

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2014-2416127

Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc.

**ANSWER TO PRELIMINARY OBJECTIONS OF RASIER-PA LLC,
A WHOLLY OWNED SUBSIDIARY OF UBER TECHNOLOGIES, INC.**

1. Admitted.
2. Admitted.
3. It is admitted that PAJ filed a timely protest. It is also admitted that the protest raises allegations about Uber's fitness. It is denied that the protest raises "general assertions regarding fitness". To the contrary, PAJ raises specific issues regarding Uber's fitness. In addition to allegations regarding Uber's proposed plan of insurance (which relates to fitness under 52 Pa. Code § 41.14(b)(3)), PAJ alleges that Uber and its drivers have been providing common carrier ground transportation service in Allegheny County for the past two (2) months (or longer) without operating rights granted by the Commission. The allegations regarding Uber's unauthorized operations directly relate to fitness under 52 Pa. Code § 41.14(b)(5).
4. To the extent that Paragraph 4 of Uber's Preliminary Objections requires a response, then it is denied that the preliminary objections of PAJ should be dismissed for lack of standing and a legally insufficient pleading. By way of further response, Uber's reliance on the Commission's Order in the matter of the *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, (hereinafter "Yellow X") is misplaced for numerous reasons. First, there is nothing

contained within the Commission's Order that can support the assertion that a hearing is unwarranted. The *Yellow X* case was decided without a hearing because there were no protests filed to the application. *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order adopted May 22, 2014, Page 1-2. Secondly, "as a certificated carrier, Yellow Cab is presumed fit to provide the service, possessing the technical and financial ability to provide the service and to operate legally and safely". *Id.* at page 7. In this case, Uber is not a certificated carrier and does not benefit from the same presumption.¹ Lastly, Yellow X, unlike Uber, was not engaged in unauthorized transportation services.

II. Legal Standards Applicable to Preliminary Objections

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

A. Preliminary Objection No. 1

9. Admitted.

10. Uber contends that PAJ lacks standing because it does not have operating authority in actual or potential conflict with the authority sought by Uber, citing *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994 (became final by operation of law by Order dated December 23, 1994). PAJ acknowledges that it is not a certificated carrier with operating authority in actual or potential

¹ Applicant's sister company, Gegen, LLC, also a wholly owned subsidiary of Uber Technologies, Inc., holds limousine operating rights at Docket No. A-2012-2339043. However, Rasier is a separate legal entity and does not hold operating rights.

conflict with the authority sought by Uber. However, that PAJ is not a certificated carrier should not preclude it from having standing in this case for two reasons. First, “[a]n association may have standing as a representative of its members.” *Energy Conservation Council of Pa. v PUC* Id. at *Energy Conservation Council of Pa. v PUC* at 995 A.2d 465, 476. Secondly, Uber’s Application is for experimental service for which, prior to *Yellow X*, no individual or entity had certificated rights, and by extension – standing. The Commission should appropriately forgive the requirement of having operating authority in actual or potential conflict with the authority sought by Uber, for the purposes of these proceedings, because it is in the public’s interest to do so.

11. Denied for the reasons as set forth in Paragraph 10.

12. Denied. To have standing to participate before the Commission, a party must have a direct, immediate and substantial interest. The Commonwealth Court has articulated the criteria to determine whether a party has standing as follows:

If a party is not adversely affected in any way by the determination being challenged, the party is not aggrieved and, thereby, has no standing to obtain a judicial resolution of the challenge. “[I]t is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.” In order to be aggrieved, a party must have a substantial interest in the subject matter of the litigation, the interest must be direct, and the interest must be immediate. The substantial interest requirement means that “there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” Direct interest “means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains.” Finally, the interest must “be ‘immediate’ and ‘not a remote consequence of the judgment.’”

Energy Conservation Council of Pa. v PUC, 995 A.2d 465, 475 (Pa. Cmwlth. 2009). (Citations omitted).

PAJ has a discernible interest in these proceedings. As stated in its Protest, PAJ is a non-profit organization with a membership of approximately 2,200 men and women of the trial bar of the Commonwealth of Pennsylvania, which includes Allegheny County. The members of PAJ represent clients to secure full and just compensation for innocent victims, including victims of negligently operated vehicles. PAJ seeks to protect its members from Uber's proposed operations by ensuring that Uber's fitness is fairly and fully vetted.²

PAJ has a substantial interest as it relates to the ability of its members to effectively represent clients injured by the negligent operations of Uber drivers. Under Uber's proposal for insurance, drivers who sign up to drive for Uber will allegedly be primarily insured by their personal automobile policy of insurance, and Applicant's policy would be "excess coverage". However, coverage for any claim on the driver's policy would undoubtedly be denied because the vehicle is being used to carry a person or property for hire. Applicant's so-called excess liability coverage would not be implicated because there would not be an underlying primary policy of commercial insurance. "...[T]raditional excess insurance coverage generally is subject to an exhaustion requirement. See 2 EUGENE R. ANDERSON ET AL., INSURANCE COVERAGE LITIGATION §13.4, at 106 (1997) ("Excess coverage attaches only after the primary coverage has been paid out or exhausted."). *Nationwide Ins. Co. v. Schneider*, 960 A.2d 442,449 (Pa. 2007).

