

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Blackhorse Empire LLC	:	
for the right to begin to transport,	:	
as a common carrier, by motor vehicle,	:	
persons in paratransit service, between points in	:	A-2024-3050285
the Counties of Berks, Bucks, Chester,	:	
Delaware, Huntingdon, Montgomery,	:	
Susquehanna, and the City and County of	:	
Philadelphia	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision approves the Application of Blackhorse Empire LLC for the right to begin to transport as a common carrier, by motor vehicle, persons in paratransit service, between points in the Counties of Berks, Bucks Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and the City and County of Philadelphia, finding that the Applicant successfully carried the burden of proving, by a preponderance of the evidence, that it is technically and financially fit to provide said service.

**HISTORY OF THE PROCEEDING**

On July 16, 2024, Blackhorse Empire LLC (the Applicant or BHE) filed an Application with the Pennsylvania Public Utility Commission (Commission) for the right

to begin to transport as a common carrier, by motor vehicle, persons in paratransit service, between points in the Counties of Berks, Bucks Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and the City and County of Philadelphia. The Commission caused notice of this Application to be published in the September 21, 2024 *Pennsylvania Bulletin* at 54 Pa.B. 6090 (Sept. 21, 2024), specifying a deadline of October 7, 2024, for filing protests.

On October 7, 2024, Bucks County Transport, Inc., Bux-Mont Transportation. Inc, Easton Coach Company, Suburban Transit Network, Inc. and Tri County Transit Service, Inc. (Joint Protestants) filed a Joint Protest to the Application.

By Hearing Notice dated October 22, 2024, the Commission scheduled a telephonic hearing on this matter for December 11, 2024, at 10:00 a.m., and assigned the case to me.

A Prehearing Order was issued on November 26, 2024, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on December 11, 2024. Jefferey Feldman, Esq., appeared representing the Applicant. Tanya Leshko, Esq., appeared representing the Joint Protestants. At the hearing, counsel for the Applicant requested a continuance in order to better represent his client. The evidentiary hearing was continued.

By Further Call-in Telephonic Hearing Notice dated December 13, 2024, the Commission scheduled a telephonic hearing on this matter for March 5, 2025, at 10:00 a.m.

The further hearing convened as scheduled on March 5, 2025. Jeffrey Feldman, Esq., appeared representing the Applicant and presented the testimony of Sonia Reyes, Edith Hernandez, and Sylvester Thomas. The Applicant sponsored 14 exhibits which were admitted into the record in this matter (Applicant Exhibits 1-12, 17, 19). Tanya Leshko, Esq., appeared representing the Joint Protestants and sponsored two cross-examination exhibits which were admitted into the record (Joint Protestants Exhibits 1, 2).

The record in this matter closed upon receipt of my copy of the hearing transcript on March 23, 2025.

#### FINDINGS OF FACT

1. The Applicant is Blackhorse Empire LLC, whose offices are located at 238 North 12<sup>th</sup> Street, Reading, PA 19604. Tr. 45; Applicant Exhibit 3.
2. The Joint Protestants are Bucks County Transport, Inc., Bux-Mont Transportation., Easton Coach Company, Suburban Transit Network, Inc. and Tri County Transit Service, Inc.
3. The Applicant is a limited liability company registered with the PA Department of State since October of 2016. Tr. 46-47; Applicant Exhibit 1.
4. The Applicant is owned entirely by Sylvester Thomas who is the sole member of the LLC. Tr. 45, 48; Applicant Exhibit 2.

5. The Applicant is a Commission certificated common carrier of persons in group and party service in vehicles seating more than 15, at Docket No. A-6222038. Tr. 57-58; Applicant Exhibit 3.

6. The Applicant received its Certificate of Public Convenience at Docket No. A-6222038 on December 29, 2023. Applicant Exhibit 3.

