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November 14, 2014

VIA OVERNIGHT DELIVERY & EMAIL

Secretary's Bureau
Attn: Secretary Rosemary Chiavetta
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, Pennsylvania 17120

RECEIVED

NOV 14 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: *Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette
v. Lyft***
PUC Dkt. No. P-2014-2442001
PUC Ref. Dkt. No. A-2014-2415045

Dear Secretary Chiavetta:

On behalf of Frederick N. Frank, Esquire, enclosed please find the Response to the Petition for a Partial Stay or Supersedeas of Lyft, Inc., filed on behalf of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette.

Also enclosed is the Response to the Petition for Reconsideration of Lyft, Inc. filed on behalf of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette.

Thank you for your attention to this matter.

Respectfully,



Zachary N. Gordon

ZNG
Enclosures

cc: Administrative Law Judge Mary D. Long (via e-mail)
Administrative Law Judge Jeffrey A. Watson (via e-mail)
Adeolu A. Bakare, Esquire, *counsel for Lyft, Inc.* (via e-mail)
Bohdan R. Pankiw, Esquire, *Chief Counsel for the PUC* (via e-mail)
Michael S. Henry, Esquire, *counsel for Executive Transportation, Inc.* (via e-mail)
David William Donley, Esquire, *counsel for JB Taxi LLC t/a Country Taxi Cab*
(via e-mail)
Samuel Marshall, *CEO & President of Insurance Fed. Of Pennsylvania* (via e-mail)
Lloyd R. Persun, Esquire, *counsel for MTR Trans. Inc. and Billtown Cab* (via e-mail)
Dennis G. Weldon, Jr., Esquire, *counsel for Philadelphia Parking Authority* (via
first class mail)

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NOV 14 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM LYONS and
PG PUBLISHING, INC. d/b/a
THE PITTSBURGH POST-GAZETTE,
Petitioners,

v.

LYFT, INC.
Respondent.

:
:
:
: PUC Dkt. No. P-2014-2442001
: PUC Ref. Dkt. No. A-2014-2415045

**RESPONSE TO THE
PETITION FOR A PARTIAL
STAY OR SUPERSEDEAS
OF LYFT, INC.**

Filed on behalf of:
Petitioners, Kim Lyons and
The Pittsburgh Post-Gazette

Counsel of Record
for this Party:

Frederick N. Frank, Esq.
Pa. I.D. No. 10395

Ellis W. Kunka, Esq.
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM LYONS and	:
PG PUBLISHING, INC. d/b/a	:
THE PITTSBURGH POST-GAZETTE,	:
Petitioners,	:
	:
v.	:
	:
LYFT, INC.	:
Respondent.	:

PUC Dkt. No. P-2014-2442001
PUC Ref. Dkt. No. A-2014-2415045

**RESPONSE TO THE PETITION FOR A PARTIAL STAY OR
SUPERSEDEAS OF LYFT, INC.**

Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette (collectively “The Post-Gazette”) file the within Response to the Petition for a Partial Stay or Supersedeas of Lyft, Inc.

Introduction

1. This case arises from two separate, but interrelated, petitions before the Pennsylvania Public Utility Commission (“PUC” or “Commission”). Both relate to whether a portion of the record in the applications of Lyft, Inc. (“Lyft”) to operate experimental transportation services should be sealed.

2. On September 10, 2014, The Post-Gazette brought a Petition for an Interim Emergency Order (“The Post-Gazette’s Petition”) at PUC Dkt. No. P-2014-2442001 to unseal the record. The Post-Gazette asserted and Lyft agreed the PUC

proceeding was a quasi-judicial proceeding. Therefore, the record could not be sealed unless Lyft met its burden for sealing under the common law and First Amendment rights of access.

