



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

RECEIVED

May 27, 2014

MAY 27 2014

Rosemary Chiavetta, Secretary PA PUBLIC UTILITY COMMISSION
Pennsylvania Public Utility Commission SECRETARY'S BUREAU
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

FCM
VIA ELECTRONIC FILING

**Re: Application of Lyft, Inc. (Experimental Service in Pennsylvania);
A-2014-2415047**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Preliminary Objections of Lyft Inc. to the Protest of the Insurance Federation of Pennsylvania ("IFPA") concerning the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to Lyft, Inc.

Inc
Enclosure

c: Chief Administrative Law Judge Charles E. Rainey, Jr. (via e-mail and First-Class Mail)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 27 2014

In Re: Application of Lyft, Inc.

:
:
:
:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
~~Docket No. A-2014-2415045~~
Docket No. A-2014-2415047

PRELIMINARY OBJECTIONS OF LYFT INC.
TO THE PROTEST OF THE INSURANCE FEDERATION OF PENNSYLVANIA

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Lyft, Inc. ("Applicant" or "Lyft"), by undersigned counsel and pursuant to 52 Pa. Code § 5.101(a)(2), respectfully submit these Preliminary Objections asking for dismissal of the Protests filed at the above-captioned docket by the Insurance Federation of Pennsylvania ("IFPA") due to numerous failures to conform to the Commission's Regulations. 52 Pa. Code § 5.101(a)(2).

2. On April 3, 2014, Lyft filed Applications at the above-captioned dockets requesting Commission authority to offer experimental service in Allegheny County and throughout the Commonwealth of Pennsylvania ("Applications") pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, IFPA filed a Protest to the Applications ("IFPA Protest").

3. For the reasons explained below, Lyft objects to the IFPA Protests as follows:

A. **The IFPA Has No Direct and Immediate Interest In This Proceeding and Therefore Lacks Standing to Protest the Applications**

4. The Commission should dismiss the IFPA Protest pursuant to 52 Pa. Code § 5.101(a)(2) because the Protest fails to conform to the Commission's Regulations requiring that protests to any application "set forth facts establishing the protestant's standing to protest." See 52 Pa. Code §§ 5.101, 5.52(a)(3). To establish standing, a protestant must furnish evidence of an

interest that is direct, immediate and substantial. *Application of Consumers Pennsylvania Water Company - Shenango Valley Division*, Opinion and Order, Docket No. A-212750F0007 (January 11, 2001), p.9 (hereinafter "*Consumers*"). A general interest in compliance with the law is insufficient to confer standing to protest an application. *In re PECO Energy Co.*, slip op., Docket No. A110550F0160 (July 18, 2005), p. 8 (hereinafter "*PECO*"). Where there is no issue of material fact, the Commission is authorized to dismiss a protest for lack of standing as a matter of law. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A review of the IFPA Protest shows that the facts are not in dispute. IFPA's interests in this case are indirect, speculative, and fail to exceed the general interest of all Pennsylvania citizens with Applicant's compliance with the law.

a. The criteria required to establish the requisite standing to protest an application under Section 5.52(a)(3) are well-established by Commission precedent. The Commission has articulated the threshold as follows:

A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest, and is substantial if the protestant has a discernible interest other than the general interest of all citizens in seeking compliance with the law. *See Ken R. ex rel. C.R. v. Arthur Z.*, 546 Pa. 49, 682 A.2d 1267 (1996); *In re El Rancho Grande, Inc.*, 496 Pa. 496, 437 A.2d 1150 (1981); *William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources*, 154 Pa. Cmwlth. Ct. 296, 623 A.2d 897 (1993). **Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding.**

Consumers, p. 9 (Emphasis added); *see* 52 Pa. Code § 5.52(a)(3). Further, with regard to applications for transportation authority, only entities with motor carrier authority in actual or potential conflict with authority sought by the applicant have standing to protest applications for new or expanded authority. *Application of Germanton Cab Company*, slip op, Initial Decision, (Docket No. Docket No. A-2012-2294922 (August 23, 2012), pp. 4-5. (hereinafter

"Germantown") (dismissing protest of taxicab trade association because the association did not hold a certificate of public convenience in the affected service territory and could not be aggrieved by the application).¹ The requirement is consistent with Section 3.381(c)(1)(i)(V) of the Commission's Regulations, which mandates that all protestants to applications to transport passengers furnish copies of certificated authority affected by the protested application.

b. As stated in its Protest, IFPA is a non-profit trade organization that "represents over 200 insurance companies doing business in the Commonwealth of Pennsylvania." IFPA Protest, p. 1. IFPA claims that its members provide private passenger auto insurance in Pennsylvania and commercial auto insurance coverage. *Id.*

c. Accepting facts as stated in the IFPA Protest, IFPA lacks standing to protest the Applications. IFPA claims that its "auto-insuring members have a direct and immediate liability exposure created by Applicant's proposal, an exposure unanticipated in their underwriting and rating of the coverage the Applicant requires of its drivers." *Id.* at 3. IFPA alleges that a liability exposure is created because the Applications fail to conform to the PUC's minimum insurance requirements for passenger carriers and therefore exposes auto-insuring members of the IFPA to "unforeseen liability exposure as well as the cost and confusion of resolving claims of insureds who happen to become drivers of the Applicant. *Id.* at 4. However, IFPA is not a certificated motor carrier with authority in actual or potential conflict with Applicant's. Therefore, IFPA's interests in the Applications are indirect and speculative.