7. The Applicant has one party bus, and three drivers employed for its party business. Tr. 58-59, 90.

8. In early 2025, the Applicant, doing business as BHE Trucking, received its license and permits from U.S. Department of Transportation to transport freight across state lines. Tr. 62-64; Applicant Exhibit 5.

9. The Applicant's trucking operation consists of two 18-wheeler trucks and five drivers equipped with CDL licenses. Tr. 49, 51; Applicant Exhibit 5.

10. BHE has approximately \$15,000 in its bank account to cover its various business expenses. Tr. 78-79, 137-38; Applicant Exhibits 6, 7.

11. Mr. Thomas has between \$30,000 and \$35,000 in personal funds that he can provide in service of the new business. Tr. 78-79, 137-38; Applicant Exhibits 6, 7.

12. BHE owns the building at 238 North 12th Street, Reading, Berks County, PA 19604 where its offices are located and where it parks its vehicles. Tr. 45; Applicant Exhibit 3.

13. BHE has not purchased any vehicles while awaiting the outcome of its paratransit Application. Tr. 97-98.

14. BHE has access to a 2019 Dodge minivan with a handicap lift, which is owned by Donald Damico, one of BHE's drivers. Tr. 95.

15. The 2019 Dodge minivan is kept at Mr. Damico's home, but BHE will keep track of the maintenance and condition of the minivan through the TripMaster application. Tr. 95.

16. BHE's drivers have vehicles that they are willing to use for the paratransit service. Tr. 100.

17. BHE's drivers' vehicles will be covered by BHE's insurance while operating for the Applicant but will be under the driver-owner's personal car insurance while off-the-clock with the Applicant. Tr. 96, 100-101; Applicant Exhibit 17.

18. BHE has set procedures in place both for screening drivers during the hiring process and for training them. Tr. 80-81.

19. BHE performs driver history checks monthly and requires that its existing drivers undergo drug tests. Tr. 81-82; Applicant Exhibits 8-10.

20. Initially, the Applicant would be able to use the drivers from its group and party business to cover the needs of the paratransit service. Tr 90.

21. Mr. Thomas will be one of the drivers for the Applicant's paratransit service, having worked in a similar position for a company in Pittsburgh, PA. Tr. 66, 138.

22. BHE has become a member of the Community Transportation Association of America and has subscribed to its Passenger Assistance, Safety and

Sensitivity program (PASS), which provides driver training regarding safety, etiquette, emergencies, recordkeeping, etc. Tr. 83-84; Applicant Exhibit 12.

23. The Applicant maintains \$1,000,000 liability insurance for its party bus business from National Liability and Fire Insurance Company. Tr. 60-61; Applicant Exhibit 4.

24. BHE will be able to expand the policy with National Liability and Fire Insurance Company to cover its paratransit business, should the Application be approved. Tr. 79-80.

25. BHE will use TripMaster software for dispatching and tracking the maintenance of the vehicles that will be used in paratransit service. Tr. 85-87.

26. TripMaster keeps a running total of milage for each vehicle for routine maintenance procedures like oil change, tire rotation, inspection, etc. Tr. 89.

27. Denver Diesel Motors provides maintenance work for BHE's party bus and the two freight trucks. Tr. 96-97.

28. Davis Auto Repair will provide maintenance work for BHE's paratransit vehicles. Tr. 97.

29. As of the date of the hearing, the Applicant did not have any compliance issues with the Commission. Tr. 61-62.

30. BHE is compliant with all the regulatory requirements for the freight shipping business. Tr. 64.

31. I Am Home Care LLC, a limited liability company, is incorporated in the state of Pennsylvania with only one member and owner, Pat George Felix. Tr. 55-56.

32. I Am Home Care is a home care agency licensed by the Pennsylvania Department of Health with approximately 120 employees and 60 clients in the counties of Bucks, Lehigh, Schuylkill, Montgomery, Berks, and Philadelphia. Tr. 56-57, 91, 93.

