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May 13, 2010

Re: 88 Transit Lines, Inc. v.  
Mid Mon Valley Transit Authority  
Docket No. C-2009-2116699  
File No. 1987

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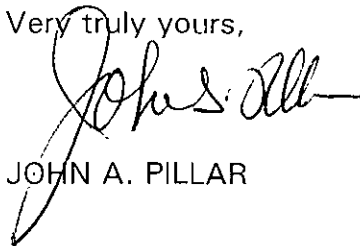
James J. McNulty, Secretary  
c/o New Filing Section  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Dear Mr. McNulty:

Enclosed for filing are the original and 9 copies of **Reply Brief on Behalf of Mid Mon Valley Transit Authority, Respondent**, in connection with the above docketed proceeding.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,



JOHN A. PILLAR

sw

Enclosures

cc: Hon. Mark A. Hoyer, Administrative Law Judge (w/encl.)  
William A. Gray, Esq. (w/encl.)  
Mid Mon Valley Transit Authority (w/encl.)  
David N. Lint, Esq. (w/encl.)

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Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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88 TRANSIT LINES, INC., )

Complainant )

v. )

MID MON VALLEY TRANSIT )  
AUTHORITY, )

Respondent. )

) Docket No. C-2009-2116699  
)

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PA PUBLIC UTILITY COMMISSION  
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**REPLY BRIEF ON BEHALF OF  
MID MON VALLEY TRANSIT AUTHORITY, RESPONDENT**

JOHN A. PILLAR  
Attorney for  
MID MON VALLEY TRANSIT AUTHORITY,  
Respondent

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Due Date: May 14, 2010

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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88 TRANSIT LINES, INC., )  
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 Complainant )  
 )  
 v. )  
 )  
 MID MON VALLEY TRANSIT )  
 AUTHORITY, )  
 )  
 Respondent. )

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. C-2009-211669

**I. INTRODUCTION**

Complainant (herein 88 Transit) and Respondent (herein MMVTA) have filed Main Briefs in accordance with the Administrative Law Judge's post-hearing Order. Said Order provides that Reply Briefs may be filed, if warranted. While MMVTA largely agrees with the facts referred to in the Complainant's Main Brief, certain facts relied upon by Complainant require being considered in perspective.

**II. REPLY TO BRIEF FOR COMPLAINANT**

Complainant's Brief contends that MMVTA had an "understanding" with 88 Transit that pickups of passengers from points in Union Township and Finleyville Borough "were handled under 88 Transit's PUC authority" (see Complainant's Brief, page 10). To support this contention, 88 Transit refers to the testimony of Mr. Novozny, 88 Transit's witness, who testified that he had discussions about the need for a carrier with PUC authority to serve Union Township and Finleyville Borough with

Ronald Tuman (NT 18-19). Ronald Tuman was not called as a witness. Ms. Kissell testified that a Dr. Ron Tuman was a board member of MMVTA who resigned in 2006, and that Tuman never advised Ms. Kissell that any entity awarded a contract with MMVTA had to have PUC authority in order to offer service from Union Township and Finleyville Borough (NT 60).

Since 2006, when Ms. Kissell became Executive Director of MMVTA, and even prior to that time, as Ms. Kissell testified, MMVTA required competitive bids from carriers to contract with MMVTA to provide scheduled route service (NT 44-46). MMVTA did not require any bidder, as a condition, to have PUC authority. Ms. Kissell testified that no question was ever raised, to her knowledge, about the necessity of the contractor having PUC authority until the bidding process commenced in early 2009 (NT 44-46). When Ms. Kissell referred the question of PUC authority to the various agencies funding MMVTA, Ms. Kissell understood that it was a requirement of the funding regulations, governing MMVTA's procurement, to require free and open competition in the bidding process and that, therefore, bidders were not limited to those having PUC authority (NT 48-49).

Contrary to the requested Findings of Fact Nos. 11 and 13 in Complainant's Brief (page 4), all service provided by 88 Transit was pursuant to a contract with MMVTA and not pursuant to 88 Transit's PUC authority. While 88 Transit contends that it paid an assessment to the PUC for revenues received from Union Township and Finleyville Borough service, all scheduled route service it provided was based on rates, routes and service coordinated by MMVTA. 88 Transit's tariff rates were not charged. 88 Transit apparently did not believe the transportation it performed to and

from points other than Union Township and Finleyville Borough was being regulated by the PUC since it paid no assessment on such revenues. The routes traversed and the scheduled stops were mandated by MMVTA, not by 88 Transit's tariff which had not been updated since 1981, a fact of which the Commission may take official notice.

