**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  |  Public Meeting held September 21, 2017 |
| Commissioners Present:Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanDavid W. SweetJohn F. Coleman, Jr. |  |
| Application of Amigo Cab, LLC for approval to transport persons in call or demand service from points in the counties of Berks and Lancaster to points in Pennsylvania and return |  A-2015-2475776  A-6317547 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration from Staff Action (Petition) filed by Amigo Cab, LLC (Amigo Cab) on November 28, 2016, relative to the above-captioned proceeding. The Secretarial Letter to which the Petition refers was issued on November 8, 2016 (*November 2016 Letter*). No Answer has been filed to the Petition.For the reasons that follow, we will grant the Petition, rescind the *November 2016 Letter*, and grant the Application.

**History of the Proceeding**

On March 16, 2015, Amigo Cab filed an Application with the Commission seeking approval to transport persons in call or demand service from points in the counties of Berks and Lancaster to points in Pennsylvania and return (Application).

 The Application was published in the *Pennsylvania Bulletin* on May 23, 2015, at 45 *Pa*. *B*. 2566, with protests due on or before June 8, 2015. Timely protests were filed by Michael Richard Grab d/b/a Grab a Cab (Grab a Cab), Reading Checker Cab, Reading Yellow Cab, Reading Metro Cab, and Autocab, Inc (Autocab). On July 30, 2015, Reading Checker Cab, Reading Yellow Cab, and Reading Metro Cab filed a Joint Petition for Leave to Withdraw their Protest. On July 31, 2015, Grab a Cab filed a Notice of Withdrawal of its Protest. On January 12, 2016 Autocab filed a Notice of Withdrawal of its Protest. Thereafter, by Interim Order dated March 3, 2016, the unopposed Application was assigned to the Bureau of Technical Utility Services (TUS) for review. On June 30, 2016, Amigo Cab filed its Business Plan and Supporting Witness Statements.

 By way of the *November 2016 Letter* issued by TUS, the Commission denied the Application. The Secretarial Letter indicated that Amigo Cab failed to demonstrate that it possesses the technical and financial ability to provide the proposed service. Specifically, the *November 2016 Letter* states that “[a]ccording to the applicant’s own Verified Statements, it possesses insufficient equipment to provide reasonable service in such a broad service area. Furthermore, the applicant lacks sufficient funds to purchase the number of vehicles which would be sufficient for providing reasonable service.”

Amigo Cab filed the instant Petition on November 28, 2016. No response to the Petition has been filed.

**Discussion**

In considering this Petition, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission’s Rules of Administrative Practice and Procedure,

52 Pa. Code § 5.44(a), which provides the following:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

 In its Petition, Amigo Cab asks the Commission to: (1) overturn the *November 2016 Letter* which denied the Application and (2) grant the Application and issue Amigo Cab a certificate of public convenience to provide the proposed service. Petition at 10. The Petition avers that the Business Plan on record, along with the Verified Statements contained therein, demonstrate that the service proposed by Amigo Cab is necessary to satisfy a public demand or need and that Amigo Cab possesses the requisite technical and financial fitness and propensity to operate legally in accordance with the requirements set forth in 52 Pa. Code § 41.14. *Id*.

 Although the *November 2016 Secretarial Letter* denied the Application for failure to demonstrate technical and financial fitness, the Petition avers that the *November 2016 Secretarial Letter* does not offer any reasoning to explain why Amigo Cab’s Business Plan does not satisfy the fitness standard set forth in 52 Pa. Code § 41.14(b). Petition at 7. Specifically, the Petition avers that TUS incorrectly relied on certain statements made by Amigo Cab in its Business Plan to negate a finding of technical and financial fitness. Petition at 5. The Petition further avers that, contrary to the meaning read into these statements by TUS, Amigo Cab possesses sufficient capital, equipment, facilities, and other resources to serve the requested territory. Petition at 5-9. Additionally, the Petition avers that Amigo’s Business Plan, which relies on the expertise of experienced individuals to utilize sufficient assets to prudently enter the market in the requested territory slowly over time, demonstrates that Amigo Cab possesses the requisite technical and financial fitness and propensity to operate legally. Petition at 8-9.

Upon review, we conclude that Amigo Cab has provided sufficient information for us to consider its Application under the applicable legal standards. Pursuant to the Public Utility Code (Code), 66 Pa. C.S. § 1103(a), an application for a certificate of public convenience should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” To make these determinations, the Commission, in a policy statement, set forth the criteria to be taken into consideration. These factors, found at 52 Pa. Code § 41.14, are:

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

 (a)An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

 (b) 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.