3. Lyft filed a Petition for Interlocutory Review and Answer to a Material Question (“Petition for Interlocutory Review”) at PUC Dkt. No. A-2014-2415045 on September 23, 2014, seeking review of the Administrative Law Judges’ (“ALJ”) September 2, 2014 Interim Order denying Lyft’s Motion for Protective Order.

4. The specific matter at issue was whether trip data and insurance data introduced into evidence in a September 3, 2014 hearing should be sealed. The Post-Gazette sought to unseal this evidence. Lyft opposed that effort, asserting the evidence is proprietary, and should remain under seal.

5. On October 23, 2014, the PUC decided both The Post-Gazette’s Petition and Lyft’s Petition for Interlocutory Review in one opinion. While, the PUC denied The Post-Gazette’s Petition, with respect to Lyft’s Petition for Interlocutory Review, the PUC found that Lyft’s trip data was not proprietary and ordered that the record be unsealed.

6. On October 31, 2014, Lyft filed a Petition for a Partial Stay or Supersedeas (“Petition for Stay”) with the PUC asking for a stay of the order unsealing the record, and noting that Lyft intended to file a Petition for Reconsideration by November 3, 2014. On November 3, 2014, Lyft filed a Petition for Reconsideration.

7. On November 3, 2014, Lyft also filed a Petition for Review and Emergency Application for Stay with the Commonwealth Court, seeking review and an order staying the PUC's October 23, 2014 Order.

8. On November 4, 2014, the PUC's Secretary issued a letter that delayed release of the trip data at issue pending responses to Lyft's Petition for Reconsideration and Petition for Stay.

9. On November 6, 2014, The Post-Gazette filed a Motion to Strike Lyft's Petition for Reconsideration.

10. On November 13, 2014, the PUC issued an Order, which decided to hear the merits of Lyft's Petition for Reconsideration. The Petition for Stay, Petition for Reconsideration, and Motion to Strike are still pending before this Commission.

Argument

11. Lyft's Petition for Stay does not meet the standard this Commonwealth requires to issue a stay.

12. The specific standard to grant a stay is well established by the Commonwealth Court as follows:

This Court may grant a stay if the applicants [1] make a strong showing that they are likely to prevail on the merits; [2] if they show they will suffer irreparable injury without the stay; and [3] if the stay will not substantially harm other interested parties or [4] adversely affect the public interest.

Southeastern Pennsylvania Transp. Auth. v. Ass'n of Cmty. Organizations for Reform Now, 563 A.2d 574, 574-75 (Pa. Cmwlth. 1989) (denying stay) (citing *Pennsylvania Public Utility*

Commission v. Process Gas Consumers Group, 467 A.2d 805 (Pa. Cmwlth. 1983). Lyft must satisfy each element of this test in order to receive a stay.

Lyft is Unlikely to Prevail on the Merits

13. Lyft must demonstrate that they are likely to prevail on the merits. *Southeastern Pennsylvania Transp. Auth.*, 562 A.2d at 574-75. To prevail, Lyft must show that this Commission's order should be reversed under the Commonwealth Court's standard of review.

14. "This Court's standard of review of a decision of the PUC is limited to considering whether substantial evidence supports necessary factual findings, whether the PUC erred as a matter of law, and whether any constitutional rights were violated." *Lloyd v. Pa. P.U.C.*, 17 A.3d 425, 429 (Pa. Cmwlth. 2011).

15. "This Court may not substitute its judgment for that of the PUC when substantial evidence supports the PUC's decision on a matter within the commission's expertise." *Id.* (internal quotations omitted).

16. "Judicial deference is even more necessary when the statutory scheme is technically complex." *Id.* (internal quotations omitted).

17. Lyft's Petition for Stay does not even discuss this high appellate burden.

18. The ALJs that first heard this matter, initially denied Lyft's Petition for a Protective Order on September 2, 2014, because Lyft did not produce any evidence that the trip data was proprietary. Instead the ALJs found that Lyft's evidence consisted solely of bald assertions.