33. I Am Home Care provides home care services to clients who need help with daily activities. Tr. 29-30.

34. Employees of I Am Home Care cannot provide transportation services to the agency's clients. Tr. 25; 31-32.

35. For the past six years, Mr. Thomas has been employed full-time as Director of Operations for I Am Home Care. Tr. 56-57, 91, 93.

36. During an unannounced onsite state licensure survey and complaint survey completed on December 3, 2021, the PA Department of Health found that I Am Home Care agency: 1) was in violation of state regulations governing employee photo identification badges; 2) failed to ensure documentation of a completed face-to face interview and references for its new employees; 3) failed to ensure that criminal background checks were completed at the time of the application or within one year preceding the date of the application for employment; 4) failed to document annual competency tests; and 5) failed to document annual TB education being provided. Joint Protestants Exhibit 1.

37. During an unannounced onsite state re-licensure survey conducted on October 29, 2024, the PA Department of Health found that I Am Home Care agency: 1) failed to ensure documentation of a federal criminal history record and letter of determination from the PA Department of Aging, for direct care workers who have not been residents of the Commonwealth; 2) failed to ensure the direct care worker was screened for mycobacterium tuberculosis prior to consumer contact in accordance with CDC guidelines; and 3) failed to provide to consumers with an information packet. Joint Protestants Exhibit 2.

38. I Am Home Care was able to correct the violations in a timely fashion. Tr. 118.

### DISCUSSION

Blackhorse Enterprise LLC seeks Commission approval of its Application as evidenced by issuance of a Certificate of Public Convenience. As stated in Section 1101 of the Public Utility Code:

Upon the application of any proposed public utility and the approval of such application by the [C]ommission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish or supply within this Commonwealth.

66 Pa.C.S. § 1101.

An Order of the Commission granting an application must be based upon substantial evidence. *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm'n*, 337 A.2d 922 (Pa. Cmwlth. 1975). 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. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

The legal standards for approval of a motor carrier application are set forth in the Public Utility Code and Commission regulations. Section 1103(a) of the Public Utility Code states as follows:

A certificate of public convenience shall be granted by order of the [C]ommission, only if the [C]ommission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The [C]ommission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa.C.S. § 1103(a).

The Commission has promulgated the following evidentiary criteria in 52 Pa. Code § 41.14:

**§ 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 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 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.

Applicant must show by a preponderance of evidence that he has the requisite technical and financial ability to provide the proposed service; however, he need not show inadequacy of existing service. *Morgan Drive Away, Inc. v. Pa. Pub. Util. Comm'n*, 512 A.2d 1359 (Pa. Cmwlth. 1986) (*Morgan Drive Away, Inc.*); *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985).

Regarding technical fitness, an applicant must have the technical capacity to meet the need for the proposed service in a satisfactory fashion. An applicant must possess sufficient staff and facilities or operating skills to make the proposed service

feasible, profitable, and a distinct service to the public. In order to prove that it possesses the requisite financial fitness, the applicant should possess the financial ability to give reliable and respectable service to the public. The Applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service. *Re Perry Hassman*, 55 Pa.P.U.C. 661 (1982).

In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process of meeting the burden of proof. In accordance with *Waldron* and the previously cited legal standards, Applicant has the burden to put forth evidence establishing a *prima facie* case as to technical and financial fitness for the proposed service. If Applicant establishes a *prima facie* case, the burden of going forward, but not the ultimate burden of proof, shifts to the Protestant to rebut the *prima facie* case with evidence which is at least co-equal. If Applicant's evidence is rebutted to the legally required extent, the burden of going forward shifts back to the Applicant, which must rebut the adverse party's evidence by a preponderance of the evidence. *Poorbaugh v. W. Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*).

After an applicant for motor carrier authority has met its burden of proving fitness, the next consideration is whether the record demonstrates a lack of propensity on the part of the applicant to operate safely and legally. This finding must be based upon the totality of a record which demonstrates conclusively that an applicant will not operate safely or legally. The applicant has no affirmative duty to prove that it will operate safely and legally. *See, Application of Mahmoud Awad*, Docket No. A-00119891 (Final Order entered Jan. 3, 2005).

