

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : A-2022-3032252
Helping Hands Warming Hearts Transportation LLC :

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision grants Helping Hands Warming Hearts Transportation LLC the authority to transport as a common carrier by motor vehicle persons in paratransit service between points in the City of Philadelphia and Philadelphia and Montgomery counties and return.

HISTORY OF THE PROCEEDINGS

On April 29, 2022, Helping Hands Warming Hearts Transportation LLC (Applicant) filed an Application requesting authority to provide paratransit services to persons who require wheelchair/paratransit transportation to and from doctors' appointments, treatments, hospital visits between points in counties of Philadelphia and surrounding counties of Montgomery, Delaware, Bucks and Chester (Application). On May 5, 2022, Applicant filed Additional Application information which includes a survey from the Pennsylvania Department of Health.

On June 25, 2022, the following Notice was published in the Pennsylvania Bulletin:

A-2022-3032252 HELPING HANDS WARMING HEARTS TRANSPORTATION LLC (611 North 33rd Street, Philadelphia, Philadelphia County, PA 19104) – To transport persons, by motor vehicle, in paratransit service, from points in the counties of Bucks, Chester, Delaware and Montgomery, and the city and county of Philadelphia, to points in Pennsylvania, and return.

52 Pa.B. 3655 (June 25, 2022). The Notice advised that any formal protests, petitions to intervene and answers must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before July 11, 2022. *Id.*

On July 11, 2022, a Joint Protest was filed by Bucks County Transport, Inc., Bux-Mont Transportation, Inc., Easton Coach Company, Suburban Transit Network, Inc., Tri County Transit Service, Inc., and Rover Community Transportation, Inc. (Joint Protestants). Joint Protestants averred that Applicant had not made a sufficient and adequate showing that it possesses, or is likely to possess, sufficient technical and financial ability to allow the Commission to find or determine that granting a certificate of public convenience to the Applicant is necessary or proper for the service, accommodation, convenience or safety of the public pursuant to Section 1103(a) of the Public Utility Code. 66 Pa.C.S. § 1103(a). Joint Protestants also averred that Applicant has not made a sufficient and adequate showing that it is likely to operate safely when providing paratransit service.

On August 2, 2022, a Call-In Telephone Hearing Notice was issued, setting a hearing for September 20, 2022. A prehearing order was issued on August 10, 2022. On September 12, 2022, Christopher P. Fiore, Esquire, filed a Notice of Appearance on behalf of Applicant.

The hearing was held as scheduled on September 20, 2022. Attorney Fiore appeared on behalf of the Applicant and called Candice Ray as a witness. Joint Protestants were represented by Tanya Leshko, Esquire and John F. Povilaitis, Esquire.

The following exhibits were admitted into the record:

Applicant Exhibit 1 – Four verified Statements
Applicant Exhibit 2 – Application Checklist
Applicant Exhibit 3 – Business Plan
Applicant Exhibit 4 - Policies
Applicant Exhibit 5 - Personal Financial Statements
Applicant Exhibit 6 - IRS Documents

Protestant Exhibit 1- Website Printout

At the beginning of the hearing, counsel for the Applicant stated that, “for judicial economy,” the Applicant was seeking to amend its Application. Tr. 7-8. The Application and the Notice published in the Pennsylvania Bulletin stated that the Applicant was seeking to provide paratransit services in Bucks County, Chester County, Delaware County, Montgomery County and the City and County of Philadelphia and return. Counsel stated that the Applicant would amend the Application to include only Montgomery and Philadelphia Counties and return, and file an Amended Application that day.

Counsel for Joint Protestants objected, stating that the hearing was being held for the Application as filed and posited that the Applicant has not demonstrated the fitness to provide service in any service area. Tr. 8. I proceeded with the hearing based on the Application filed and Notice published. Tr. 8-9. The Applicant did not file an Amended Application.

The record closed on October 15, 2022, upon receipt of the 58-page transcript.

FINDINGS OF FACT

1. The Applicant is Helping Hands Warming Hearts Transportation LLC.
2. A protest was filed by Bucks County Transport, Inc., Bux-Mont Transportation, Inc., Easton Coach Company, Suburban Transit Network, Inc., Tri County Transit Service, Inc., and Rover Community Transportation.

3. Applicant's business address is 611 North 33rd Street, Philadelphia, Pennsylvania 19104. Tr. 10.

4. The business address is a 2,000 square foot office space with four offices, a meeting space, fax and telephone and security for the building includes an ADT security system and indoor and exterior cameras. Tr. 10-11.