19. Lyft failed to provide any substantial evidence in support of its Petition. Belatedly Lyft attempted to supplement the record with a late-filed affidavit. This Commission, however, agreed with *The Post-Gazette* that the affidavit was procedurally improper as well as substantively “conclusive and speculative.” PUC October 23, 2014 Order, pp. 16-17.

20. With respect to the evidence that Lyft sought to seal, this Commission found: “The information is simply aggregate data . . . It is not a trade secret or an operational methodology and, in the Commission’s judgment, is not of significant value to Lyft’s competitors sufficient to warrant non-disclosure.” PUC’s October 23, 2014 Order, p. 18.

21. Lyft’s remaining argument in its Petition for Stay is that because its main competitor refuses to submit the same data, it must be a trade secret.

22. This argument essentially asks the reviewing Court to accept the bald assertions of two corporations whose fitness to operate in this Commonwealth was denied for failing to show a propensity to obey this Commission’s regulations.

23. Lyft has failed to make a “strong showing” that Lyft will prevail on the merits. Instead, Lyft’s arguments are a re-hash of the same arguments before this Commission, and do not show how Lyft can meet its appellate burden.

Lyft Will Not Suffer Irreparable Injury

24. Lyft’s contention that it will suffer irreparable harm is premised upon the fact that the trip data is proprietary or a trade secret. This contention was explicitly

rejected by the ALJs and this Commission's Order. Both held the trip data is not proprietary or a trade secret. Therefore, there is no injury to Lyft.

The Issuance of a Stay Will Substantially Harm The Post-Gazette

25. The Post-Gazette has asserted a First Amendment and common law right of access to the evidence presented at a quasi-judicial hearing. Even Lyft agrees the First Amendment and common law right of access apply.

26. Each day The Post-Gazette and the public are wrongfully denied access to the proceedings constitutes a continued violation of their common law and First Amendment rights of access.

27. The Post-Gazette opposed the sealing of hearing from the outset when the issue first arose at the September 3, 2014 hearing. The Post-Gazette's and the public's access has been delayed long enough.

28. The Post-Gazette and the public will be substantially harmed by the continued denial of their rights of access if Lyft's Petition for Stay is granted. Thus, the Petition for Stay should be denied.

The Issuance of a Stay Will Adversely Affect the Public Interest

29. As noted by the Commonwealth Court, the press stands in the shoes of the public when it seeks information on the affairs of government. *Press-Enter., Inc. v. Benton Area Sch. Dist.*, 604 A.2d 1221, 1225 (Pa. Cmwlth. 1992) ("The role of the press is to disseminate information; if that information is withheld from the press, many

concerned citizens who do not attend public meetings would have no way of informing themselves of their government's activities.”)

30. Here, Lyft seeks to withhold from The Post-Gazette and the public information relating to an important government process, deciding whether or not to grant an application to provide experimental transportation services. The public interest strongly favors transparency.

31. Therefore, the issuance of a stay will adversely affect the public interest and Lyft's Petition for Stay should be denied.

WHEREFORE, The Post-Gazette requests this Commission deny the Petition for a Partial Stay or Supersedeas of Lyft, Inc.

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO
& POCRASS, P.C.

DATED: November 14, 2014

By: 
Frederick N. Frank, Esq.
Ellis W. Kunka, Esq.
Attorneys for Kim Lyons and
The Pittsburgh Post-Gazette

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Response to the Petition for a Partial Stay or Supersedeas of Lyft, Inc. upon the persons in the manner set forth below, in accordance with 52 Pa. Code § 1.54.

