



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
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SERVED: February 29 2008
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Exceptions, if any, must be filed with the Secretary, Alabama Public Service Commission, P. O. Box 304260, Montgomery, Alabama 36130, and served on all other parties of interest within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of Exceptions. Replies to Exceptions may be filed within 20 days from the date of service of the Exceptions. At the expiration of the period for filing of Exceptions, the within Report and Recommended Order will become the Report and Order of the Commission unless Exceptions are filed seasonably or the time for filing Exceptions is extended by the Commission, or the Commission, within such period stays or postpones the Order. An **original and four copies** of any Exceptions and Replies should be filed.

JAMES N. McADAMS
d/b/a BLUE DOLPHIN TAXI
Applicant

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REPORT AND RECOMMENDED ORDER

I. INTRODUCTION AND BACKGROUND

By application filed with the Commission on or about April 6, 2007, James N. McAdams, d/b/a Blue Dolphin Taxi ("Blue Dolphin"), 21550 U.S. Highway 98, Foley, Alabama 36535, seeks to institute a new operation as a common carrier by motor vehicle in the intrastate transportation of passengers and their baggage in special or charter taxi operations over irregular routes between all points in Baldwin County, Alabama. Pursuant to Commission notice dated April 10, 2007, said application was set for hearing on April 26, 2007.

The Commission received notices of protest to the application of Blue Dolphin from Gulf of Dixie, LLC, d/b/a Yellow Cab of Baldwin County ("Dixie") and Mobile Bay Transportation Company,

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Inc. ("Mobile Bay"). Representatives from both Dixie and Mobile Bay appeared at the April 26, 2007 hearing to further their respective protests.

II. SUMMARY OF THE RECORD

The first witness to testify in the proceeding was Mr. James N. McAdams, the owner of the applicant Blue Dolphin. During his direct testimony, Mr. McAdams represented that he and his brother, Mr. Robert S. McAdams, purchased Blue Dolphin from previous owners. He represented that Blue Dolphin had been in business in Gulf Shores, Orange Beach, Foley and other points in South Baldwin County for approximately seventeen (17) years at the time that he and his brother purchased the company.

Mr. McAdams further represented during his direct testimony that some time after Hurricane Ivan, his brother injured his back and had to go on disability. Mr. McAdams represented that unbeknownst to him, his brother stopped paying Blue Dolphin's bills including those for insurance coverage. As a result of such non payment, Mr. McAdams testified that Blue Dolphin's coverage with Canal Insurance lapsed. Upon receiving notice of that lapse, the Alabama Public Service Commission ("APSC" or "the Commission") revoked the operating authority of Blue Dolphin. Mr. McAdams was unsure of the date of the Commission's Order of revocation, but the APSC's official records reveal that said Order of Revocation was entered by the Commission on February 18, 2005 in Informal Docket C-12999.

Mr. McAdams explained on further direct testimony that his brother had formerly been the president and secretary of Blue Dolphin and as such handled all the books and records of the company. Mr. McAdams in fact represented that all he had previously done personally for Blue Dolphin was to drive. He thus represented that he had no knowledge of the issues with Blue Dolphin's operating authority. Upon learning of those issues, Mr. McAdams represented that he parted ways with his brother.

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In response to questions from the bench, Mr. McAdams testified that he had continued to provide taxi service in Foley and into Gulf Shores and Orange Beach even after learning that Blue Dolphin's authority had been revoked. If granted the authority sought, Mr. McAdams represented to the bench that he intended to operate two vehicles. Mr. McAdams stated that he and one other individual would handle the company's driving responsibilities if Blue Dolphin's application were to be granted.

Mr. McAdams represented on further questioning from the bench that he was generally familiar with all the rules and regulations governing passenger transportation providers in Alabama and would operate in compliance with those rules. He represented that his company regularly maintained its vehicles in house, but also had a relationship with an outside mechanic. Mr. McAdams also indicated that Blue Dolphin had appropriate insurance coverage in place at the time of the hearing.

Mr. McAdams lastly maintained in response to questions from the bench that the service he proposed was needed in the Baldwin County area. He asserted that during the summer season, all passenger transportation providers in the area were swamped. He indicated that he had received referrals from Dixie during the summertime and had made return referrals to Dixie when he was busy.

Under cross examination by Mr. Chris Jones of Dixie, Mr. McAdams again represented that he did not become aware that Blue Dolphins insurance had lapsed until the fall or winter of 2005. He indicated that Blue Dolphin did not get insurance coverage in place until approximately six months prior to the time of the hearing. Mr. McAdams thus conceded that Blue Dolphin did operate for a time without insurance. He in fact admitted that a former driver of Blue Dolphin, a Mr. Donald Thompson, was involved in an accident while driving for Blue Dolphin when the company was without insurance coverage. Mr. McAdams represented that Blue Dolphin paid in full the claim that arose out of that accident.