Mr. Novozny's testimony clearly supports the fact that no carrier can successfully provide the scheduled route service between MMVTA's communities and from these communities to the City of Pittsburgh and return as a common carrier. 88 Transit admittedly does not intend to provide service from Union Township and Finleyville Borough if this Complaint is sustained. Moreover, 88 Transit could have continued to service all the regular routes as a common carrier under its PUC authority in competition with MMVTA and First Transit, but it did not. In this regard, Mr. Novozny testified (NT 28):

Q. If the Complaint was sustained, you could reactivate the authority, acquire equipment and begin to provide service from Union Township and Finleyville to Pittsburgh and vice versa?

A. That would be a problem acquiring the equipment plus the funding. We wouldn't be able to get any funding because we are not an authority.

Q. You could charge a fare?

A. Yes, but there isn't a company in the country that can operate the company based on the fares they take in. You couldn't afford to buy the equipment.

Q. With regard to the service that your company provided after Mid Mon Valley Transit Authority went into existence, you entered into a contract with them and then you provided the service under this contract; is that correct?

A. That is correct.

This testimony directly supports the position asserted by MMVTA that this Commission may and should assert its power to permit MMVTA to continue to provide service in Union Township and Finleyville Borough as it has for nearly 25 years.

On page 11 of the Complainant's Brief, reference is made to the agreement between MMVTA and WCTA (Respondent's Exhibit 2). Complainant argues that MMVTA will continue to fix (meaning set or establish) the rates and not WCTA. However, the agreement does provide that all rates must "not conflict with the policies and purposes of the WCTA", so it is clear that WCTA has oversight of MMVTA's coordination of scheduled route service. MMVTA is, therefore, acting as the agent of WCTA in extending service beyond the limits of its member municipalities, a service that WCTA is authorized to coordinate and subcontract or delegate by agreement.

### III. CONCLUSION

MMVTA respectfully requests that the Conclusions of Law set forth in the Conclusion of MMVTA's Main Brief be adopted and that the Complaint be dismissed.

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Respectfully submitted,



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JOHN A. PILLAR  
Attorney for  
MID MON VALLEY TRANSIT AUTHORITY,  
Respondent

Due Date: May 14, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the within **Reply Brief on Behalf of Mid Mon Valley Transit Authority, Respondent**, upon the following parties as indicated, this 13<sup>th</sup> day of May, 2009:

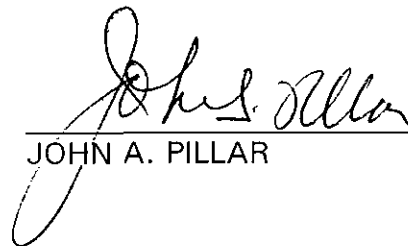
HON. MARK A. HOYER (1 copy via first-class mail and  
Administrative Law Judge 1 copy via e-mail: mhoyer@state.pa.us)  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

WILLIAM A. GRAY, ESQ. (2 copies via first-class mail)  
Vuono & Gray, LLC  
2310 Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2382

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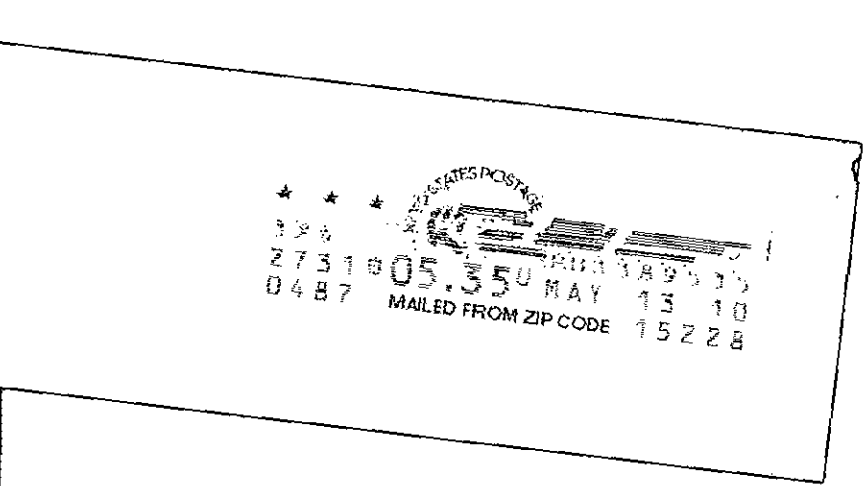
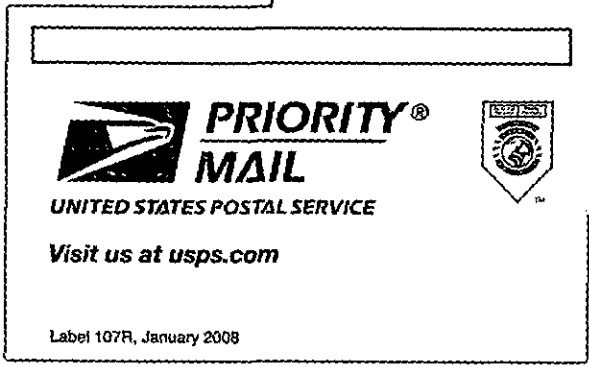
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