STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER OF

THE APPLICATION OF ROCKAWAY VOLUNTEER AMBULANCE SEARCH AND RESCUE CORPS. FOR PRIMARY OPERATING TERRITORY

ORDER

Petitioner,

Pursuant to Section 3008 of the Public Health Law

On June 28, 2016, the Regional Emergency Medical Services Council of New York City ("REMSCO") disapproved new permanent ambulance operating authority for Rockaway Volunteer Ambulance Search and Rescue Corps. ("RVAC") in the Rockaway Peninsula as per Public Health Law ("PHL") § 3008. On July 4, 2016, RVAC appealed REMSCO's determination and requested that the State Emergency Medical Services Council ("State EMS Council") approve its application for ambulance operating territory. Integrity CONS Ltd. ("ICON"), a concerned party, argues against the appeal.

Ronnie Murchinson, appeared on behalf of RVAC pro se. ICON is represented by Timothy C. Hannigan, of counsel to Robert Jay Dinerstein, P.C. The Bureau of Emergency Medical Services ("EMS") of the New York State Department of Health issued Policy Statement #06-06, dated May 26, 2006, ("Policy Statement") for the EMS Operating Certificate Application Process. Pursuant to that policy, Dawn MacKillop-Soller, Administrative Law Judge ("ALJ"), was assigned to hear the appeal and make findings of fact and a recommendation to the State EMS Council. On August 24, 2017, the Administrative Law Judge issued her Report and Recommendations.
NOW, on reading and filing the Notice of Hearing, the Record herein and the ALJ's Report, we hereby adopt the Report of the ALJ as our own; and

IT IS HEREBY ORDERED:

1. REMSCO's vote to disapprove the Petitioner's CON application for new permanent ambulance operating authority for RVAC in the Rockaway Peninsula is upheld.

2. This Order shall be effective upon service on the applicant by personal service or by certified or registered mail.

DATED: Albany, New York 
_______, 2017

THE STATE EMERGENCY MEDICAL SERVICES COUNCIL

By: 
DONNA JOHNSON
Executive Secretary
New York State Emergency Medical Services Council

TO:

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STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER OF

THE APPLICATION OF
ROCKAWAY VOLUNTEER AMBULANCE SEARCH AND RESCUE CORPS, FOR PRIMARY OPERATING TERRITORY

Petitioner,
Pursuant to Section 3008 of the Public Health Law

To: The New York State Emergency Medical Services Council

On June 28, 2016, the Regional Emergency Medical Services Council of New York City ("REMSCO") failed to approve new permanent ambulance operating authority for Rockaway Volunteer Ambulance Search and Rescue Corps. ("RVAC") in the Rockaway Peninsula as per Public Health Law ("PHL") § 3008.1 On July 4, 2016, the RVAC appealed REMSCO's determination and requested that the State Emergency Medical Services Council ("State EMS Council") approve its application for ambulance operating territory. Integrity CONS Ltd. ("ICON"), a concerned party, argues against the appeal.

Ronnie Murchinson appeared on behalf of RVAC pro se. ICON is represented by Timothy C. Hannigan, of counsel to Robert Jay Dinerstein, P.C. The Bureau of Emergency Medical Services ("EMS") of the New York State Department of Health issued Policy Statement #06-06, dated May 26, 2006, ("Policy Statement") for the EMS Operating Certificate Application Process. Pursuant to that policy, Dawn MacKillop-Soller, Administrative Law Judge ("ALJ"), is assigned to hear the appeal and make findings of fact and a recommendation to the State EMS Council.

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1 RVAC is seeking to operate as Rockaway Volunteer Ambulance Corporation.
HEARING RECORD


1. Index of files contained on a CD related to the appeal.

2. Cover letter dated August 30, 2016, from the Department’s Bureau of EMS, notifying the Bureau of Adjudication of RVAC’s July 4, 2016, appeal.

3. RVAC’s letter to the Bureau of EMS dated July 4, 2016, stating its appeal intent.

4. Cover letter from Marie Diglio, Executive Director, REMSCO, dated June 29, 2016, stating the voting results and roll call vote attachment.

5. Transcript from the June 28, 2016, REMSCO hearing.

6. Part I of the public webcast of the June 28, 2016, REMSCO meeting.

   6b. Part 2 of the public webcast of the June 28, 2016, REMSCO meeting.