Under cross examination by Ms. Margie Wilcox of the Protestant Mobile Bay, Mr. McAdams represented that Blue Dolphin had vehicles in addition to the two that it currently operated. More

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specifically, Mr. McAdams stated that he had a large van that currently did not have an appropriate tag and a minivan that was not operable and thus did not have a tag.

Mr. McAdams testified upon further cross examination by Ms. Wilcox that Blue Dolphin had not received any citations from the Commission. Mr. McAdams did however, indicate that a representative from the Commission came around to his business to inform him that his company's insurance had lapsed and that the company's authority had been revoked as a result.

Under further cross-examination by Ms. Wilcox, Mr. McAdams testified that he currently operated Blue Dolphin out of his home. He represented that Blue Dolphin was his only company and thus his only source of income. Prior to driving for Blue Dolphin, Mr. McAdams testified that he had been in the automobile business for the better part of thirty years in sales and management.

During further cross-examination by Ms. Wilcox, Mr. McAdams conceded that he did not bring any witness other than himself to support his application. Based on that response, Ms. Wilcox moved for a dismissal of the application of Blue Dolphin. Ms. Wilcox was advised from the bench that her motion would be taken under advisement as only the APSC acting in its official capacity as a regulatory body could grant such a motion to dismiss.

Mr. McAdams represented under further cross-examination by Ms. Wilcox, that he currently held a business license in Foley. He maintained that his company provided taxi service twenty-four hours a day, seven days a week, but did not operate any wheelchair or special needs vehicles. Mr. McAdams indicated that the company's dispatching was handled by telephone.

With respect to driver training requirements, Mr. McAdams represented that his company performed background checks on drivers as did Blue Dolphin's insurance carrier. He indicated, however, that his company did not provide any ongoing driver safety training or defensive driving training for its employees. Mr. McAdams represented that he personally maintained the company's driver files as required by the Department of Transportation and the Public Service Commission.

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Under further cross-examination by Ms. Wilcox of Mobile Bay, Mr. McAdams estimated that his company's revenues for the year prior to the hearing had been in the neighborhood of fifty to sixty thousand dollars because he was restricted to the Foley area as the scope of his operations. Mr. McAdams was uncertain of what revenues he may have generated in prior years. He did, however, indicate that he had no employees besides his drivers.

During his redirect testimony, Mr. McAdams represented to the bench that his company had not been operating without insurance. He did, however, acknowledged the accident that Mr. Donald Thompson was involved in while driving for Blue Dolphin and did not dispute his previous testimony that the company had no insurance at the time of that accident which he estimated to be in March of 2006. Mr. McAdams represented that the company did not continue to operate after that accident without insurance.

In response to further questions from the bench, Mr. McAdams testified that the city of Foley required him to file proof of insurance. He maintained that his license with the city of Foley had not been revoked or suspended. Mr. McAdams also indicated that he had applications pending in both Orange Beach and Gulf Shores. Mr. McAdams asserted that he had dropped off passengers in those areas, but had not solicited any traffic originating in those cities. Mr. McAdams insisted that the cities of Orange Beach and Gulf Shores did not require him to have a license to merely drop passengers off in their jurisdictions.

The next witness to testify in the proceedings was Ms. Margie Wilcox, the sole owner of the Protestant Mobile Bay. Ms. Wilcox represented that Mobile Bay's principal address was at 8341 Airport Boulevard in Mobile where the company operated a full service transportation office. Ms. Wilcox explained that Mobile Bay had recently purchased Yellow Cab of Mobile which had another full service, twenty-four seven dispatch center located at 82 Mack Street in Mobile. Ms. Wilcox represented that Mobile Bay's authority general covered Mobile and Baldwin Counties.

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During her direct testimony, Ms. Wilcox testified that business in the Mobile and Baldwin areas had fallen off since the hurricanes of 2005-06. Ms. Wilcox represented that even with the economic slow down attributable to the hurricanes, Mobile Bay stood ready, willing, and able to expand its business to meet the public need and had the financial wherewithal to do so. Ms. Wilcox testified that she was protesting the application of Blue Dolphin to protect her significant investment in the operations of Mobile Bay and to protect the livelihood of the approximately forty individuals employed by her company. Ms. Wilcox maintained that Mobile Bay provided a twenty four hour a day, seven days a week, full service transportation business. Ms. Wilcox represented that her company actively solicited business by advertising in local telephone books and the Mobile Register.

