

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Dominicana Taxi Express, LLC

Docket No. A-2015-2471494

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**APPLICANT’S MEMORANDUM OF LAW
IN SUPPORT OF ITS APPLICATION FOR A CERTIFICATE OF PUBLIC
CONVENIENCE TO OPERATE A CALL AND DEMAND SERVICE IN THE CITY OF
READING, BERKS COUNTY, PENNSYLVANIA**

I. STATEMENT OF FACTS

A. Procedural History

Dominicana Taxi Express, LLC (hereinafter referred to as DTE) filed an application for an application for a Certificate of Public Convenience to operate a call and demand (taxicab) service within the City of Reading, Berks County, Pennsylvania on February 8, 2015. Protests were filed by Michael Grab D/B/A Grab a Cab on May 26, 2015 which were withdrawn on November 20, 2015. Protests were additionally filed by Reading Metro Taxi, Inc., Reading Yellow Taxi and Reading Checker Taxi, Inc., all of which are owned in whole or in part by Curtis Stricker, on April 21, 2015. A hearing on the application was held on November 23, 2015.

B. Factual History

DTE was organized as a limited liability company on or about February 6, 2015 and executed an operating agreement with its initial members on or about January 28, 2015. DTE was formed to “provide all kinds of services to all of Berks County, and especially the Hispanic community...[s]ervices to hospitals , to stores, to supermarkets, to schools, from home, to home, work...” and would focus on providing services to the underserved Hispanic community.(R.19-20). Indeed, as noted by Xiomara Rodriguez, co-owner of DTE, there are many “people that

come here to Berks County that do not speak any, any, any English”, and it is the intent of DTE to serve this community with a bilingual taxicab service. (R.20).

Ms. Rodriguez’s sentiments were echoed by community witnesses, Lordes Alvelo and Perla Polanca who both utilize taxi services on a regular basis. (R.189-190; R.. 198-200). Indeed, Ms. Avelo testified that it would be “very helpful” if a taxicab driver was bilingual “because if they go to a house where the person’s only Spanish, she could communicate the address...where she wants to go,.” (R.195). Moreover, as was testified by Ms. Polanca, the absence of a bilingual driver presents difficulties for non-English speaking patrons by making it difficult to communicate, often resulting in the patron being transported to the wrong location. (R.203). Both Ms. Alvelo and Ms. Polanco indicated that the current providers are not meeting the needs of the Hispanic community, and indeed, expressed significant dissatisfaction with the current providers, citing issues concerning timeliness of taxicabs arriving to pick up their fare, concerns that taxicabs were not available during inclement weather, and significantly, that current service providers do not have enough bilingual drivers available. (R.190-195, R.198-204).

DTE, and its principals, themselves frustrated by the inadequate service to the Hispanic community, and after research and consultation with the PUC and other industry experts, including counsel and Thomas Loughlin, MBA, decided to start a small home-based call and demand service once PUC approval is given. Both through its own anecdotal research and that of its experts, DTE decided to focus its business on the growing Hispanic community in Reading and acquired two four-wheel drive vehicles, a 2008 Toyota Sienna, and a Hyundai Tucson, both with the capacity for large seating to accommodate larger families to provide service in this community. (R.147; R.210-21). DTE will utilize a preventative maintenance checklist to ensure

inspection of the vehicles and identified an auto repair shop to handle necessary repairs (R.93-106). Only one driver will be responsible for driving at a time so the second vehicle can be held in reserve to ensure that if there is a mechanical malfunction DTE can still accommodate its patrons. DTE obtained insurance quotes indicating that vehicles similar to those intended to be placed into service will be covered in accordance with PUC regulations and at an affordable cost (R.32-36).

DTE intends to dispatch from their home-based headquarters in the principals' home and will utilize drivers who have significant experience in transporting others. (R.21). Indeed, all of the drivers to be utilized by DTE have spotless driving records, passed drug screens and have driven in a commercial capacity in the past. (R.21; R.33-R.36; R.91-92; R.106; R.119). The proposed drivers also have not been convicted of any felonies or crimes of moral turpitude. (R.33-36; R.104-105). Both Pedro E. Ramirez and Pedro A. Ramirez worked in similar capacities as drivers for a car service in New York and Pedro A. Ramirez worked for a paratransit operator in Reading, Pennsylvania. (R.87-91; R.117-R.119). Xiomara Rodriguez is currently employed by Berks County Intermediate Unit and transports school-aged children. (R.37).