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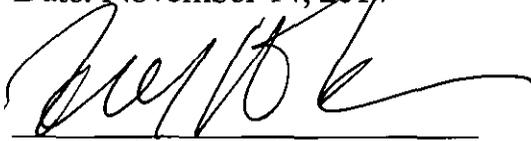
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Date: November 14, 2017



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM LYONS and	:	
PG PUBLISHING, INC. d/b/a	:	
THE PITTSBURGH POST-GAZETTE,	:	
Petitioners,	:	
	:	PUC Dkt. No. P-2014-2442001
v.	:	PUC Ref. Dkt. No. A-2014-2415045
	:	
LYFT, INC.	:	
Respondent.	:	

RESPONSE TO LYFT’S PETITION RECONSIDERATION

Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette (collectively “The Post-Gazette”) file the within Response to the Petition for Reconsideration of Lyft, Inc.

Introduction

1. This case arises from two separate, but interrelated, petitions before the Pennsylvania Public Utility Commission (“PUC” or “Commission”). Both relate to whether a portion of the record in the applications of Lyft, Inc. (“Lyft”) to operate experimental transportation services should be sealed.

2. On September 10, 2014, The Post-Gazette brought a Petition for an Interim Emergency Order (“The Post-Gazette’s Petition”) at PUC Dkt. No. P-2014-2442001 to unseal the record. The Post-Gazette asserted and Lyft agreed that the PUC proceeding was a quasi-judicial proceeding. Therefore, the record could not be

sealed unless Lyft met its burden for sealing under the common law and First Amendment rights of access.

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4. The specific matter at issue was whether trip data and insurance data introduced into evidence in a September 3, 2014 hearing should be sealed. The Post-Gazette sought to unseal this evidence. Lyft opposed that effort, asserting the evidence is proprietary, and should remain under seal.

5. On October 23, 2014, the PUC decided both The Post-Gazette’s Petition and Lyft’s Petition for Interlocutory Review in one opinion. While, the PUC denied The Post-Gazette’s Petition, with respect to Lyft’s Petition for Interlocutory Review, the PUC found that Lyft’s trip data was not proprietary and ordered that the record be unsealed.

6. On November 3, 2014, Lyft filed a Petition for Reconsideration.

7. On November 13, 2014, the PUC issued an Order deciding it would hear the merits of Lyft’s Petition for Reconsideration.

Argument

8. Lyft’s Petition for Reconsideration does not meet the standard the PUC requires. The specific standard to for the PUC to grant reconsideration is as follows:

A petition for reconsideration, under the provisions of 66 Pa CS § 703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was said that *‘[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.’* What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Philip Duick et al. v. Pennsylvania Gas and Water Co., 51 P.U.R.4th 284, 1982 WL 993413, *4 (Pa. P.U.C. Dec. 1982) (emphasis added).

9. Lyft’s Petition for Reconsideration is essentially presented a re-hash of its previous arguments in its Petition for Interlocutory Review and its responses to The Post-Gazette’s Petition.

10. In addition, petitions for reconsideration before the PUC must contain appropriate record references. 52 Pa. Code § 5.572. Lyft’s Petition for Reconsideration relies heavily upon a late-filed affidavit outside of the record to support its assertions that the trip data is proprietary.

11. The late filed affidavit is improper in consideration of a petition under 52 Pa. Code. § 5.572, such as a petition for reconsideration. In order to introduce additional evidence in the record a party must properly reopen the record and show that the additional information is “newly discovered evidence, not discoverable through the exercise of due diligence prior to the close of the record.” *Philip Duick, supra*, at *4.

12. Lyft has not sought to reopen the record and has not shown that its late-filed affidavit presents evidence that was not discoverable through the exercise of due diligence prior to the record closing.

13. Substantively, Lyft alleges two “main reasons” in support of its Petition for Reconsideration. Neither reason nor the remainder of Lyft’s arguments satisfies Lyft’s burden for reconsideration.

14. Lyft’s first “main reason” for reconsideration is the fact that transportation network companies are a new industry, and Lyft would be harmed by disclosure of the information at this early stage in the industry. Lyft’s Petition for Reconsideration, p.1-2.