Finally, existing carriers seeking to expand their authorized service territory are entitled to a presumption of fitness. As the Commission recently stated in *Application of First Class Transportation Inc.*, Docket No. A-2015-2466538 (Opinion and Order entered Aug. 31, 2017), current certificate holders are entitled to a

presumption of technical and financial fitness for the proposed call and demand authority. *See, Rosemont Taxicab Co. v. Phila. Parking Auth.*, 68 A.3d 29, 32 (Pa. Cmwlth. 2013), (“[a] licensed utility is entitled to a presumption that it holds the technical<sup>1</sup> and financial capacity and propensity to operate safely and legally, and it is the party opposing the utility’s application that bears the burden of proof.”); *Application of Three Rivers Limousine Serv., Inc.*, Docket No. A-2014-2412182 (Opinion and Order entered Feb. 12, 2015) (paratransit certificate holder entitled to a presumption of technical and financial fitness for proposed limousine service authority); and, *Application of John C. Delauter t/d/b/a Delauter’s A-1 Servs.*, Docket No. A-00122443 (Final Order entered May 18, 2007) (applicant presumed to be technically and financially capable of transporting household goods based on prior Commission determination that applicant was technically and financially capable of transporting property).

It is within these parameters that a decision on a motor common carrier application case must be decided. Using these criteria, I find, for the reasons set forth herein, that Applicant has successfully met its burden of proving that it is technically and financially fit to transport persons in paratransit service, between points in the Counties of Berks, Bucks, Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and the City and County of Philadelphia.

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<sup>1</sup> In 2016, the Commission amended its regulations at 52 Pa. Code §§ 3.381-385 to eliminate the requirement that an applicant for common carrier authority must establish that approval of the application would serve a useful public purpose, responsive to a public demand or need. *Final Rulemaking Amending 52 Pa. Code Chs. 1, 3, 4, 23, and 29*, Docket No. L-2015-2507592 (Order entered Oct. 27, 2016). Consistent with this regulatory change, the Commission also revised the Policy Statement regarding the evidentiary criteria used to evaluate motor carrier applications to reflect the elimination of the public need component. 52 Pa. Code § 41.14.

## 1. Sufficient Capital, Equipment and Facilities

The Commission's regulation at 52 Pa. Code § 41.14 provides the criteria that must be met by applicants seeking motor common carrier authority to establish financial fitness. As stated therein, applicants must demonstrate that they have "sufficient capital, equipment, facilities and other resources necessary to serve the territory requested." 52 Pa. Code § 41.14(1). In *Application of Raymond P. Sutherland*, Docket No. A-00122346 (Opinion and Order entered June 5, 2007) (*Application of Sutherland*), the Commission considered what was meant by the term sufficient capital in the context of 52 Pa. Code § 41.14(1). In so doing, the Commission observed that there was no regulatory definition and no statute or decisional law providing any specific monetary or other standards necessary to meet the sufficient capital requirement. Accordingly, the Commission concluded that the determination of financial fitness was within its discretion, on a case-by-case basis, with the primary concern being the adequacy of service to the public.

The Applicant's witness, Mr. Thomas, testified that he is the sole member of Blackhorse Empire LLC, which was created in October of 2016. Tr. 45, 48, Applicant Exhibit 2. On December 29, 2023, the Applicant received its Certificate of Public Convenience from the Commission for the right to transport, as a common carrier, persons in group and party service in vehicles seating more than 15, at Docket No. A-6222038. Tr. 57-58; Applicant Exhibit 3. The Applicant has one party bus and three drivers for its party business. Tr. 58-59, 90.

In early 2025, the Applicant, doing business as BHE Trucking, received its license and permits from the U.S. Department of Transportation to transport freight across state lines. Tr. 62-64; Applicant Exhibit 5. The Applicant's trucking operation

consists of two 18-wheeler trucks and five drivers equipped with CDL licenses.<sup>2</sup> Tr. 49, 51; Applicant Exhibit 5.