   6c. Part 3 of the public webcast of the June 28, 2016, REMSCO meeting.

   6d. Part 4 of the public webcast of the June 28, 2016, REMSCO meeting.

   6e. Public hearing for application held on June 28, 2016.


8. Email correspondence - corporation officers and the Department of State filing.


11. Email correspondence dated June 17, 2016, between RVAC, the Department and REMSCO - corporate structure, proposed territory and name filing.

   11a. Email correspondence showing letters sent to board members dated

       June 3, 2016.
11b. Letter dated June 2, 2016, from RVAC to a board member – removal from Board of Directors.

11c. Letter dated June 2, 2016, from RVAC to a board member – removal from Board of Directors.

12. RVAC’s name filing receipt dated June 17, 2016.


15. RVAC membership meeting minutes dated June 5, 2016.


17. Email correspondence - RVAC territory overlaps RPVRAC dated June 7, 2016.

18. Email correspondence - maps needed for RPVRAC territory dated April 14, 2016.

19. Application maps showing RVAC’s proposed territory dated April 14, 2016.

20. RVAC’s CON application dated November 2, 2015.


22. RVAC’s brief dated November 18, 2016, and attachments.


24. CD containing the index of files.


26. April 21, 2016, REMSCO transcript.

27. Hearing officer’s report dated June 1, 2016.

28. Complete copy of the record.
FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. The references in brackets refer to exhibits ["Ex."].

1. On November 2, 2015, president and chief of RVAC, Ronnie Murchinson, submitted a Certificate of Need ("CON") application to REMSCO to operate a new, not-for-profit volunteer ambulance service in the territory of the Marine Parkway Bridge to the Nassau County border, in the Rockaway Peninsula, in Queens County, New York. [Ex. 20].

2. On April 21, 2016, a public hearing was held at the REMSCO offices on the Petitioner’s application. Hearing officer and chairman, Frank Schorn, Esq., presided over the hearing. In a report dated June 1, 2016, Mr. Schorn recommended that the Ambulance Committee of REMSCO ("Committee") approve the Petitioner’s CON application based on “sufficient community need” after it determine its “satisfaction with (RVAC’s) financial and organizational status.” [Ex. 27].

3. The Committee reviewed the hearing officer’s report and recommended approval of RVAC’s new ambulance service. However, on motion before the REMSCO members on June 21, 2016, 19 out of 26 REMSCO members authorized to vote participated in a roll call vote that received only ten affirmative votes, which resulted in a failed vote. [Ex. 4, 5].

4. In a letter dated July 4, 2016, RVAC appealed the denial. [Ex. 3].

APPLICABLE LAW

1. The purpose of an ambulance service is to provide “emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft or other form of transportation to facilities providing hospital services.” 10 NYCRR 800.3(f); See also 10 NYCRR 800.21(i).

All applications shall focus on how the proposed service will meet the definition of public need. The narrative and endorsements shall respond to and document issues related to this definition. \textit{Statements of want, desire, feeling or other unsubstantiated sentiments are not acceptable.}

The complete application is the basis for the demonstration of need. In the public hearing the applicant may be restricted to corroborating and/or explaining the data therein.

3. Public need is defined as “the demonstrated absence, reduced availability or an inadequate level of care in ambulance or emergency medical service available to a geographical area which is not readily correctable through the reallocation or improvement of existing resources.” Policy Statement 06-06, p. 4.

4. Under Policy Statement 06-06, p. 6, in order to demonstrate public need, the applicant’s narrative should also include a “description of the EMS system, all existing EMS agencies, hospitals and other institutions that generate an EMS response.” The applicant is also required to attach a narrative detailing “the positive and negative impact the proposed agency shall have on the area and providers,” inclusive of the following:

- Response time (time the call was received to time on the scene);
- Staffing;
- Level of service;
- Call volume for the past 12 months and the anticipated call volume for first 12 months of operation;
- Mutual aid;
- Quality assurance;
- Medical direction;
- Protocols;
- Ability and quality of existing services, and;
Financial impact, and any adverse impact the proposed service will have on existing services.

5. Under Policy Statement 06-06, p. 4, the variables to consider in assessing public need include the following:

- Geography;
- Population (size, density, projections);
- Level of care (existing, available);
- Quality, reliability, and response patterns of existing services;
- Type of service (emergency, non-emergency);
- Special need (i.e. Air, Industrial or Facility);
- Service effectiveness, cost, and operation; and
- Other local factors.