5. The owners of the Applicant are Candice Ray and Leikicha Phillips. Tr. 11.

6. Neither owner of the Applicant has been convicted of a felony or subject to supervision by a court or correctional facility. Tr. 11.

7. Ms. Ray owns a home care and home-delivered meals business that services meals to seniors and people with disabilities in Philadelphia and surrounding counties. Tr. 11, 47-48; Joint Protestants Exhibit 1.

8. Ms. Ray has networked with other transportation companies to obtain information and guidance, worked for ten years as a consultant and worked for twenty years in health care. Tr. 20-21.

9. Because she operates an existing business, Ms. Ray has access to lines of credit and loans if necessary. Tr. 21.

10. Ms. Ray currently has banking relationships with various banking institutions. Tr. 43.

11. Ms. Ray is familiar with the aging and disabled population to whom she seeks to provide paratransit services. Tr. 21.

12. Ms. Phillips owns a title and tag company in Philadelphia and also has experience in sales and is an insurance underwriter. Tr. 13.

13. Ms. Ray will serve as administrator of the paratransit operations if the Application is approved. Tr. 11.

14. Ms. Phillips will serve as back-up administrator of the paratransit service, as needed. Tr. 13.

15. Ms. Ray and Ms. Phillips will serve as dispatchers, and they plan to hire a full-time dispatcher as well. Tr. 12.

16. Ms. Ray at the time of the hearing had patients that she served in Montgomery County and has spoken with persons in specific zip codes that she services now that have an interest in using the subject transportation service, particularly Philadelphia and Montgomery County. Tr. 14.

17. The Applicant owns two vehicles. They are:

- a. A Ford Ecobus, which has an automatic wheelchair lift and can hold four passengers seated and four wheelchairs.
- b. A 2015 Ford Transit Van that can seat ten passengers.

Tr. 15.

18. Vehicles will be housed at a garage where a mechanic can service them, 12 minutes from the office. Tr. 24.

19. The garage where the vehicles will be housed is secure and has security cameras. Tr. 24.

20. The Applicant had two employees at the time of the hearing. Tr. 16.

21. The Applicant plans to have a total of eight employees – the two owners, four drivers and a full-time dispatcher and a part-time dispatcher – as well as a consultant. Tr. 15-16.

22. The Applicant driver hiring criteria will require the drivers be at least 21 years of age with five years of driving experience, have no criminal history and no DUIs or convictions related to healthcare or issues with the aging population. Tr. 18.

23. If a driver's license is suspended, it will be automatic grounds for termination. Tr. 25.

24. Drivers hired will be CPR/AED certified, take EVOC (Emergency Vehicle Operation Course) and defensive driving courses and have to take a drug test within three hours of any accident in which a driver is involved. Tr. 18.

25. All drug testing requirements are modeled after the U.S. Department of Transportation. Tr. 18.

26. At the time of the hearing, the Applicant had professional and general liability insurance. Tr. 18.

27. The Applicant has cost quotes and commercial insurance for the transportation vehicles "ready to go" after approval of the Application. Tr. 19.

28. The owners have the financial ability to operate the paratransit business. Applicant Exhibit 5.

29. Clients of Ms. Ray's current business provided statements expressing concerns with their current transportation providers and supporting the Application and need for the services proposed to be provided. Tr. 32; Applicant Exhibit 1.

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*, 70 A.2d.

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 Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A. 2d 96 (Pa. Super. 1960).

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 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.

66 Pa.C.S. § 1103(a).

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.

In this matter, the Applicant has applied for paratransit service. As to factor one, sufficient capital, equipment, facilities and other necessary resources, the Applicant has two

vehicles, including a van which can accommodate wheelchairs. Tr. 15-16. The financial statements show that there is capital available to support a paratransit service. Applicant Exhibit 5.

In regard to the second factor, experience and expertise, one of the owners, Ms. Ray, has a home care and meal delivery business in which she has gained experience with the population that she wishes to serve – the elderly and those with disabilities. FOF 7. In her business, she is also familiar with the Montgomery County and Philadelphia areas in which she currently has clients and which she seeks to serve if given paratransit authority.

As for the ability to secure and maintain the appropriate insurance coverage, factor three, the Applicant has professional and general liability insurance for her current operations. Tr. 19. She also has obtained quotes for and is prepared to obtain insurance for the paratransit service. *Id.* Additionally, the other owner of the Applicant, Ms. Phillips, has experience in the insurance industry. Tr. 13. There appear to be no barriers to the Applicant obtaining and keeping the necessary insurance.