To demonstrate the Applicant's financial fitness, BHE submitted a business plan with rate schedules along with a profit and loss statement and balance sheet. Tr. 78-79; Applicant Exhibits 6, 7. Mr. Thomas testified that, as of the date of the hearing, BHE had approximately \$15,000 in its bank account to cover its various business expenses and he himself had between \$30,000 and \$35,000 in personal funds that could be placed in the service of the new business. Tr. 137-38. According to Mr. Thomas, BHE is operating successfully and is getting stronger financially. Tr. 78.

Next, BHE owns the building at 238 North 12<sup>th</sup> Street, Reading, Berks County, PA 19604 where its offices are located and where it plans to park all its vehicles. Tr. 45; Applicant Exhibit 3.

Finally, Mr. Thomas explained that BHE has not purchased any vehicles while awaiting the outcome of its paratransit Application. Tr. 97-98. However, BHE has access to a 2019 Dodge minivan with a handicap lift, which is owned by Donald Damico, one of BHE's drivers. Tr. 95. The 2019 Dodge minivan is kept at Mr. Damico's home, but BHE will keep track of the maintenance and condition of the minivan through the TripMaster application. Tr. 95. Similarly, Mr. Thomas explained that all of BHE's drivers have vehicles that they are willing to use for the paratransit service. Tr. 100. These vehicles will be covered by BHE's insurance while operating for the Applicant but will be under the driver-owner's personal car insurance while off-the-clock with the

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<sup>2</sup> Additionally, the Applicant owns a 35% interest in Jirab Cleaning Services, LLC; 80% of the Luxury Beauty Bar, LLC; 100% of Bruno Luxury Party; a 50% interest in East Reading Boxing Gym; and 15% share in the PA Kings basketball team. Tr. 49, 52-54. The Applicant also manages two professional athletes, owns a recording studio and a podcast room, as well as operates an online store called BHE Sells. Tr. 54.

Applicant. Tr. 96, 100-101; Applicant Exhibit 17. Furthermore, Mr. Thomas testified that, if BHE's paratransit Application is approved, it intends to purchase two more vehicles to supplement its fleet. Tr. 97.

The Joint Protestants were unable to overcome BHE's presumption of financial fitness as an existing operator. Despite this presumption, Applicant also provided extensive evidence of its fitness through the testimony of Mr. Thomas, who demonstrated that BHE has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

## **2. Sufficient Technical Expertise and Experience**

With regard to whether BHE and its employees have sufficient technical expertise and experience to serve the territory requested, 52 Pa. Code § 41.14(2), technical expertise, or fitness, is defined as: "An applicant must have the technical capacity to meet the need for the proposed service in a satisfactory fashion. An applicant must possess sufficient staff and facilities or operating skills to make the proposed service feasible, profitable and a distinct service to the public." *Re Adegbola Ige t/a Globe Limousine Serv.*, 75 Pa.P.U.C. 45 (1991); *see also, Application of William Matthew Sullivan*, Docket No. A-00118268F0001AMA (Order entered Feb. 2, 2004); *Application of Samir Ouauerrouch*, Docket No. A-2011-2218369 (Opinion and Order entered Sep. 27, 2012).

BHE employs drivers for its party bus business and for its freight business and has set in place procedures for screening drivers during the hiring process and for training them. Tr. 80-81. BHE performs driver history checks monthly and requires that its existing drivers undergo drug tests. Tr. 81-82; Applicant Exhibits 8-10. Mr. Thomas testified that, initially, the Applicant would be able to use the drivers from its group and party business to cover the needs of the paratransit business. Tr. 90. In addition, Mr.