 (c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

 (d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331--29.335 (relating to limousine service.)

The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.,* 72 Pa. P.U.C. 262, 274 (1990) (*Blue Bird*).

 Thus, in order to approve an application for a certificate of public convenience, the Commission must find that the applicant has sustained its burden of proving, by a preponderance of the evidence, that it possesses the requisite technical and financial fitness and propensity to operate safely and legally.

 Based on our review of the record and Amigo Cab’s averments in the Petition, we will grant the Petition, rescind the *November 2016 Letter*, and grant the Application.

 In granting the Application, we find that Amigo Cab provided ample evidence that the proposed service would fulfill some useful public purpose and be responsive to public demand and need. In its Business Plan, Amigo Cab submitted a total of thirty-five verified Supporting Witness Statements to demonstrate a public need for the

proposed service. Therefore, we find that there is sufficient evidence to support a finding that the public need requirement has been satisfied.[[1]](#footnote-1)

 We also find that Amigo Cab has demonstrated that it possesses the technical and financial fitness and propensity to operate safely and legally as required by 52 Pa. Code § 41.14(b). In evaluating the factors to be considered in determinations of fitness, the *November 2016 Letter* seemingly denied the Application on the basis that Amigo Cab did not possess sufficient capital, equipment, facilities, and other resources necessary to serve the territory requested as required by 52 Pa. Code § 41.14(b)(1). The *November 2016 Letter* found that Amigo Cab failed to possess the requisite technical and financial fitness to provide service because “[a]ccording to the applicant’s own Verified Statements, it possesses insufficient equipment to provide reasonable service in such a broad service area. Furthermore, the applicant lacks sufficient funds to purchase the number of vehicles which would be sufficient for providing reasonable service.” However, we do not agree that this statement made by Amigo Cab should, on its own, negate a finding of technical and financial fitness in this matter. We must also rely on the evidence on record to determine whether Amigo Cab possesses the requisite technical and financial fitness, rather than solely relying on this statement to negate such a finding.

 As set forth in the Petition, the stated inability of Amigo Cab to satisfy the entire need for *all* transportation service within the proposed service territory does not equate to an admission by Amigo Cab that they are technically or financially unfit to provide that service. Petition at 8. In its Business Plan, Amigo Cab states that it plans to commence the operation of its service with two vehicles, which will be purchased immediately upon the Commission’s approval of the Application.[[2]](#footnote-2) Business Plan at 4. Amigo Cab intends to operate this fleet of two vehicles until it can obtain additional vehicles and drivers to serve the requested service territory.[[3]](#footnote-3) *Id*. The Petition further avers that this business model will allow Amigo Cab to enter the market slowly over time while still addressing the public’s immediate need for additional call and demand service in the requested service territory. Petition at 8.

 An almost identical business model was approved by the Commission in *Application of Express Taxi, LLC*, Docket No. A-2015-2475767 (Order entered May 5, 2016) (*Express Taxi*). In *Express Taxi*, the Commission granted an application whereby Express Taxi, LLC (Express Taxi) sought approval to transport persons in call or demand service in the exact same service territory as proposed by Amigo Cab.[[4]](#footnote-4) As in the instant Application, Express Taxi proposed to use two vehicles to serve this territory and expressed its intent to increase its fleet going forward as needed. Based on the record evidence in that case, the Commission found that Express Taxi possessed sufficient equipment necessary to serve the requested territory. Accordingly, we find that Amigo Cab also possesses sufficient equipment to serve the requested territory.

 We also find that Amigo Cab possesses sufficient capital, facilities, and other resources to serve the requested territory. The Business Plan on record demonstrates that the owner of Amigo Cab has an estimated net worth of $290,500, including $30,500 in liquid funds and a $50,000 line of credit. Business Plan, Exhibit F. Additionally, as part of the Petition, Amigo Cab submitted three letters of credit from Keystone Auto Group, LLC; Adam Auto Group; and Yassee Auto Sales, LLC; which indicate that these three companies will extend financing to Amigo Cab to purchase additional vehicles up to dollar amounts of $80,000, $50,000, and $40,000, respectively. Petition at Exhibit A. As such, we find that Amigo Cab possesses sufficient capital, equipment, facilities, and other resources necessary to serve the requested territory.