In short, under Applicant's proposed plan of insurance, there would be no coverage for injury and damages to persons and property caused by Applicant's drivers. This "gap" insurance coverage constitutes an immediate and ongoing hazard, leaving drivers, passengers, and pedestrians (unknowingly) in the position where they are led to believe that they are covered by insurance when, in fact, they are not. The members of PAJ would not be able to adequately

² PAJ has not protested Uber's Application for a lack of need.

represent injured clients when there is no available insurance from which they could be compensated.

PAJ's interests are not speculative. That motor vehicle collisions occur, particularly with commercial operators, is not speculative. Commercial operators, as Uber drivers would be, occupy the roadways far more than the average operator. As such, the risk of injury from negligent operators is significantly greater. It is not conjecture to state that individuals will be injured by the negligence of Uber operators if the application is approved. It is inevitable.

13. Denied. PAJ has a direct, immediate and substantial interest to establish standing to participate in these proceedings as set forth in paragraph 12.

B. Preliminary Objection No. 2

14. Denied. To the contrary, the Protest is legally sufficient, and it is in the public interest to conduct a hearing. Uber does not state the bases for concluding that PAJ's Protest is legally insufficient. However, Uber cites to 66 Pa.C.S. §703(b) as support.

The PUC may, in some instances, exercise its discretion pursuant 66 Pa.C.S. §703(b), and decide a case without a hearing as a matter of law. To do so, the Commission must accept, as true, all of the facts alleged in the Protest. *Cresco, Inc., v. Pennsylvania Public Utility Commission*, 622 A.2d 997, 999 (Pa. Cmwlth. 1993), *appeal denied* by 637 A. 2d 292 (Pa. 1993).

There are disputed factual issues raised by PAJ regarding Uber's fitness that cannot be decided as a matter of law. PAJ has alleged that: (a) Uber has been providing common carrier ground transportation service in Allegheny County for the past two (2) months (or longer), and has openly advertised its services via the internet and other sources; (b) Uber does not hold PUC operating rights to operate their ground transportation services anywhere within the

Commonwealth of Pennsylvania;³; and (c) the drivers who provide the transportation service for the benefit of Uber do not hold PUC operating rights. (Protest, ¶¶ 7-9). These factual issues directly address Uber's fitness under 52 Pa.Code § 41.14(b)(5). As stated previously, PAJ has raised factual issues regarding Uber's proposed form of insurance. Issues challenging Uber's form of insurance relate to fitness under 52 Pa. Code § 41.14(b)(3). Accordingly, this case should not be decided without a hearing.

15. To the extent that a response to Paragraph 15 of Uber's Preliminary Objections is required, then the same is denied for the same reasons as set forth in Paragraph 4 herein.

16. Denied. The Yellow X decision does not support the argument that there is no basis for a hearing in this case. First, as previously stated, PAJ raises fitness issues in addition to the issue surrounding Uber's form of insurance. Uber states that "it is up to the Commission to make a legal determination as to whether Rasier's proof of insurance complies with its requirements". (Preliminary Objections, ¶ 16). It goes without saying that the Commission will decide all issues regarding whether Uber's form of insurance complies with PUC regulations. Indeed, the Commission will ultimately decide all issues regarding Uber's fitness as it does in all contested application proceedings. The real issue is whether the Commission's decision should be made without the benefit of having all issues of fact fully vetted. As previously stated – it should not.

17. Denied. PAJ has proffered specific allegations regarding Uber's fitness. Specifically, PAJ has alleged that:

³ Applicant's sister company, Gegen, LLC, also a wholly owned subsidiary of Uber Technologies, Inc., holds limousine operating rights at Docket No. A-2012-2339043. However, Rasier is a separate legal entity and does not hold operating rights.

- a. Applicant's proposed form of insurance (or lack thereof) is illusory and fails to comply with the insurance requirements of the 52 Pa. Code § 32.11(a) and (b), and the evidentiary standards of 52 Pa.Code § 41.14(b)(3). (Protest, ¶ 20);
- b. Under Applicant's proposal for insurance, drivers who sign up to drive for Rasier will allegedly be primarily insured by their personal automobile policy of insurance, and Applicant's policy would be "excess coverage" or "contingent coverage". However, coverage for any claim on the driver's policy would undoubtedly be denied because the vehicle is being used to carry a person or property for hire. Applicant's so-called excess liability coverage would not be implicated because there would not be an underlying primary policy of commercial insurance. "...[T]raditional excess insurance coverage generally is subject to an exhaustion requirement. See 2 EUGENE R. ANDERSON ET AL., INSURANCE COVERAGE LITIGATION §13.4, at 106 (1997) ("Excess coverage attaches only after the primary coverage has been paid out or exhausted."). *Nationwide Ins. Co. v. Schneider*, 960 A.2d 442,449 (Pa. 2007). (Protest, ¶ 23);
- c. Applicant has been providing common carrier ground transportation service in Allegheny County for the past two (2) months (or longer), and has openly advertised its services via the internet and other sources. (Protest, ¶ 7);
- d. Applicant does not hold PUC operating rights to operate their ground transportation services anywhere within the Commonwealth of Pennsylvania. (Protest, ¶ 8); and
- e. The drivers who provide the transportation service for the benefit of Applicant do not hold PUC operating rights. (Protest, ¶ 9).

Accordingly, PAJ has set forth sufficient facts regarding Uber's fitness to warrant a hearing.

WHEREFORE, PAJ respectfully requests that Uber's preliminary objections be denied.

Respectfully submitted,

Pennsylvania Association for Justice

Date: June 16, 2014

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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).

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Dated this 16th day of June, 2014 in Wexford, Pennsylvania