Thomas explained that he, too, would be one of the drivers for the Applicant's paratransit service having worked in a similar position for a company in Pittsburgh, PA. Tr. 66, 138. Mr. Thomas testified that he is currently employed full-time as Director of Operations for I Am Home Care, which is a home care business licensed by the Pennsylvania Department of Health with approximately 120 employees and 60 clients in the Counties of Bucks, Lehigh, Schuylkill, Montgomery, Berks, and Philadelphia. Tr. 56-57, 91, 93. Because of his background, Mr. Thomas believes that he is knowledgeable of the needs of the community that the Applicant will be serving. Tr. 67.

Lastly, in anticipation of receiving paratransit authority from the Commission, BHE has become a member of the Community Transportation Association of America and has subscribed to its Passenger Assistance, Safety and Sensitivity program (PASS), which provides driver training regarding safety, etiquette, emergencies, recordkeeping, etc. Tr. 83-84; Applicant Exhibit 12.

The evidence collected in this case demonstrates that BHE has the technical expertise and experience to serve Berks, Bucks, Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and Philadelphia counties. The Joint Protestants did not refute the evidence presented by BHE. Therefore, the Applicant has demonstrated that it has sufficient technical expertise and experience to serve Berks, Bucks Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and Philadelphia counties.

### **3. Sufficient and Continuous Insurance**

With regard to whether BHE 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), record evidence demonstrates that BHE is able to secure sufficient and continuous insurance coverage. The Applicant maintains \$1,000,000 liability insurance for its party bus business from National Liability and Fire

Insurance Company. Tr. 60-61; Applicant Exhibit 4. Mr. Thomas testified that BHE would be able to expand the policy with National Liability and Fire Insurance Company to cover its paratransit business should the Application be approved. Tr. 79-80.

This record evidence is sufficient to demonstrate that this requirement in the Commission's regulations has been satisfied. The Joint Protestants have not presented any argument that warrants finding to the contrary.

#### **4. Compliance with safety regulations**

With regard to whether BHE has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards, 52 Pa. Code § 41.14(4), record evidence demonstrates that there is such a plan in place. Mr. Thomas testified that BHE will use TripMaster software for dispatching and tracking the maintenance of the vehicles that will be used in paratransit service. Tr. 85-87. He explained that TripMaster keeps a running total of mileage for each vehicle for routine maintenance like oil change, tire rotation, inspection, etc. Tr. 89.

Mr. Thomas added that Denver Diesel Motors provides maintenance work for BHE's party bus and the two freight trucks. Tr. 96-97. According to Mr. Thomas, Davis Auto Repair will provide maintenance work for BHE's paratransit vehicles. Tr. 97.

Again, the Joint Protestants did not refute the evidence presented by BHE. Therefore, the Applicant has demonstrated that it has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards.

## **5. Compliance with the Public Utility Code and Commission Orders**

With regard to the Applicant's record of compliance with the Public Utility Code and Commission orders, 52 Pa. Code § 41.14(5), the evidence collected in this matter demonstrates that BHE has complied with the Public Utility Code regulations regarding operating safely and legally. Mr. Thomas testified that the Applicant never had any compliance issues with the Commission. Tr. 61-62. In addition, he stated that BHE is compliant with all the regulatory requirements for the freight shipping business. Tr. 64.

The Joint Protestants, however, argued that the Applicant lacks the propensity to operate safely and legally. Tr. 112, 152. They based this argument on public records of violations committed by I Am Home Care agency, the employer of Mr. Thomas. In particular, during an onsite unannounced state licensure survey and complaint survey completed on December 3, 2021, the PA Department of Health found that I Am Home Care agency: 1) was in violation of state regulations governing employee photo identification badges; 2) failed to ensure documentation of a completed face-to face interview and references for its new employees; 3) failed to ensure that criminal background checks were completed at the time of the application or within one year preceding the date of the application for employment; 4) failed to document annual competency tests; and 5) failed to document annual TB education being provided. Joint Protestants Exhibit 1. Also, during an onsite unannounced state re-licensure survey conducted on October 29, 2024, the PA Department of Health found that I Am Home Care agency: 1) failed to ensure documentation of a federal criminal history record and letter of determination from the PA Department of Aging, for direct care workers who have not been residents of the Commonwealth; 2) failed to ensure the direct care worker was screened for mycobacterium tuberculosis prior to consumer contact in accordance with CDC guidelines; and 3) failed to provide to consumer an information packet. Joint Protestants Exhibit 2. According to the Joint Protestants, the laws and regulations that govern the home care industry in the state of Pennsylvania are very similar to those that