15. This argument is virtually identical to the argument Lyft presented in its Petition for Interlocutory Review, p. 8, alleging, “public disclosure of the trip data at this early stage of the TNC industry would cause irreparable damage.” The PUC rejected this argument. PUC’s October 23, 2014 Order, p. 17.

16. Lyft’s second “main reason” for reconsideration is that the PUC’s Order does not account for Lyft’s competitors disobeying the PUC’s Orders. Lyft claims it would be “fundamentally unfair” to make Lyft comply with the rule of law when Lyft’s competitors will not. Lyft’s Petition for Reconsideration, p.2.

17. Lyft previously raised concerns over Raiser-PA, LLC (a subsidiary of Uber, hereinafter “Uber”), not disclosing its trip data. Lyft’s Petition for Interlocutory Review, p. 9.

18. This Commission noted this argument in Lyft's Petition for Interlocutory Review. This Commission, however, found that the trip data should not be protected, and rejected these arguments. PUC's October 23, 2014 Order, pp. 12-17.

19. Lyft's "main reasons" for reconsideration fail to present new or novel arguments, and should be rejected.

20. Lyft also attempts to re-argue the PUC's analysis under some of the factors for finding information proprietary under 52 Pa. Code. § 5.365 (a)(1)-(5). Lyft's arguments are a repetition of its previous filings, and fail to bring forth, "new and novel arguments, not previously heard." *Philip Duick, supra*, at *4.

The Extent to Which the Disclosure Would Cause Unfair Economic or Competition

Damage

21. Lyft starts by alleging that disclosure would cause unfair economic and competitive damage to Lyft contrary the PUC's finding under § 5.365 (a)(1). Lyft argues that the information does not involve the "number of rides in a particular market or the concentration of pick-ups and drop-offs in specific segments of that market." Lyft's Petition for Reconsideration, p. 4. This is not a new challenge, but an identical argument the PUC rejected. PUC's October 23, 2014 Order, p. 17. This is the exact type of repetitive argument disfavored in reconsideration petitions.

22. Further, Lyft also argues that infancy of its industry justifies protection. Lyft's Petition for Reconsideration, pp. 4-5.

23. Lyft has argued that its services are different from taxi cabs multiple times,

but the PUC rejected this as a basis for sealing the record. PUC's October 23, 2014 Order, pp. 18 ("Lyft also alleges that taxi and limousine carriers are not TNC's and do not face the same market pressures.")

The Extent to Which the Information is Known by Others and Used in Similar Activities

24. Lyft argues that § 5.365 (a)(2) should have weighed against disclosure, because Lyft had not shared its trip data with anyone else. The PUC rejected this claim and held that the lack of disclosure to others besides the PUC is not a "compelling reason to seal the information," because the "information is simply aggregate data." PUC's October 23, 2014 Order, pp.17-18.

The Worth or Value of the Information to the Party and the Party's Competitors

25. Lyft argues that the PUC erred in applying § 5.365 (a)(3), and alleges that there is value to Lyft's competitors. Lyft's argument is Uber refused to share this same type of information, so the information must be proprietary or a trade secret. Lyft's Petition for Reconsideration, pp. 5-6

26. This argument essentially asks the PUC to accept the bald assertions of two corporations whose fitness to operate in this Commonwealth was denied for failing to show a propensity to obey the PUC's regulations.

27. Further, Lyft argues that that information would be valuable to Lyft's competitors relying on the PUC's decision in *In re Windstream Pennsylvania, Inc.*, 2007 WL 1928636, (Pa. P.U.C. June 2007)(hereinafter "*Windstream*").

28. Lyft's citation of *Windstream* presents the same argument this Commission rejected. It merely cites a new case for the same argument. It previously made the same argument relying upon *Pa. P.U.C. vs. Bell Atlantic, Pa., Inc.*, 86 Pa.P.U.C. 208 (June 18, 1996) ("*Bell Atlantic*") and *In Re Exelon Energy*, 94 Pa. P.U.C. 382 (June 20, 2000) ("*Exelon Energy*").