6. In the demonstration of public need, the applicant is permitted to amend the application “so long as it occurs prior to the public hearing.” Policy Statement 06-06, p. 12.

7. The Applicant is also required to submit financial information that describes “the initial source of funds, the adequacy of sources of future revenue and…a first year budget for the proposed service.” Policy Statement 06-06, p. 8.

8. According to PHL § 3003(5), the regional council “shall have the responsibility to make determinations of public need for the establishment of additional medical services and ambulance services and to make the determinations of public need.” See also PHL § 3008.

9. The applicant has the burden of proof “for the demonstration of public need.” Policy Statement 06-06, p. 5; See also PHL § 3008.

**ISSUE**

Has the Petitioner established that its application should be approved based on public need?
DISCUSSION

Procedural issue

The Committee accepted the report of the hearing officer and recommended approval of RVAC’s CON application to the REMSCO members, but the vote failed at the hearing held on June 21, 2016. RVAC raises a procedural issue in its challenge of the vote on the basis that it improperly failed because it did not “have enough members to reach quorum … (to) vote yes to the application.” The evidence shows, however, that the vote was properly taken, as required under PHL § 3003(5) and Policy Statement 06-06. The vote received the minimum number of votes from at least 14 of the 19 REMSCO members present – the majority of the 26 membership – to reach quorum for voting purposes. Chairman Yedidyah Langsam confirmed this at the hearing when he stated that with 26 members, “we need…14 affirmative votes in order to pass a motion,” a result that never occurred because this vote had only ten. [Ex. 4, 5, 22].

Ruling on evidence

ICON objects to the admission into evidence of RVAC’s grant information that it submitted post-hearing, as part of its brief, in support of its financial stability. Policy Statement 06-06 states that the “completed application,” along with any attachments, must be submitted at the time it is provided to REMSCO. This requirement is also consistent with the Policy Statement that excludes new information not provided prior to the public hearing. I am sustaining ICON’s objection because unlike the Williams Grants, which RVAC identified in its application, information pertaining to the “3 (additional) grants” consists of new financial details not previously disclosed. This untimely submission deprived REMSCO of the opportunity to review these grants in furtherance of its determination. As such, reference to them will not be made in this report. [Policy Statement 06-06; Ex. 20, 22, 23].
Public need

RVAC has the burden of proof to show public need for a new ambulance service in the Rockaway Peninsula by establishing a “demonstrated absence, reduced availability or inadequate level of care in ambulance or emergency service” to the area that is “not readily correctable” by “existing resources.” RVAC argues that public need is demonstrated in its submission of “FDNY (NYC 911 provider) open public call response data” and “community surveys.” In order to demonstrate public need, RVAC was required to include in its application descriptions for existing ambulance providers authorized to service the Rockaway Peninsula, such as call response times and call volumes for the past 12 months and for the initial months of operation, ability and quality of existing services and financial and services impact information, which it failed to do. While the documents produced by RVAC support its mission and purpose, which is to provide the community with “free (medical) service(s)” and “an improvement to public convenience,” they do not contain the requisite details to establish public need. [Policy Statement 06-06; Ex. 20, 22, 26].

RVAC produced FDNY website information that shows response times “citywide” at approximately six to eight minutes with an additional 90 seconds to account for “call taker time and fire department 911 time.” This information shows response times for the FDNY to the New York City boroughs, yet it is insufficient to show response times for the FDNY – or the nine other existing ambulance providers – to the Rockaway Peninsula. Equally unpersuasive is RVAC’s reliance on “community surveys” from residents in the region and letters of support to establish the FDNY’s response times to the Rockaway Peninsula as untimely at “10-16 minutes.” The documents produced by RVAC demonstrate community support, yet they are unsupported statements. Under the Policy Statement, RVAC was obligated to provide documented details for call volumes and response times for existing ambulance providers and the ability and quality of
those services. Likewise, RVAC's operation projections — call volume at "500-1500" per year and no adverse effect on existing ambulance providers — are unreliable as they are based on speculation, as opposed to actual data. RVAC was responsible to include substantiated details as part of its application and its claim that requests to receive such information went unanswered is no excuse for its obligation to comply with the documentation requirements. [Policy Statement 06-06; Ex. 20, 22, 26; See also PHL § 3008].