The evidence also supports a finding that the Applicant meets the requirements of the fourth factor, having an appropriate plan to comply with the Commission's driver and vehicle safety regulations and standards. The extensive business plan developed by the Applicant contains detailed strategies to comply with the Commission's driver and vehicle safety standards. Applicant Exhibit 4. Additionally, Ms. Ray credibly testified that she has been networking with and has sought and obtained advice and guidance from existing paratransit companies and a consultant who advises such companies. Tr. 17, 21.

As far as safe operation, the Applicant has engaged a consultant to advise on how to safely operate the paratransit service. Tr. 23. The Applicant also has access to two mechanics, including one who has twenty years of experience with SEPTA, to assure that vehicles are up to code and maintained properly. Tr. 23. Nothing in the record suggests that the Applicant is unable to safely operate the service.

Detailed in the Applicant's business plan are methods to comply with Commission directives. Applicant Exhibit 3. Personnel policy documents also support a finding that the Applicant can ably operate a paratransit service. Applicant Exhibit 4.

As to factor five, compliance with 66 Pa.C.S. (relating to the Public Utility Code), the Applicant has not had authority granted by the Commission to operate under its auspices and therefore there is no evidence that the Applicant cannot comply with the Public Utility Code or Commission Orders. Also, the record does not contain any showing that the Applicant has not complied with regulations and directives that apply to its current senior and disabled home care and meal delivery business.

Factor six requires consideration of whether the 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. Ms. Ray credibly testified that neither she nor Ms. Phillips have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution. Tr. 11. Additionally, the business plan and policies of the Applicant and the testimony of Ms. Ray show that the Applicant will not hire as drivers persons with criminal histories. FOF 22, FOF 23; Applicant Exhibits 3,4.

While the assertion of the Joint Protestants was that the Applicant has not demonstrated that it possesses, or is likely to possess, sufficient technical and financial ability to provide paratransit service under the authority of the Commission, evidence in the record demonstrates to the contrary. However, the authority granted here will be limited to Montgomery County, Philadelphia County and the City of Philadelphia.¹

During her testimony, Ms. Ray acknowledged that she has two vehicles for the paratransit service and therefore will not offer her service beyond Philadelphia and Montgomery county. Tr. 22. She also stated that she is primarily interested in providing such service to her

¹ The amendment made by counsel for the Applicant during the hearing is essentially allowed. The Applicant is not seeking to expand beyond the areas included in the notice and therefore there is no prejudice to the Joint Protestants or any interested person. *See* 52 Pa.B. 3655 (June 25, 2022).

current client base in the Montgomery and Philadelphia County areas at this time and others in these areas. Tr. 14-15, 40. Also, all of the persons providing statements in support of the Application stating that they are in need of the service the Applicant intends to provide reside in Philadelphia, and Ms. Ray testified that she currently services individuals and has discussions with facilities to provide the applied for services in Montgomery and Philadelphia counties. Tr. 14-15, 22. As previously noted, counsel for the Applicant also stated that the Applicant is interested in operating in the City of Philadelphia and Philadelphia and Montgomery counties. Tr. 7-8. Further, Ms. Ray testified that she is not looking to service the public in all of the areas but seeks to provide paratransit service to her current clients that show a need and others in Philadelphia and Montgomery counties in specific zip codes. Tr. 14, 15.

The Application will be granted to the Applicant for authority to transport as a common carrier by motor vehicle persons in paratransit service between points in Montgomery County and the City and County of Philadelphia and return.

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).
3. 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).
4. 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.

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 sought, namely between points in Montgomery County and the City and County of Philadelphia and return. 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 sought. 52 Pa. Code § 41.14(2).

7. The Applicant has proved by a preponderance of the evidence that it 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 principal 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. The Applicant has not shown that it should be granted authority to provide paratransit services to persons in the counties of Delaware, Bucks and Chester. 66 Pa.C.S. § 1103.

12. Applicant has met its burden of showing, by a preponderance of the evidence, that it is fit to render paratransit service in the City of Philadelphia and Philadelphia and Montgomery counties 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request for authority to provide paratransit services between points in counties of Delaware, Bucks and Chester is dismissed.
2. That Applicant, Helping Hands Warming Hearts Transportation LLC is granted authority to transport as a common carrier, by motor vehicle, persons in paratransit service from points in the City of Philadelphia and Philadelphia and Montgomery counties and return.
3. That the Joint Protest is dismissed.
4. That a certificate of public convenience shall not be issued until the following are submitted to the Commission and approved by the Commission:
 - a. Form E, as evidence of bodily injury and property damage liability insurance.
 - b. A tariff establishing just and reasonable rates.

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

6. 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: January 6, 2023

/s/
Darlene Davis Heep
Administrative Law Judge