29. The October 23, 2014 Order noted that Lyft's reliance on *Bell Atlantic* and *Exelon Energy* was misplaced, because, the disclosure regarding Lyft's information involves "aggregate, unauthorized trip data." PUC's October 23, 2014 Order, p. 19 (citing.

30. The information sealed in *Bell Atlantic* and *Exelon Energy* involved disaggregate information. *Exelon Energy* also addressed aggregate data, which this Commission released. *Id.*

31. *Windstream* is consistent with both *Bell Atlantic* and *Exelon Energy*. *Windstream* sealed "disaggregated" revenue and financial data, but released "aggregate revenues." *Id.* at *2-3.

32. Lyft's citation to *Windstream* is the same "misplaced" argument this Commission previously rejected.

33. Lyft produced no additional evidence or reasons for this Commission to reverse its finding that the trip data was aggregate data subject to disclosure. PUC October 23, 2014 Order, p. 13, pp. 17-18.

The Public's Interest in Disclosure

34. Lyft claims that it is unclear, why its trip data “is of any public interest at all.” Lyft’s Petition for Reconsideration, p. 6-7.

35. Interestingly, even though Lyft cited *Windstream* on the issue of disaggregate data; the case articulated one reason the information is a matter of public interest - the public’s interest in transparency in government. *Windstream, supra*, at *2.

36. *Windstream* held that the PUC must “balance the potential harm to *Windstream* in disclosure of the information with the public’s interest in free and open access to the administrative process.” *Windstream, supra*, at *2. The decision quoted the Sunshine Act explaining the importance of open public meetings, because “secrecy in public affairs undermines the faith of the public in government.” *Id.* (quoting 65 Pa. C.S.A. § 702).

37. The trip data is also of public interest, because it is subject to the common law right of access and the First Amendment right of access. Under both rights of access, The Post-Gazette and the public has a right to this information, which was introduced into evidence.

38. Further, there is special interest in Lyft’s trip data, because Lyft is still attempting to obtain the proper regulatory approval to operate in this Commonwealth. In evaluating the PUC’s decision of Lyft’s pending applications, The Post-Gazette and the public have a legitimate interest to know the extent to which Lyft flouted the PUC’s Orders to cease and desist transportation services.

39. Lyft attempts to diminish this important interest by claiming that the public can learn about Lyft's violations from proceedings before the PUC's Bureau of Investigation and Enforcement ("I & E"). Lyft's Petition for Review, p. 7. This argument is disingenuous, because Lyft is vigorously litigating to prevent disclosing similar trip data in those I & E proceedings. *See* PUC Dkt. No. G-2014-2422713.

40. Therefore, The Post-Gazette and the public have substantial interests in immediate disclosure of the trip data.

WHEREFORE, The Post-Gazette requests this Commission deny the Petition for Reconsideration of Lyft, Inc.

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO
& POCRASS, P.C.



DATED: November 14, 2014

By: _____
Frederick N. Frank, Esq.
Ellis W. Kunka, Esq.
Attorneys for Kim Lyons and
The Pittsburgh Post-Gazette

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Response to the Petition for Reconsideration of Lyft, Inc. upon the persons in the manner set forth below, in accordance with 52 Pa. Code § 1.54.

Via E-Mail

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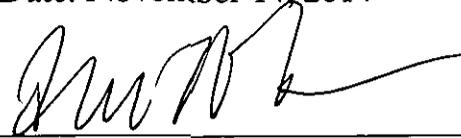
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Date: November 14, 2014



Frederick N. Frank

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(Attorneys for Petitioners, Kim Lyons and *The Pittsburgh Post-Gazette*)

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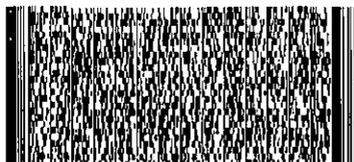
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NOV 14 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

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