In support of its application, DTE's expert, Mr. Loughlin, developed a business plan, which sets forth DTE's operational plan. (See Exhibit 21). The plan additionally projects expenses and revenue for DTE, and on the basis that DTE can perform thirteen daily trips with one car operating at a time, projects that sufficient revenues can be raised to pay expenses and generate a profit in the first twelve months of operation. (See Exhibit 21). Further, the plan indicates that given the capital resources of the company, some of which were contributed by the principals, there are sufficient resources to generate revenue. (See Exhibit 21). As such, in his testimony,

Mr. Loughlin is able to opine that the resources, cash flow and revenues are sufficient to support the proposed business activities of applicant (R. 150-163).

II. QUESTION PRESENTED

Whether DTE by establishing that it seeks to fill an under-served niche in the Hispanic market in the City of Reading with a small bilingual call and demand service should be granted a certificate of public convenience?

Suggested Answer: Yes.

III. ARGUMENT

Dominicana Taxi Express, LLC (DTE)'s application for a certificate of public convenience to provide call and demand taxi service within the City of Reading, Berks County, Pennsylvania should be approved because DTE established by substantial evidence that approval of said application is necessary and proper for the service, accommodation, convenience and safety of the public. Further, Protestant fails to demonstrate that granting DTE'S application would be contrary to public policy such that the protest must be dismissed.

The Public Utility Code requires that prior to lawful operation, a public utility, such as a taxi cab company, must obtain a certificate of public convenience which shall be granted "where necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. CS. Sec. 1103(a); see, e.g., *Lehigh Valley Transp. Services, Inc. v. PUC*, 56 A.3d 49, 51 Pa. (Comm. Ct. 2012); *Dutchland Tours, Inc. v. PUC*, 337 A.2d 922, 925 (Pa. Comm. Ct. 1975). To be granted a certificate of public convenience an applicant must demonstrate, by substantial evidence, (1) "that approval of the application will serve a useful

public purpose, responsive to public demand or need”; (2) applicant possesses the technical financial ability to provide the service; and (3) that applicant does not “lack[] a propensity to operate safely and legally” 52 Pa. Code Sec. 41.14(a)(b). Applicant meets this burden by providing relevant and competent evidence “having a rational probative force which a reasonable mind might accept as adequate to support a conclusion” is presented. *Dutchland Tours, Inc.* 337 A.2d at 925-26 (citing *York v. PUC*, 281 A.2d 261 (Pa. Comm. Ct. 1971), *aff’d* 295 A.2d 825(1972)); *Yellow Cab Co. of Pittsburgh v. PUC*, 412 A.2d 1385, 1387 (Pa. Comm. Ct. 1980); but see *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 56 (Applicant only required to meet a preponderance of evidence standard in support of application). Each factor will be discussed individually below.

- A. Dominicana Taxi Express, LLC established its burden of establishing a need for new service in the City of Reading as Dominicana Taxi Express will serve the underserved Hispanic community with a previously unoffered bilingual taxi service and established that it has the capacity to provide said service

To receive a certificate of public convenience an applicant has “the burden of proving a need for the proposed service, the inadequacy of the existing service, and the capacity of applicant to satisfactorily meet this need.” *Dutchland Tours, Inc.* 337 A.2d at 925 (citing *Byerly v. PUC*, 270 A.2d 186(Pa. Comm. Ct. 1970); *Seiferd v. PUC*, 315 A.2d 320 (Pa. Comm. Ct. 1974). Indeed, while it is not necessary to prove “an absolute necessity or present demand for service in every point of the territory proposed...it is incumbent upon the applicant to prove that such service is reasonably necessary for the accommodation and convenience of the public.” *Id.*; see also *Morgan Driveway, Inc. v. PUC*, 512 A.2d 1359, 1361 (Pa. Comm. Ct. 1986); *Yellow Cab Co. of Pittsburgh*, 412 A.2d at 1388. The Court holds that evidence of public need, though “traditionally established by proof of requests for proposed service”, need not be in this form,

and, in fact, “the only requirement is that the evidence as a whole be legally sufficient” to support the conclusion that there is a public need. *Dutchland Tours, Inc.*, 337 A.2d at 926. Need can be established through the use of community witnesses who “comprise[] a representative sampling of the public” and who are “legally competent and credible; their testimony must be probative and relevant to the application, and they must articulate a demand/need for the type of service embodied in the application. *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 56-57.

Finally, while the Public Utility Code does provide that an application may be denied if entry of the new carrier would endanger the operations of an existing carrier, such a rule is not intended

to benefit established carriers by erecting artificial barriers to the entry of new competitors, It is, rather, the public interest and convenience which the law seeks to protect. The amount of competition which will best serve that interest is a matter within the discretion of the (Commission). It may be that one additional carrier, if not completely correcting the situation, would at least tend to improve the existing condition. The granting of a certificate...may have a salutary effect by also inducing the improvement of services rendered by others. *Yellow Cab Co. of Pittsburgh*, 412 A.2d at 1388.; see also 52 Pa. Code. 41.14(c).