regulate common carriers by motor vehicle of persons in paratransit service. Tr. 113-14. Because Mr. Thomas is the Director of Operations for I Am Home Care LLC and the sole member and owner of the Applicant, the violations cited by the PA Department of Health in connection with the operations of I Am Home Care LLC are indicative of a propensity to operate illegally and unsafely on the part of BHE. Tr. 112-13.

For its part, the Applicant put forth the testimony of Edith Hernandez, who is the Office Supervisor for I Am Home Care LLC. Ms. Hernandez testified that the I Am Home Care employee who is responsible for the agency's regulatory compliance and the contact person for the PA Department of Health is Katleya Tipsuri. Tr. 35. This was followed by Mr. Thomas' testimony that the violations mentioned in the Joint Petitioners' Exhibits 1 and 2 resulted from changes in regulations which his employer had not been aware of. Tr. 121-23. In addition, Mr. Thomas testified that the said violations were corrected swiftly by I Am Home Care allowing the agency to successfully remain in business and maintain its licenses. Tr. 118.

I note that the record in this case does not contain a description of Mr. Thomas' duties and responsibilities as Director of Operations for I Am Home Care LLC. I Am Home Care is a limited liability company incorporated in the state of Pennsylvania with only one member and owner, Pat George Felix. Tr. 55-56. Although Mr. Thomas testified to some extent that Mr. Felix has promised him a 5% interest in I Am Home Care, in the event the operations of the Applicant have a positive impact on the I Am Home Care business, no shares have been officially exchanged and Mr. Thomas remains a full time employee of I Am Home Care and is not a member of the agency. Tr. 110-13.

Additionally, the record contains scarce information regarding the services provided by I Am Home Care LLC. However, the testimonies of Ms. Hernandez, Mr. Thomas, and Sonia Reyes, who is a client of the agency, indicate that I Am Home Care provides home care services to clients who need help with daily activities. Tr. 29-30.

Employees of I Am Home Care cannot provide transportation services to the agency's clients. Tr. 25; 31-32.

Upon careful consideration of the evidence collected in this case and the Joint Protestants' arguments on the Applicant's lack of propensity to operate legally and safely, I find that the relationship between the Applicant and I Am Home Care is too attenuated to rebut the Applicant's presumption of compliance with the Public Utility Code and Commission Orders. I Am Home Care's violations brought to light by the Joint Protestants fail to refute the evidence of BHE's compliance with the Public Utility Code and Commission Orders during the time it has operated its party bus service.

#### **6. Felony convictions or crimes of moral turpitude**

With regard to whether BHE 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(6), record evidence demonstrates that BHE's drivers have not been convicted of a felony, or a crime of moral turpitude and that BHE will require criminal background checks for all drivers. Applicant Exhibit 3. Again, the Joint Protestants did not refute the evidence presented by BHE. Therefore, BHE has demonstrated that it has satisfied this requirement in the Commission's regulations for its application to be approved