Ms. Wilcox testified during her further direct presentation that she had been in the transportation business twenty-seven years. She represented that she had been forced by the present economy to explore new ways of generating revenues for her business. Ms. Wilcox indicated that the economic slowdown had prompted her to purchase Yellow Cab of Mobile in an effort to expand her business into the area of on demand transportation in order to maintain her company and support the people who worked for her. She represented that a grant of the authority sought by Blue Dolphin would jeopardize those efforts. Ms. Wilcox again maintained that her company was actively seeking more business and had not turned down any calls for service. Mr. McAdams did not engage in any cross-examination of Ms. Wilcox.

In response to questions from the bench, Ms. Wilcox testified that if her application to transfer the authority of Yellow Cab of Mobile to Mobile Bay Transportation were to be subsequently approved by the Commission, her company would have an active presence in Baldwin County. She in fact indicated that Mobile Bay already picked up passengers in Baldwin County and had a local telephone number in that area. Ms. Wilcox represented that even though her company was based in Mobile, she still sent vehicles to Baldwin County as needed and had in the past operated an office there. She testified that she would reestablish that office if the business generated in Baldwin County necessitated such action.

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Ms. Wilcox surmised in response to further questions from the bench that even though calls for Mobile Bay's service had increased, the company's revenues were nonetheless down due to the increased pressure of higher fuel prices. Ms. Wilcox maintained that a further dilution of her company's market share would have an increasing negative economic impact on her company.

The next witness to testify in the proceedings was Mr. Chris Jones, the owner of the Protestant Dixie. Mr. Jones represented that Dixie had been operating for a little more than five years in southern Baldwin County. He stated that Dixie was experiencing pretty strong growth before Hurricane Ivan, but was devastated economically thereafter. He indicated that the damage caused by Katrina a little more than a year after Ivan only compounded matters further. He indicated that his company had, as a result of the hurricanes, been forced to restructure and let some employees go. He also represented that this company had reduced the number of vehicles operated and tried to go to more fuel efficient vehicles.

Mr. Jones indicated that for the year after Hurricane Ivan, his company experienced a 42 percent decrease in gross sales. Following hurricane Katrina, Mr. Jones represented that Dixie's revenues were 30 percent less than pre-Ivan numbers. At the time of the hearing, Mr. Jones indicated that his company's revenues were approximately 18 percent lower than pre-Ivan revenues.

Mr. Jones acknowledged during his further direct presentation that he and his existing competitors who operated in the Mobile and Baldwin County area had been able to meet the existing public need for passenger transportation service and still maintain profitability because the companies focused on different market niches in their respective operations. Mr. Jones accordingly requested that the application of Blue Dolphin be denied.

In his attempt to cross examine Mr. Jones, Mr. McAdams represented that his primary area of service was in and around Foley, an area which he maintained his competitors did not even try to accommodate. Mr. Jones acknowledged that Foley was growing and represented that his company would love to establish a base of regular day-time business in addition to its resort business near the beaches of

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Baldwin County. Mr. Jones represented that contrary to the assertions of Mr. McAdams, his company had never referred calls to Blue Dolphin.

In a closing statement, Mr. McAdams represented that his company had indeed been referred calls to Dixie. He in fact represented that the dispatcher from Dixie called his company all the time to refer calls in Foley that Dixie could not accommodate. He indicated that Blue Dolphin reciprocated by sending to Dixie calls from individuals who needed a cab in Orange Beach.

III. DISCUSSION AND CONCLUSIONS

An applicant seeking a certificate to operate as a common carrier must establish through evidence presented at the hearing that it is fit, willing and able to properly perform the service proposed in conformity with the provisions of the Alabama Motor Carrier Act and the Commission's Motor Carrier Rules, and that the proposed service is required by the public convenience and necessity. The adequacy of existing service in meeting the public need; the Applicant's financial ability to furnish adequate, continuous, and uninterrupted service and the advantages to the public of the proposed service are, among other things, factors which must be considered. Proof of public convenience and necessity requires an affirmative showing that the proposed service will be superior to the service of presently authorized carriers, or that the proposed operations will serve a useful purpose which cannot or will not be met by existing carriers.

In accordance with the foregoing, the first issue to be addressed in the case at bar is whether the Applicant is fit, willing and able to provide the common carrier service proposed. It appears from a review of the record compiled herein that the Applicant has the necessary experience, equipment and financial resources to provide the services proposed. Additionally, it appears that the Applicant is generally familiar with the Commission's rules and regulations regarding passenger transportation service. There is, however, a question as to whether the applicant will conduct its operation in accordance with all applicable rules as the Applicant apparently conducted operations without

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appropriate insurance. Although the Applicant appears to have settled the damages that arose from an accident one of its drivers was involved in while the company was without appropriate insurance coverage, the fact that any operations at all were conducted without insurance is great cause for concern. At best, this Applicant should be found fit, willing, and able for a limited term of eighteen (18) months, during which time the Applicant would be required to affirmatively demonstrate a willingness and ability to comply with all applicable rules, regulations and guidelines.