In the instant case, DTE has established by substantial evidence a compelling need for an additional service provider within the City of Reading that is capable of providing service to the growing Hispanic community, and that the current service providers are not adequately meeting the needs of this population. Indeed, as established in the testimony of Xiomara Rodriguez, it is the intent of DTE to provide bilingual service, which according to both Ms. Rodriguez, and community witnesses Lordes Alvelo and Perla Polanca, is currently not offered by other taxi services. These community witnesses, who varied in age and life experience, represent a fair cross-section of the community and clearly and articulately identify a need within the City of Reading for a taxicab service which focuses on the Spanish speaking population. Since many

people are moving to the City of Reading without a mastery of the English language, and speaking only the Spanish language, situations such as that described by Ms. Polanco in which her mother, a Spanish speaking woman, being transported to the wrong location due to her inability to communicate in English to taxicab drivers, is only going to continue without the entry into the market of DTE or a similar bilingual service provider.

Indeed, as was the case in *Yellow Cab Co. of Pittsburgh*, the entry of DTE into the taxicab market will provide better service to a segment of the population that is being underserved by the current taxicab providers that do not offer exclusively bilingual drivers. By focusing on the bilingual Hispanic community, as DTE intends, DTE will fill a niche in the community which, according to the community witnesses, is lacking. Granting of the instant application will provide more reliable service to Spanish-speaking occupants of the City of Reading, a population which is growing at a rapid pace, and avoid situations, as described by Ms. Polanco, in which a Spanish speaking customer is not taken the correct location due to the language barrier, and forced to pay for additional unnecessary services, which is contrary to the public interest. While Protestant may argue that his companies are able to accommodate this concern with radio dispatchers who speak the Spanish language, or the chance that one of the independent contractors who speak Spanish are the assigned driver, the testimony of the community witnesses firmly establishes that these methods are ineffective and as was the case in *Yellow Cab Co. of Pittsburgh* and *Lehigh Valley Transp. Services, Inc.*, the testimony articulates a demand and need for the exact service proposed by DTE. Accordingly, it is urged that the instant application be granted.

Notwithstanding this firmly established public need, Protestant suggests that DTE does not have the capacity to provide service, and in any event, any new service, such as DTE, would

so endanger Protestant's three licenses to operate within the City of Reading to necessitate a denial of the instant application. DTE most certainly proposes a relatively small operation to commence with two cars to be owned by the company, and only one to be utilized at any time and one home-based dispatcher. Given the small nature of this operation, compared to Protestant, who owns three of the five licenses to operate taxicab service with the City of Reading, the suggestion that DTE's entry into the market would have such a drastic and negative economic impact on Protestant's monopoly is incomprehensible. Indeed, though testifying at the hearing, Protestant's principal Curtis Stricker, failed to point to any specific calculations or other evidence to suggest that the entry of a small competitor, such as DTE, would have any economic impact on his companies, and most certainly, did not provide evidence that DTE's operations would sufficiently endanger Protestant's ability to carry on business. As such, since DTE has firmly established a public need, capacity to carry on its service and there is no risk that DTE, a relatively small market participant, would have any appreciable impact on Protestant's monopoly on taxicab services in the City of Reading, it is urged that the instant application be granted.

- B. DTE established by substantial evidence that it has the technical ability to operate a small call and demand service and has the propensity to operate safely and legally such that its application should be granted.

The Pennsylvania Code requires that before an application for call and demand service be approved the Commission must be satisfied that the Applicant has the "technical and financial ability" to operate and has "a propensity to operate safely and legally." 52 Pa. Code. Sec. 41.14(b); see also *Rosemont Taxicab Co., Inc. v PUC*, 68 A3d 29, 36 (Pa. Comm. Ct. 2013); *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 58. The Court defines technical fitness to mean that applicant has "sufficient technical and operating knowledge, staff and facilities to provide

the proposed service.” *Rosemont Taxicab Co., Inc.*, 68 A.3d at 36 (quoting *Yellow Cab Company of Pittsburgh v. PUC*, 673 A.2d 1015,1019 (Pa. Comm. 1996)). Further, the phrase “lacks propensity to operate safely and legally” has been interpreted by the PUC to mean “a persistent disregard for, flouting, or defiant attitude toward the [Code], or the orders and regulations of the [PUC].” *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 58; *id.* While the Court and the Commission do not condone consistent violations of the Code, “inadvertent or isolated violation[s] of the Code...[do] not demonstrate that [an Applicant]...is naturally inclined or has an innate tendency to operate unsafely or illegally.” *Id.* As such, in order to prevail on a claim that an applicant lacks the fitness to operate a challenger “must demonstrate the applicant has a persistent disregard for, flouting or defiant attitude” towards the Code and the law.

