

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Dominicana Taxi Express, LLC

Docket No. A-2015-2471494

REPLY BRIEF OF APPLICANT, DOMINICANA TAXI EXPRESS, LLC

**I. APPLICANT ESTABLISHED ITS BURDEN FOR THE EXISTENCE OF PUBLIC DEMAND
WITHIN THE PROPOSED SERVICE AREA BY PREPONDERANCE OF CREDIBLE EVIDENCE
BY DEMONSTRATING A NEED FOR A BILINGUAL TAXI SERVICE TO SERVE THE
HISPANIC COMMUNITY**

Pennsylvania law establishes that to receive a Certificate of Public Convenience an Applicant has “the burden of proving a need for the proposed service, 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 vs. PUC*, 278 A.2d 186 (Pa. CWLTH. CT. 1970)). Furthermore, the Court holds that it is not necessary to prove “an absolute necessity or present demand for service in every point of the territory proposed...[however] it is incumbent upon the Applicant to prove that such services are reasonably necessary for the accommodation and convenience of the public.” *Id.*; see also *Morgan Driveway, Inc. vs. PUC*, 512 A.2d 1359, 1361 (Pa. CWLTH CT. 1986); *Yellow Cab Co. of Pittsburgh*, 412 A.2d 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 evidences all be legally sufficient” to support the conclusion that there is a public need. *Dutchland Tours, Inc.* 337 A.2d at 926. To articulate a demand or need for a type of service embodied in an application, community witnesses must be a representative sampling of the public and provide testimony legally competent and credible and to which is relevant to the application. *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 5657.

Here, the testimony of both Lourdes Avilo and Perla Blanca most certainly establish inadequacies in service within the current service providers in the Hispanic community, and demonstrates that the introduction of a service provider, such as Applicant, who can provide bilingual service is necessary to properly accommodate the public. Indeed, both witnesses testified that it would be helpful for taxi cab drivers to be bilingual citing experiences within the community with family members, friends or acquaintances in which the fact that a taxi cab driver was not able to speak the Spanish language caused significant difficulty resulting in passengers being transported to incorrect locations, and as a result, paying higher than necessary fares. These witnesses testified that if there were more bilingual drivers, as proposed by Applicant, Spanish speaking patrons would be less likely to be misunderstood, transported to the incorrect location, or pay unnecessary extra fares due to such misunderstanding.

Since the Hispanic and Spanish speaking communities are only growing within the City of Reading, the experiences of the community witnesses will only become more common suggesting an increasing need for bilingual call and demand service such as that proposed by Applicant. Indeed, though Protestant does have minimal bilingual taxicab drivers available to the public, as the testimony and evidence establishes, a mere seventeen (17) independently contracted bilingual drivers, who may or may not all be working at any given time, and the use of radio communication to translate provides inadequate accommodation to the public, does not provide adequate service and instead, results in the difficulties described by the community witnesses. Given the changing demographics of the City of Reading, and the willingness of Applicant to provide bilingual drivers to the Hispanic speaking (and other) communities in the City of Reading, granting the instant application is appropriate and would result in the greatest accommodation of the public

II. APPLICANT DEMONSTRATES BY SUBSTANTIAL EVIDENCE THAT IT HAS THE TECHNICAL ABILITY TO OPERATE A SMALL CALL AND DEMAND SERVICE THAT OPERATES SAFELY AND LEGALLY.

Pennsylvania law requires that before the Pennsylvania Utility Commission approves an Application for Call and Demand Service, the Commission must be satisfied that the application 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 A.3d 29, 36 (Pa. Comm. Ct. 2013); *Lehigh Valley Transp. Services, Inc.*, 56 A.3d at 58. While the Court defines technical fitness to mean the Applicant has “sufficient technical and operating knowledge, staff and facilities to provide the proposed service”, the Court has not specifically required, as Applicant suggests, that an Applicant have previously served in a managerial responsibility for a previous call and demand service. In fact, the applicable regulations do not require an Applicant to possess a perfect technical record, but rather merely to not “lack propensity to operate safely and legally” which the Court interprets to mean “a persistent disregard for flouting or defiant attitude toward the [Code] or the orders and regulations of the [PUC]. As such “inadvertent or isolated violations” of the Code will not demonstrate that an Applicant is “naturally inclined or has innate tendency to operate unsafely or illegally,” and do not rise to the level of establishing technical incompetence justifying licensure be withheld. See *Rosemont Taxicab Co., Inc.*, 68 A.3d at 36.

In the instant matter, Applicant established, at the hearing, a plan to operate in a safe and legal manner by proposing drivers, all of whom have significant driving experience, albeit without extensive call and demand experience. None of the drivers proposed have major traffic infractions or accidents on their driving records, criminal history or positive drug screens, suggesting that each driver is capable of driving patrons in a safe and prudent manner. Further,

Applicant has purchased vehicles in excess of the number needed to be used on a daily basis to provide consistency and a back-up plan in case a vehicle malfunctions.


Finally, Applicant has employed multiple experts to assist it in becoming financially viable and complying with its legal and safety responsibilities. Specifically, Applicant has sought out guidance from the PUC which has further been supplemented and, to the extent misunderstood, corrected by counsel. While Applicant certainly could acknowledge that it is still learning some of the idiosyncrasies of the Code, there have been no violations or any persistent disregard for PUC regulation. These misunderstandings as to the idiosyncrasies of the Code, can and are easily correctable, and do not rise to a level requiring that the application be denied. Indeed, unlike *Rosemont Taxicab Co., Inc.*, where the Court concluded that two (2) minor citations against the Applicant as a result of actions in violation of the Code, do not constitute sufficient evidence to establish that the Applicant lacked the propensity to operate and safely legally, Applicant's minor misunderstandings of the Code prior to providing service, cannot constitute a lack of propensity to operate safely and legally, particularly where Applicant, through its principals, testified that it will only perform permissible services and that it will comply with PUC regulations. Applicant's inquiry into PUC regulations from PUC and from counsel certainly establishes the mentality of Applicant to comply with the Code, and any missteps should most certainly not be held against at this early stage. As such, it is urged that the application be approved.

III. Conclusion.

Based on the foregoing, it is urged that the Application of Dominicana Taxi Express, LLC for Call or Demand Service in the City of Reading, Berks County, Pennsylvania be approved.

Respectfully submitted,

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