 We also find that the remaining factors used to establish technical and financial fitness set forth in 52 Pa. Code § 41.14(b) have been satisfied by the evidence of record. The owner and manager of Amigo Cab possess the requisite technical expertise to serve the requested territory as they both have extensive experience in the taxi cab industry, including the operation of other taxi companies such as: Express Taxi, Inc.; Keystone Cab Service, Inc; EZ Taxi, LLC; and United Cab, LLC. 52 Pa. Code § 41.14(b)(2); Business Plan at 1-2. Amigo Cab has also submitted adequate evidence that it is able to obtain sufficient and continuous insurance coverage for its vehicles. 52 Pa. Code § 41.14(b)(3); Business Plan, Exhibit C. Finally, the Business Plan adequately outlines Amigo Cab’s ability to comply with the Commission’s driver and vehicle safety Regulations as well as the requirements set forth in the Code. 52 Pa. Code § 41.14(b)(4)-(6); Business Plan at 3-6. Accordingly, we find that there is sufficient evidence demonstrating that Amigo Cab possesses the requisite technical and financial fitness and propensity to operate safely and legally.

**Conclusion**

For the reasons set forth above, we find that evidence of record demonstrates that the service proposed by Amigo Cab is necessary to satisfy a public demand or need and that Amigo Cab possesses the requisite technical and financial fitness and propensity to operate legally. As such, Amigo Cab has satisfied the requisite criteria set forth in 52 Pa. Code § 41.14 to obtain a certificate of public convenience. Accordingly, we will grant the Petition, rescind the *November 2016 Letter*, and grant the Application; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Petition for Reconsideration from Staff Action filed by Amigo Cab, LLC on November 28, 2016, is granted.

 2. That the Application filed by Amigo Cab, LLC, at Docket No. A‑2015-2475776 is hereby approved granting the following rights:

To transport persons in call or demand service from points in the counites of Berks and Lancaster to points in Pennsylvania and return.

4. That Amigo Cab, LLC shall not engage in any transportation authorized herein until the following are submitted to the Commission:

a. Form E evidence of Bodily Injury and Property Damage Liability insurance; and

b. A tariff establishing just and reasonable rates.

 5. That, upon compliance with the requirements herein, a Certificate of Public Convenience be issued to Amigo Cab, LLC evidencing the Commission’s approval of the above-outlined transportation authority.

 6. That, if Amigo Cab, LLC has not, on or before sixty (60) days from the date of entry of this Opinion and Order, complied with the requirements set forth above, this Application shall be dismissed without further proceedings.

 7. That the certificate holder shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all regulations of the Commission now in effect, or as may hereafter be prescribed, by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate.

 8. That the authority granted herein, to the extent that it duplicates authority now held or subsequently granted to Amigo Cab, LLC, shall not be construed as conferring more than one operating right.

** BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: September 21, 2017

ORDER ENTERED: September 21, 2017

1. By Final Rulemaking Order, entered October 27, 2016, at Docket No. L‑2015-2507592, the Commission reduced the barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. The amended Regulations became final upon publication in the *Pennsylvania Bulletin* on June 3, 2017, at 47 *Pa*. *B*. 3099. For purposes of this proceeding, we will apply our Regulations and the Policy Statement at 52 Pa. Code § 41.14 that were in place at the time Amigo Cab filed its Application and through the time it filed the instant Petition. This approach is consistent with the legal standard that no statute be construed to be retroactive, which has also been applied to regulations of administrative agencies. *See* 1 Pa. C.S. § 1926; *R & P Services, Inc. v. Commonwealth Dep’t of Revenue*, 541 A.2d 432 (Pa. Cmwlth. 1988). [↑](#footnote-ref-1)
2. No Commission Regulations, policy statements, or decisions require applicants to actually own the facilities and equipment to be used in the proposed service prior to Commission approval of an application. *Application of Go Green Taxi*, LLC, Docket No. A-2015-2504430 (Order entered February 10, 2017). Instead, an applicant could consider it imprudent to purchase facilities and equipment prior to the Commission approving the proposed service. *Id*. [↑](#footnote-ref-2)
3. Amigo Cab plans to purchase twenty-eight cabs over the next five years. Business Plan, Exhibit E. [↑](#footnote-ref-3)
4. Additionally, we note that the owner and manager of Express Taxi is also the manager of Amigo Cab. [↑](#footnote-ref-4)