Variables to show public need can be considered, such as the geography, population, size and response patterns of existing agencies, but they alone do not establish public need. Mr. Murchinson points to an unfortunate delayed response time to the area of 20 minutes for an existing ambulance provider that resulted in the death of two young girls, but this isolated tragedy is insufficient to confirm ongoing and repeatedly delayed responses. Indeed, Mr. Murchinson acknowledged at the hearing his experience working for an ambulance company where there were occasional, albeit unwanted, delays in call responses. Without the actual data, there is no way to determine whether emergency responses to the Rockaway Peninsula are routinely delayed or within the national standard, which the evidence established is "90 percent (of emergency calls) answered within 10 minutes." [Ex. 20, 22, 26].

It is undisputed that the Rockaway Peninsula is located in isolated territory, but the evidence does not confirm that the area suffers from an absence or refusal of services from existing providers or that ambulance providers outside the area are unavailable or unwilling to provide emergency assistance. Mr. Murchinson even admitted at the hearing that he was unaware of ambulance resources for any emergency providers, which leaves open the possibility that ambulance numbers could be increased to service the area, if needed, or that any inadequacy of services could be corrected. [Ex. 21, 26].
Financial feasibility

Under Policy Statement 06-06, in order to demonstrate financial stability, RVAC was required to explain the “adequacy of sources of future revenue” and “the initial source of funds” and provide a “first year budget.” RVAC’s budget includes revenue sources from two grants totaling $15,000 each, donations amounting to $15,000, a credit card amount of $20,000 and $14,790 in expenses. While RVAC acknowledges that it “does cost money to run an ambulance,” its only source of definitive start-up revenue comes from $15,000 in “donations,” which the evidence established as insufficient to show financial stability. [Ex. 20, 26].

It is unclear whether the donations are on a one-time basis or will be a reliable and predictable funding source moving forward. Also, like the line of credit, the grants do not represent actual funds or the guarantee of future money. At the hearing, Mr. Grillo stated that in his 38 years of experience, which includes working with an ambulance company with an annual budget totaling $125,000, grants are “money…already shown” as spent and “until you’ve spent the money, you’re not going to get that in.” Even if it could be established that these grants do not require money upfront, as Mr. Murchinson explained at the hearing, they are based on an in-progress pipeline project and are prospective funds that are subject to change. The uncertainty of the funds was confirmed by Mr. Murchinson at the hearing when he stated that it doesn’t look like plans for the grants are “going to change,” which suggests the possibility that they could.

RVAC’s projected expenses at $14,790 include one ambulance at a cost of $4,500 – a number questioned by hearing officer Mr. Schorn in his report as too low and missing necessary operational costs, such as insurance – and do not account for any rental costs, which RVAC estimates could amount to $20,000 in the first year. Even if RVAC’s plan to bill residents’ insurance companies – with “councilmen” and other government representatives funding billing
failures – was considered as a revenue source, it cannot be relied upon. While the members of the New York City Council, New York State Senate, New York State Assembly and the Borough of Queens applaud RVAC’s mission in their letters of support, none of them promise funds or financial assistance. In a region where many residents are low income and living without health insurance, the evidence does not establish how RVAC will recover from the financial deficiencies resulting from missed bills. [20, 22, 25, 26].

Conclusion

The Policy Statement makes clear that public need cannot be based on “want, desire, feeling or other unsubstantiated sentiments.” RVAC has shown its desire to contribute to the community in a meritorious manner, but it has failed to demonstrate that there exists an “absence, reduced availability or an inadequate level of care” for emergency and ambulance services in the Rockaway Peninsula. Also, its plans to start-up an ambulance company that will run 24 hours per day, seven days a week are based on funds that are largely speculative, making this ambitious task – a job that the evidence established requires a “constant flow of money” – likely unfeasible. The State EMS Council should uphold REMSCO’s vote to disapprove the application. [Ex. 26].

RECOMMENDATION: Based upon the foregoing, I hereby make the following recommendation:

1. REMSCO’s vote to disapprove the Petitioner’s CON application for new permanent ambulance operating authority for RVAC in the Rockaway Peninsula should be upheld.

DATED: Albany, New York
       August 24, 2017

Dawn MacKillop-Soller
Administrative Law Judge
To:

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