The next issue to be addressed is whether the public convenience and necessity requires the services as proposed by the Applicant. It is incumbent upon the Commission, when considering the question of public need, to consider whether the territory for which authority is sought is served by other carriers and the adequacy of such service to meet the public need. *Alabama Public Service Commission v. Higginbotham*, 256 Ala. 621, 56 So. 2nd 401 (1951), *Alabama Public Service Commission v. Crowe*, 247 Ala. 120, 22 So. 2nd 721 (1945). The maintenance of sound economic conditions in the transportation industry would be jeopardized by allowing a new operator to compete with existing carriers who are providing reasonably adequate service. Motor Carriers serving an area should be afforded an opportunity to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

Proof of public convenience and necessity requires an affirmative showing that the proposed operations are superior to those of presently authorized carriers, or that the proposed operations would serve a useful purpose which cannot or will not be met by existing carriers. There must be an affirmative demonstration not only that a common carrier service is required in the convenience of the public proposed to be served, but also that it is a necessity on the part of such public.

A proposed service does not, however, have to be absolutely indispensable in order to serve the public convenience and necessity. A demonstration that the proposed service is reasonably necessary for the public good satisfies the required showing of public convenience and necessity. *Alabama Public*

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Service Commission v. Wells Fargo Armored Services, 495 So. 2nd 42 (Ala. 1986); *Van Express Inc. v. Beeline Express Inc.*, 347 So. 2nd 1353 (Ala. 1977); *Southern Haulers v. Alabama Public Service Commission*, 331 So. 2nd 660 (Ala. 1976).

The testimony of record in this proceeding indicates that the Applicant Blue Dolphin has focused its service in the Foley area including movements that originate in Foley and terminate in Gulf Shores and Orange Beach. The record compiled also indicates, however, that the Protestants Dixie and Mobile Bay are authorized to service the entirety of Baldwin County, including Foley. Ms. Wilcox of Mobile Bay represented that her company had previously operated an office in Baldwin County and would do so again if the need to reopen such an office resurfaced. Ms. Wilcox further testified that Mobile Bay had purchased the operations of Yellow Cab of Mobile with the express intent of providing on-call taxi type service throughout Mobile and Baldwin Counties. Ms. Wilcox further represented that her company actively solicited business in Baldwin County and had not experienced calls for service that could not be handled.

Mr. Jones of the Protestant Dixie testified that his company had been providing taxi service in south Baldwin County for a little more than five years. He maintained that Dixie's sales had still not reached the levels experienced prior to Hurricane Ivan, leaving the company with no choice but to reduce its fleet and pursue more fuel efficiency with the fleet retained.

The only testimony produced by Mr. McAdams that would tend to indicate the existence of an unmet public need for the service proposed by Blue Dolphin was his representation that Dixie sometimes referred customers seeking movements within Foley to Blue Dolphin due to Dixie's inability to handle such calls. Mr. Jones of Dixie flatly denied, however, that Dixie had referred any calls for service to Blue Dolphin. Without a witness to corroborate his claims that Dixie indeed referred calls for service in the Foley area that it could not handle and no other testimony indicating any public need, Mr. McAdams of Blue Dolphin has failed to meet his burden of affirmatively demonstrating a need for the service

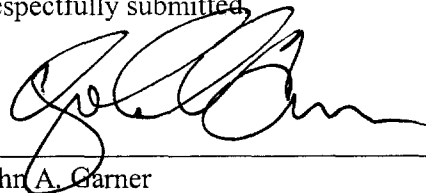
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proposed in his company's application. There was also no other testimony indicating that the service proposed by Blue Dolphin was in any way superior to that opposed by the Protestants Dixie and Mobile Bay, nor was there any testimony indicating that the service proposed by Blue Dolphin would serve a useful purpose which is not already being met by those existing carriers.

RECOMMENDATION

Based on the foregoing, it appears that the Applicant has failed to affirmatively demonstrate that the service proposed in its application is required by the public convenience and necessity. Further, the Applicant has failed to demonstrate that its proposed service will serve a useful purpose which cannot or will not be met by existing carriers. It is accordingly recommended that the Application of Blue Dolphin be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John A. Garner', is written over a horizontal line.

John A. Garner
Chief Administrative Law Judge