To determine compliance with these standards, the Commission will often consider certain 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 facility. 52 Pa. Code 41.14(b).

In the instant case, DTE certainly possesses the technical fitness to operate the small call and demand services it applied for. DTE presented evidence establishing that, though a small operation, it has sufficient vehicles, a dispatch center and other resources to provide service to customers within its service area. Indeed, to ensure that operations would be continuous, DTE even built redundancies into its operations plan such as purchasing both a 2008 Toyota Sienna, and a Hyundai Tucson, despite only intending to operate on vehicle at a time, reserving the second vehicle in case of mechanical failures. To prevent mechanical breakdowns or other malfunctions which could result in service interruptions, DTE will use a preventative maintenance checklist to identify mechanical issues before they cause issues. DTE additionally identifies an auto repair shop to handle any necessary repairs, and has secured quotes to ensure proper insurance coverage within PUC guidelines.

Moreover, as presented at the hearing, DTE, with the aid of Thomas Loughlin, MBA, introduced a business plan establishing that, with the use of DTE's principal's home as the dispatching base, and purchase of the vehicles, there is sufficient capital to support the initial operation of the business. Further, based upon the conservative estimate of thirteen trips per day, the business plan postulates sufficient revenue to pay expenses and to even generate a profit within the first twelve months of operation certainly establishing DTE's financial ability to operate the call and demand service it seeks. Finally, while Protestant may challenge the business plan as failing to address certain expenses, even if the business plan would be amended to address these concerns, the conclusion that DTE is profitable and poised for success remain viable and it is therefore urged that the instant application be granted.

Further, DTE's intended employees all testified and established that they possess necessary technical knowledge to property operate their vehicles in accordance with the Public

Utility Code. Each of the drivers identified by DTE have spotless driving records indicating that they are capable of driving their vehicles safely, as well as significant experience in the transportation industry. Each proposed driver submitted to criminal record checks and drug testing establishing no criminal activity or drug use, and DTE will subject any employees to random drug testing to ensure that any DTE driver is capable of driving safely at all times.

While Protestant may argue that none of Applicant's employees were previously employed in the taxicab industry, at least two employees worked as chauffer's and are able to adapt those very similar skills to the current operation as a taxicab driver. The remaining driver is currently employed by the Berks County Intermediate Unit and has experience transporting larger numbers of school-aged individuals. Each driver most certainly possesses the skills and experience necessary to be an effective taxicab driver, is willing to comply with the Code, and is willing to utilize a taxicab meter as is required by the Code. Finally, despite Protestant's insistence, there is not any requirement in the Code that in order for an application to be approved proposed drivers have specific taxicab experience, and indeed, DTE's witnesses all indicated willingness and intention to comply with the Code such that DTE certainly established sufficient technical fitness to support the application being granted.

Further, as the hearing evidence establishes, DTE, by seeking out guidance from PUC, and other industry professionals, following the directives of the PUC, and adapting policies and procedures in accordance with PUC regulations DTE has a propensity to operate safely and legally. Indeed, at no time has DTE taken any action demonstrating a persistent disregard for PUC regulation, and on the contrary, has taken numerous steps to understand PUC regulations so that they can be followed. While, as acknowledged at the hearing, DTE certainly has some additional studying of the PUC guidelines to do, the unequivocal testimony of Ms. Rodriguez

firmly establishes that not only with DTE study the regulations, but they will follow them as required.

It is urged that as was the case in *Lehigh Valley Transportation Services, Inc.*, and *Rosemont Taxicab Co., Inc.*, any erroneous inclusion of proposed service for expressage in its business plan, was most certainly an oversight and does not rise to the level of establishing a natural tendency to operate unsafely or illegally. Further, unlike *Rosemont Taxicab Co., Inc.*, where the Court concluded that two minor citations against the applicant did not constitute sufficient evidence to establish that an applicant lacked the propensity to operate safely and legally, DTE's erroneous inclusion of expressage in its business plan, and where no specific service or action has taken place, cannot constitute a lack of propensity to operate safely and legally, particularly where DTE testified that it will not perform said service if it is not permissible and that PUC regulations will be followed. While Protestant may suggest that Pedro Ramirez's testimony on this issue is not particularly strong, DTE demonstrated their commitment to complying with the Code not only by testifying that they will do so, but by inquiring as to certain requirements to the PUC directly and through counsel, and committing to operating their vehicles in compliance with PUC regulations. Since DTE most certainly established that they do not lack the propensity to operate safely and legally, and have established their technical and financial fitness, it is urged that their application be approved for call and demand service.

IV. CONCLUSION

Based on the foregoing, it is urged that the Application of Dominicana Taxi Express, LLC for call and demand service in the City of Reading, Berks County, Pennsylvania be approve.

Respectfully submitted,

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