d. Even aside from its lack of certificated motor carrier authority, the "injury" asserted by IFPA remains otherwise predicated on contingencies and cannot rise beyond an

¹ The Initial Decision issued at Docket No. A-2012-2294922 was made final by operation of law on Nov. 9, 2012. *See Application of Germantown Cab Company*, Final Order, Docket No. A-2012-2294922 (Nov. 9, 2012).

indirect and general interest in compliance with established laws, which is insufficient to convey standing to a protestant. *See In re PECO*, p. 8; *see also Germantown*, pp. 4-5. IFPA claims that its members will suffer adverse impacts upon approval of the Applications. In making these allegations, IFPA is essentially attempting to justify intervention in this proceeding based on potential harm to its policyholders, which are the potential Lyft passengers, Lyft drivers, or other motorists that may be directly affected by the proposed service. However, the IFPA is an association of insurance companies, not a coalition of concerned potential Lyft passengers, Lyft drivers, or other motorists. As the representative of insurance companies that could potentially serve policyholders, which in turn could potentially be Lyft passengers, Lyft drivers, or other motorists affected by the proposed service, the potential incurrence of administrative costs and claims liability raised by IFPA are inherently indirect and related solely to an interest in compliance with the Commission's existing insurance requirements, principally Section 32.11 of the Commission's Regulations. *See IFPA Protest*, pp. 2-5. Lyft recognizes the importance of ensuring appropriate insurance coverage for the proposed experimental service, but for purposes of standing, IFPA's interests do not rise beyond a general interest in compliance with established laws, which is insufficient to convey standing to a protestant. *See PECO*, p. 8

e. Finally, granting the IFPA Protest would not result in any public interest benefit. The indirect interests identified by IFPA relate to insurance requirements applicable to Transportation Network Company ("TNC") service. *See IFPA Protest*, pp. 2-5. The Commission has already established that it will require entities approved to provide TNC service to have acceptable evidence of insurance on file with the Commission. *Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X. Order*, Docket No. A-2014-2410269 (May 22, 2014), p. 8 (hereinafter "Yellow Cab Order"). Therefore, even the indirect and speculative interests

identified by IFPA will be adequately represented in this proceeding as evidenced by the Commission's stated commitment to review and monitor insurance requirements for TNC service providers.

f. Consistent with Commission precedent that a protestant must demonstrate standing by showing a direct, immediate, or substantial interest in the subject matter of an application, Lyft requests that the Commission deny the IFPA Protest for lack of standing. 52 Pa. Code §§ 5.101(a)(2); 5.52(a)(3).

II. CONCLUSION

WHEREFORE, for all the foregoing reasons the Commission should dismiss the IFPA Protest for failing to conform to Chapter 5 of the Commission's Regulations.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By



James P. Dougherty (Pa. I.D. 59454)

Adeolu A. Bakare (Pa. I.D. 208541)

Barbara A. Darkes (I.D. No. 77419)

McNees Wallace & Nurick LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

jdougherty@mwn.com

abakare@mwn.com

bdarkes@mwn.com

Dated: May 27, 2014

Counsel to Lyft, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Lloyd R. Persun, Esq.
Persun and Heim, P.C.
MTR TRANS INC & BILLTOWN CAB
P.O. Box 659
Mechanicsburg, PA 17055-0659
pagelbaugh@persunheim.com

Michael S Henry, Esq.
Michael S. Henry LLC
Concord Limousine, Black Tie Limousine,
Executive Transportation Inc
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@mshenrylaw.com

Paul S. Guarnieri, Esq.
Ray Middleman, Esq.
Malone Middleman, PC
Pennsylvania Association for Justice
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
guarnieri@mlmpelaw.com

David William Donley, Esq.
JB Taxi LLC t/a County Taxi Cab
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

VIA FIRST-CLASS MAIL

Dennis G. Weldon Jr, Esq.
Bryan L. Heulitt Jr., Esq.
Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106

Honorable Harry A. Readshaw
Pa State House of Representatives
1917 Brownsville Road
Pittsburgh, Pa 15210

Ernest J. Delbo
Shamokin Yellow Cab Inc
T/A Shamokin Yellow Cab
212 W. Independence Street
Shamokin, PA 17872

Samuel R Marshall
CEO and President
Insurance Federation of Pennsylvania Inc
1600 Market Street, Suite 1720
Philadelphia, PA 19103

RECEIVED

MAY 27 2014

Carl W. Hovenstine
Vice President
Pauls Cab Service Inc.
735 Market Street
Sunbury, PA 17801

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


Adeolu A. Bakare
Counsel to Lyft, Inc.

Dated this 27th day of May, 2014, in Harrisburg, Pennsylvania.