No. A-2021-3024182 is dismissed.

3. That a certificate of public convenience shall not be issued until the following are submitted to the Commission and approved by the Commission:

a. A Form E, as evidence of bodily injury and property damage liability insurance.

b. A tariff establishing just and reasonable rates.

4. That upon compliance with the foregoing requirements, a certificate of public convenience shall be issued and this case closed.

5. That in the event said Applicant has not, on or before sixty (60) days from the date of the entry of the Commission's final Order in this matter, complied with the requirements hereinbefore set forth, the Application shall be dismissed without further proceedings.

Date: December 15, 2021

/s/
Dennis J. Buckley
Administrative Law Judge