In conclusion, substantial record evidence demonstrates that BHE has satisfied its burden of proving that it is entitled to have its application approved. BHE has demonstrated that it has sufficient capital, equipment, facilities and other resources, as well as the technical expertise and experience necessary to serve the territory requested. In addition, BHE has demonstrated that it has or is able to secure sufficient and continuous insurance coverage for the vehicles it will use and that it has an appropriate plan to comply with the Commission's driver and vehicle safety regulations

and service standards. Finally, BHE has complied with the Public Utility Code and the Commission's regulations and orders and has never been convicted of a felony or a crime of moral turpitude. This is especially true given that BHE is entitled to a presumption of fitness as an existing carrier. The Joint Protestants have not presented sufficient evidence to rebut the evidence presented by BHE to have the Application approved.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 1101.
2. The party seeking affirmative relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. 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. 52 Pa. Code § 41.14.
4. Applicant must show by a preponderance of evidence that he has the requisite technical and financial ability to provide the proposed service; however, he need not show inadequacy of existing service. *Morgan Drive Away, Inc. v. Pa. Pub. Util. Comm'n*, 512 A.2d 1359 (Pa. Cmwlth. 1986) (*Morgan Drive Away, Inc.*); *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985).
5. Although the burden of going forward with the evidence shifts from one party to the other, the burden of proof never shifts. *Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 90 (1980).

6. The Commission must ensure that the decision is supported by substantial evidence in the record. 2 Pa.C.S. § 704.

7. Substantial evidence is such relevant evidence that a reasonable mind may 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

8. 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.

9. A certificate of public convenience is required for any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized. 66 Pa.C.S. § 1102(a)(1).

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

11. The criteria used to decide motor carrier applications is whether the applicant seeking motor common carrier authority possesses the technical and financial ability to provide the proposed service. 52 Pa. Code § 41.14.

12. When determining whether an applicant for motor carrier service possesses the technical and financial ability to provide the proposed service, Commission regulations provide several standards to be used when determining fitness, including: 1) whether the applicant has sufficient capital, equipment, facilities and other resources

necessary to serve the territory requested, 2) whether the 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 standards contained in Chapter 29, 5) an applicant's record, if any, of compliance with the Public Utility Code and the Commission's orders, and 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(1)-(6).

13. Current certificate holders are entitled to a presumption of technical and financial fitness for the proposed call and demand authority. *Application of First Class Transp.*, Docket No. A-2015-2466538 (Opinion and Order entered Aug. 31, 2017).

14. Existing carriers seeking to expand their authorized service territory are entitled to a presumption of fitness. *Application of First Class Transp.*, Docket No. A-2015-2466538 (Opinion and Order entered Aug. 31, 2017); *Application of Three Rivers Limousine Serv., Inc.*, Docket No. A-2014-2412182 (Opinion and Order entered Feb. 12, 2015).

15. The determination of financial fitness is within the Commission's discretion, to be determined on a case-by-case basis, with the primary concern being the adequacy of service to the public. *Application of Raymond P. Sutherland*, Docket No. A-00122346 (Opinion and Order entered June 5, 2007).

16. Technical expertise, or fitness, is defined as: "An applicant must have the technical capacity to meet the need for the proposed service in a satisfactory fashion. An applicant must possess sufficient staff and facilities or operating skills to

make the proposed service feasible, profitable and a distinct service to the public.” *Re Adegbola Ige t/a Globe Limousine Serv.*, 75 Pa.P.U.C. 45 (1991); *see also, Application of William Matthew Sullivan*, Docket No. A-00118268F0001AMA (Order entered Feb. 2, 2004); *Application of Samir Ouaquerrouch*, Docket No. A-2011-2218369 (Opinion and Order entered Sep. 27, 2012).

17. BHE has met its burden to demonstrate that its Application should be approved.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Application of Blackhorse Empire LLC for the right to begin to transport as a common carrier, by motor vehicle, person in paratransit service, between points in the Counties of Berks, Bucks Chester, Delaware, Huntingdon, Montgomery, Susquehanna, and the City and County of Philadelphia, Docket Number A-2024-3050285, dated July 16, 2024, is hereby approved.

2. That the Joint Protest filed by Bucks County Transport, Inc., Bux-Mont Transportation. Inc, Easton Coach Company, Suburban Transit Network, Inc. and Tri County Transit Service, Inc. is dismissed.

3. That Blackhorse Empire LLC shall not engage in any transportation the authority of which is granted herein until the following is submitted to the Commission:

