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April 29, 2010

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APR 29 2010

Re: 88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority
Docket No. C-2009-2116699
Our File 4020-8-2

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

Dear Mr. McNulty:

We enclose for filing with the Commission the signed original and nine (9) copies of the Main Brief of Complainant 88 Transit Lines, Inc. in connection with the above-captioned proceeding.

A copy of the Main Brief has been hand delivered to Administrative Law Judge Mark A. Hoyer and two (2) copies have been served on the attorney for the Respondent. We are also sending to the Administrative Law Judge today a copy by email in Microsoft Office Word format pursuant to his letter dated March 30, 2010. We are also sending today a copy by email to the attorney for the Respondent.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

CW/78820

Enclosures

cc: Honorable Mark A. Hoyer (Hand Delivered)
John A. Pillar, Esq.
88 Transit Lines, Inc.

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2009-2116699

88 TRANSIT LINES, INC.
v. MID MON VALLEY TRANSIT AUTHORITY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAIN BRIEF OF COMPLAINANT
88 TRANSIT LINES, INC.

WILLIAM A. GRAY, ESQ.
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Due Date: April 29, 2010

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2009-2116699

88 TRANSIT LINES, INC.
vs. MID MON VALLEY TRANSIT AUTHORITY

MAIN BRIEF OF COMPLAINANT
88 TRANSIT LINES, INC.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I. STATEMENT OF THE CASE

88 Transit Lines, Inc. ("88 Transit" or "Complainant") filed a Complaint against Mid Mon Valley Transit Authority ("the Transit Authority" or "Respondent") at Docket No. C-2009-2116699 alleging that Respondent, a municipal corporation, was providing service originating beyond its corporate limits without securing authority from the Public Utility Commission, which is prohibited by the Public Utility Code.

Respondent filed an Answer to Complaint and New Matter. Complainant filed a Reply to New Matter.

A hearing was held in Pittsburgh on February 24, 2010 before Administrative Law Judge Mark A. Hoyer. Testimony on behalf of the Complainant was presented by Stanley Nabozny. Testimony on behalf of the Respondent was presented by Valerie

Kissell, Shiela Gombita, Stephen Parish and Michael Kutsek. The parties also submitted a Stipulation of Facts, which was introduced into evidence as Complainant's Ex. 1.

By letter dated March 30, 2010, the Administrative Law Judge directed that Main Briefs be filed on or before April 29, 2010 and that Reply Briefs, if any, be filed on or before May 14, 2010.

II. STATEMENT OF THE QUESTION INVOLVED

The question involved is whether the Respondent has provided service originating beyond its corporate limits without securing authority from the Commission, in violation of the Public Utility Code.

III. ABSTRACT OF TESTIMONY AND PROPOSED FINDINGS OF FACT

1. The Transit Authority has provided bus service through a contractor with buses owned by The Transit Authority from Union Township, Washington County, to the City of Pittsburgh, and return, Sunday through Saturday from July 1, 2009 to the present date. (Complainant's Ex. 1)

2. Union Township is not one of The Transit Authority's member municipalities. (Complainant's Ex. 1)

3. The Transit Authority has provided bus service through a contractor with buses owned by The Transit Authority from Finleyville Borough, Washington County, to the City of Pittsburgh, and return, Sunday through Saturday from July 1, 2009 to the present date. (Complainant's Ex. 1)

4. Finleyville Borough is not one of The Transit Authority's member municipalities. (Complainant's Ex. 1)

5. 88 Transit holds a Certificate of Public Convenience from the Commission at Docket No. A-88581 authorizing it to provide scheduled route service from the Borough of Charleroi to the City of Pittsburgh, and vice versa, including service from Union Township and Finleyville Borough, Washington County, and vice versa. (Complainant's Ex. 1)

6. The Transit Authority does not hold any authority from the Pennsylvania Public Utility Commission. (Complainant's Ex. 1)

7. First Transit, Inc., the contractor for The Transit Authority since July 1, 2009, only holds group and party authority from the Public Utility Commission and does not hold scheduled route authority. (Complainant's Ex. 1)

8. From July 1, 2009 to the present, First Transit, Inc., pursuant to a contract with The Transit Authority, has provided scheduled route transportation service from Finleyville Borough to the City of Pittsburgh, and vice versa, Sunday through Saturday. (Complainant's Ex. 1)

9. From July 1, 2009 to the present, First Transit, Inc., pursuant to a contract with The Transit Authority, has provided scheduled route service from Union Township to the City of Pittsburgh, and vice versa, Sunday through Saturday. (Complainant's Ex. 1)

10. The Transit Authority is a municipal corporation incorporated under "The Municipality Authorities Act of 1945" and amendments thereto. (Complainant's Ex. 1)

11. 88 Transit for many years provided transportation service to The Transit Authority, including service from Union Township and Finleyville Borough, Washington County, to the City of Pittsburgh, and vice versa, and continued to provide that service until June 30, 2009. (Complainant's Ex. 1)

12. The Transit Authority's member municipalities include 21 townships, cities and boroughs but do not include Union Township and Finleyville Borough, both in Washington County. (Complainant's Ex. 1)

13. 88 Transit provided service for the Transit Authority until June 30, 2009 from its member municipalities, where PUC authority was not required, and also from areas outside of the Transit Authority's corporate limits, where service was provided under 88 Transit's PUC authority. (18)

14. There was an understanding between the Transit Authority and 88 Transit that pick ups outside of the corporate limits of the Transit Authority were handled under 88 Transit's PUC authority. (18)

15. The Transit Authority was aware that it needed 88 Transit's PUC authority to serve Finleyville Borough and Union Township since those points were outside of the corporate limits of the Transit Authority. (19)

16. 88 Transit continued to pay PUC assessments in connection with the service provided to the Transit Authority where the pickups were outside of the corporate limits of the Transit Authority. (19)

17. In 2009 the Transit Authority put out for bid the scheduled route service that had been provided by 88 Transit and issued an RFP in connection with the bid to

which 88 Transit filed Objections based on the fact that the RFP failed to provide that the contractor had to have PUC authority to provide service from origins outside of the corporate limits of the Transit Authority. (20-21)

18. The Objections filed with the Transit Authority by 88 Transit were denied. (22)

19. The Transit Authority advised 88 Transit that it was not required to have PUC authority under the Public Utility Code since it was a municipal authority. (23)

20. 88 Transit just a week or so prior to the hearing in this case received a document (Memorandum of Understanding) provided by the Transit Authority which stated that it received permission from the Washington County Transportation Authority to operate outside of the Transit Authority's corporate limits. (23)

21. 88 Transit was a contractor for the Mid Mon Valley Transit Authority and not for the Washington County Transportation Authority. (23-24)

22. First Transit, the company that replaced 88 Transit as a contractor for the Transit Authority, is also not a contractor for the Washington County Transportation Authority. (24)

23. During the more than 20 years that 88 Transit provided service for the Transit Authority, 88 Transit always made pick ups in Finleyville Borough (3 pick ups) and in Union Township (5 or more pick ups). (25-26)

24. 88 Transit's scheduled route authority is presently in inactive status since it is no longer providing service under the scheduled route authority. The authority can be reactivated. (27-28)

25. The Transit Authority established the rates for the service provided by 88 Transit. (30-31)

26. Valerie Kissell is the Executive Director for the Mid Mon Valley Transit Authority, a position that she has held since February, 2006. (35-36)

27. The Transit Authority is funded by its member municipalities and also receives federal, state and local funding. (38-39)

28. The Transit Authority provides a commuter service into Pittsburgh and also provides a lot of local service which just loops throughout the local area and also provides service to California University. (40-41)

29. The Transit Authority operates 35 buses in its fleet of equipment. (42)

30. The Transit Authority had a pre-bid meeting in 2009 attended by a number of companies and 88 Transit at that time raised the issue that PUC operating authority was required. 88 Transit's position was set forth in a Legal Memorandum provided to the Transit Authority. (Complainant's Ex. 2; 46-48, 62-63)

31. The Legal Memorandum provided to the Transit Authority at the pre-bid meeting made it clear that 88 Transit's position was that under the Public Utility Code, the Transit Authority needed PUC authority to provide service outside its corporate limits. (Respondent's Ex. 2; 63)

32. 88 Transit filed a protest to the RFP on the basis of its failure to include a requirement that PUC authority was required to provide service originating beyond the corporate limits of the Transit Authority. (Complainant's Ex. 3; 49-50)

33. The protest filed by 88 Transit to the Transit Authority indicated that the issue being protested was whether or not the Transit Authority is exempt from Commission jurisdiction involving service originating beyond the corporate limits of the Transit Authority. (Respondent's Ex. 3; 65)

34. The Transit Authority knew at the time of the pre-bid meeting and at the time of the protest that the position of 88 Transit was that the Transit Authority needed to have PUC authority or use a contractor who had PUC authority for providing service originating beyond its corporate limits. (68)

35. The Transit Authority entered into a Memorandum of Understanding with the Washington County Transportation Authority to enable it to provide service originating in Union Township and Finleyville Borough under its auspices. (Respondent's Ex. 2; 56-57)

36. The Memorandum of Understanding between the Transit Authority and the Washington County Transportation Authority resulted from the protest filed by 88 Transit. (56-57)

37. The Memorandum of Understanding entered into with the Washington County Transportation Authority provides that the Transit Authority will continue to fix the rates and they will not be fixed by the Washington County Transportation Authority, including the rates in Finleyville Borough and Union Township. (69)

38. The Washington County Transportation Authority has not provided employees to drive the buses making pickups in Finleyville Borough and Union

Township, but rather those drivers are the employees of the Mid Mon Valley Transit Authority. (69)

39. The Transit Authority stipulated that it does not have statutory authority to operate in Finleyville Borough and Union Township. (70)

40. Shiela Gombita is the Executive Director of the Washington County Transportation Authority. (83)

41. The Washington County Transportation Authority does not provide any scheduled fixed route service. (86)

42. The Washington County Transportation Authority provides primarily shared ride service in Washington County. This service is provided through subcontractors. (87)

43. The witness for the Washington County Transportation Authority was aware that the Transit Authority was providing regular route service from the Mid Mon Valley area, including Union Township and Finleyville Borough, to the city of Pittsburgh. (88)

44. The witness for the Washington County Transportation Authority did not know when the Memorandum of Understanding agreement was signed or whether it was approved by the Board of Directors at some later date than the date set forth on the Memorandum of Understanding. (92)

45. The witness for the Washington County Transportation Authority admitted that one of the reasons mentioned to her for entering into the Memorandum of

Understanding was that Finleyville Borough and Union Township are outside of the corporate limits of the Mid Mon Valley Transit Authority. (94-95)

46. Stephen J. Parish is a Union Township Supervisor.

47. As a Supervisor in Union Township, Mr. Parish would like to see the Transit Authority continue to make pickups in Union Township. (97)

48. Union Township is not a member of the Transit Authority. (99)

49. Michael M. Kutsek is the Mayor of Finleyville. (99)

50. Mayor Kutsek believes that Finleyville needs the bus service of the Transit Authority that it is presently using. (100)

IV. ARGUMENT

The parties stipulated that the Transit Authority consists of 21 member municipalities but those member municipalities do not include Union Township and Finleyville Borough; that the Transit Authority has provided bus service through a contractor named First Transit, Inc. with buses owned by the Transit Authority from Union Township and Finleyville Borough from July 1, 2009 to the present date; that service from Union Township and Finleyville Borough was previously provided by 88 Transit, which is authorized to provide scheduled route bus service between Charleroi and Pittsburgh; and that neither the Transit Authority nor First Transit hold schedule route authority from the Commission. (Complainant's Ex. 1) It was also stipulated that the Transit Authority does not have statutory authority to operate in Union Township and Finleyville Borough. (70)

88 Transit provided scheduled route service between Charleroi and Pittsburgh for many years, including both before and after the Transit Authority was created in approximately 1985. (17-18) 88 Transit provided service for the Transit Authority from those member municipalities where PUC authority was not required and also from areas outside of the Transit Authority's corporate limits, where service was provided under 88 Transit's PUC authority. (18) There was an understanding between the Transit Authority and 88 Transit that pickups outside of the corporate limits of the Transit Authority were handled under 88 Transit's PUC authority. (18) The Transit Authority was aware that it needed 88 Transit's PUC authority to serve Finleyville Borough and Union Township since those points were outside of the corporate limits of the Transit Authority. (19)

88 Transit continued to pay PUC assessments in connection with the service provided to the Transit Authority where the pick ups were outside of the corporate limits of the Transit Authority. (19) The assessments were paid on revenues from providing service beyond New Eagle, which is the last point on the route within the corporate limits of the Transit Authority. (19-20)

In 2009 the Transit Authority put out for bid the scheduled route service that had been provided by 88 Transit and issued an RFP in connection with the bid to which 88 Transit filed Objections based on the fact that the RFP failed to provide that the contractor had to have PUC authority to provide service from origins outside of the corporate limits of the Transit Authority. (20-21) The Objections filed with the Transit Authority by 88 Transit were denied. (22) The Transit Authority advised 88 Transit that

it was not required to have PUC authority under the Public Utility Code since it was a municipal authority. (23)

88 Transit just a week or so prior to the hearing in this case received a document (Memorandum of Understanding) provided by the Transit Authority to the effect that it received permission from the Washington County Transportation Authority to operate outside of its corporate limits. (23) 88 Transit was a contractor for the Transit Authority and not for the Washington County Transportation Authority. (23-24) First Transit, the company that replaced 88 Transit as a contractor for the Transit Authority, is also not a contractor for the Washington County Transportation Authority. (24)

The Memorandum of Understanding entered into between the Transit Authority and the Washington County Transportation Authority provides that the Transit Authority will continue to fix the rates and they will not be fixed by the Washington County Transportation Authority, including the rates in Finleyville Borough and Union Township. (69) The Washington County Transportation Authority has not provided employees to drive the buses making pick ups in Finleyville Borough and Union Township, but rather those drivers are the employees of the Mid Mon Valley Transit Authority, as are the buses used to provide the service. (69)

The Public Utility Code requires a Certificate of Public Convenience for “any municipal corporation to acquire . . . or begin to operate, any plant, equipment or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits . . .” (emphasis added) 66 Pa. C.S. §1102(a)(5). The Public Utility Code also provides that “any public utility service being furnished or rendered by a

municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.” 66 Pa. C.S. §1501. The Transit Authority comes within the definition of a “municipal corporation”, which is defined as “all cities, boroughs, towns, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.” The parties stipulated that the Transit Authority is a municipal corporation formed under The Municipality Authorities Act of 1945 and amendments thereto.

(Complainant’s Ex. 1)

It is well established by case law that if a municipal authority provides service originating outside of its corporate limits, the PUC has jurisdiction over that service. *Borough of Ridgeway v. Pennsylvania Public Utility Commission*, 83 Pa. Cmwlth Ct 379, 480 A.2d 1253 (1984); *County of Dauphin v. Pa. P.U.C.*, 159 Pa. Cmwlth Ct 649, 634 A.2d 281 (1993). As indicated in *County of Dauphin v. Pa. P.U.C.*, *supra*, “. . . the purpose of subjecting a municipally operated public utility which renders service beyond its corporate limits to the jurisdiction of the PUC is to protect users of the service who are not residents of the municipality.”

Neither the Transit Authority nor its new contractor, First Transit, hold PUC scheduled route authority and therefore it is a violation of the Public Utility Code for the Transit Authority to make pickups outside of its corporate limits in Union Township and Finleyville Borough.

The Transit Authority has attempted to do an end run around the requirement that it must secure PUC authority to provide this service by entering into a Memorandum of Understanding dated August 7, 2009 with the Washington County Transportation Authority. However, this Memorandum of Understanding does not eliminate the need for the Transit Authority to have PUC authority to provide this service since it is the Transit Authority, not the Washington County Transportation Authority, that is providing the service. The Memorandum of Understanding itself provides that the Transit Authority will continue to fix the rates and collect the fares. (Respondent's Ex. 2) The Memorandum of Understanding also provides:

The MMVTA does not have specific statutory authority to operate in Finleyville and Union Township in Washington County. The Washington County Transportation Authority hereby agrees to permit the MMVTA to continue to operate its long standing service along the Route 88 corridor consisting of fixed-route, scheduled service.

The witness for the Transit Authority admitted that the Washington County Transportation Authority was not providing the buses or the employees to drive the buses making pickups in Finleyville Borough and Union Township. (69) The witness for the Washington County Transportation Authority testified that it does not even provide scheduled route bus service and instead primarily provides shared ride service through subcontractors. (86-87) This witness admitted that one of the reasons mentioned to her for entering into the Memorandum of Understanding was that Finleyville Borough and Union Township are outside of the corporate limits of the Mid Mon Valley Transit Authority. (94-95)

As indicated above, the Public Utility Code provides that any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the Commission. 66 Pa. C.S. §1501. There is no question that the Transit Authority is providing service beyond its corporate limits and has been providing such service since July 1, 2009. There is also no question that it has failed to secure a Certificate of Public Convenience, as required for any municipal corporation to provide service beyond its corporate limits. 66 Pa. C.S. §1102(a)(5). Washington County Transportation Authority is not providing this service (it admittedly does not even provide scheduled route service) but rather the service is being provided by the Mid Mon Valley Transit Authority. It is simply not sufficient for the Washington County Transportation Authority to give its permission to the Mid Mon Valley Transit Authority to provide this service.

V. PROPOSED CONCLUSIONS OF LAW

Complainant requests that the Administrative Law Judge make the following conclusions of law:

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. Complainant has established that Respondent violated the Public Utility Code by providing service from July 1, 2009 to the present date from points in Union Township and Finleyville Borough without being certificated.

3. A civil penalty must be assessed against the Transit Authority as a result of it providing service from July 1, 2009 to the present date from points in Union Township and Finleyville Borough without being certificated.

4. The Transit Authority must cease and desist from further violations of the Public Utility Code.

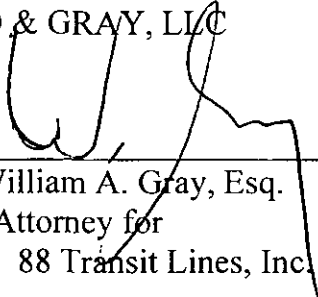
VI. CONCLUSION

For all of the foregoing reasons, Complainant, 88 Transit Lines, Inc., requests that the Complaint at Docket No. C-2009-2116699 be sustained, a civil penalty of not less than \$100 per day be assessed for each day since July 1, 2009 that the Transit Authority has provided service from points in Union Township and Finleyville Borough and that the Transit Authority be ordered to cease and desist from providing any further service from points in Union Township and Finleyville Borough without proper certification.

Respectfully submitted,

VUONO & GRAY, LLC

By: _____


William A. Gray, Esq.
Attorney for
88 Transit Lines, Inc.

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Due Date: April 29, 2010

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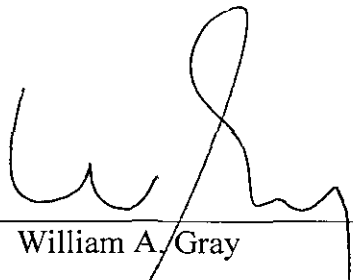
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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

William A. Gray, Esq., attorney for Complainant, 88 Transit Lines, Inc., hereby certifies that on the 29th day of April, 2010, he did serve a true and correct copy of the foregoing Main Brief of Complainant upon the following counsel, by first class mail, postage prepaid, at the address as set forth below:

John A. Pillar, Esq.
680 Washington Road
Suite B101
Pittsburgh, PA 15228



William A. Gray

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310 Grant Street, Suite 2310
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Main Brief of Complainant
88 v. MMUTA

To: James J. McNulty, Secretary
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