

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a limited liability company : A-2014-2416127  
of the State of Delaware, for the right to begin to transport, :  
by motor vehicle, persons in the experimental service :  
of shared-ride network for passenger trips between points in :  
Allegheny County :

**JOINT BRIEF OF PROTESTANTS  
CONCORD LIMOUSINE, INC. AND  
EXECUTIVE TRANSPORTATION, T/A LUXURY SEDAN  
IN OPPOSITION TO  
PETITION OF RASIER-PA, LLC FOR INTERLOCUTORY REVIEW  
AND ANSWER TO A MATERIAL QUESTION**

Protestants, Concord Limousine, Inc., and Executive Transportation, Inc., t/a Luxury Sedan (“Protestants”), by and through their attorney, Michael S. Henry, Esquire, hereby submit their Joint Brief in opposition to the Petition of Rasier-PA, LLC for Interlocutory Review and Answer to Material Question.

**I. INTRODUCTION**

This matter involves a request for interlocutory review of an ALJ decision dismissing Applicant’s preliminary objections challenging Protestants’ standing to intervene in this matter. The Commission should deny the request because the issue sought to be reviewed does not present compelling reasons for review at this stage of the proceedings and, giving due consideration to the right of all parties, is not necessary to avoid substantial prejudice or to expedite the conduct of proceedings. In the alternative, if the Commission allows review of the question presented at this stage of the proceeding, it should affirm the ALJ decision finding that Protestants have standing to intervene in this matter because it was the correct decision on the merits.

## II. INTERLOCUTORY REVIEW GENERALLY

Section 331(e) of the Public Utility Code, 66 Pa. C.S. §331(e), and the Commission's regulations promulgated thereunder, 52 Pa. Code §§5.301-5.306, establish the exclusive procedure for review by the Commission of an ALJ's interlocutory decision. Section 331(e) provides:

*Interlocutory appeals.* --A presiding officer may certify to the commission, or allow the parties an interlocutory appeal to the commission on any material question arising in the course of a proceeding, where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding. The presiding officer or the commission may thereafter stay the proceeding if necessary to protect the substantial rights of any of the parties therein. The commission shall determine the question forthwith and the hearing and further decision shall thereafter be governed accordingly. No interlocutory appeal to the commission shall otherwise be allowed, except as may be allowed by the commission.

Section 5.301(a) of the Commission's regulations, 52 Pa. Code §5.301(a), further provides that the "Commission will not permit interlocutory review of rulings made by a presiding officer during the course of proceedings, except as permitted by the act and as specified in this subchapter."

Both the statute and the regulations provide for two methods of interlocutory review by the Commission. First, the ALJ may certify a material question to the Commission for interlocutory review. 66 Pa. C.S. for interlocutory review. 66 Pa. C.S. §331(e); 52 Pa. Code §5.305. Second, a party may petition for interlocutory review without an ALJ's certification. 52 Pa. Code §5.302. In each case, the submission must be assert compelling reasons why interlocutory review is necessary to prevent substantial prejudice or expedite the conduct of proceedings. *Id.*

### **III. THERE ARE NO COMPELLING REASONS FOR INTERLOCUTORY REVIEW IN THE PRESENT CASE**

In the present matter, Applicant does not assert that interlocutory review is necessary to avoid substantial prejudice. Rather, the Applicant focuses on the fact that denying Protestants the opportunity to intervene in this matter “will significantly expedite the conduct of this proceeding by allowing the application to be adjudicated by the Commission without hearing as an unopposed application under Section 3.381(c)(iii)(A) of the Commission’s regulations.” 52 Pa. Code §3.381(c)(iii)(A). Applicant’s argument is without merit.

Section 3.381(c)(iii)(A) of the Commission’s regulations pertains to application proceedings in which no protests are filed or where all protests are withdrawn at or prior to the hearing. 52 Pa. Code §3.381(c)(iii)(A). Under such circumstances, the Commission may take either of the following actions: (A) consider the application without holding an oral hearing if it deems the facts are sufficient as in the application or as determined from additional information as the Commission may require of the applicant or (B) schedule the unopposed application for oral hearing at a time, date and place to be set, thereafter notifying the applicant by letter of the scheduling. 52 Pa. Code §3.381(c)(iii)(A) and (B).

Given the unique nature of the proposed service described in the Application and the issues it presents with regard to the Commission’s regulation of motor carrier service, it is likely that the Commission would have conducted hearings pursuant to 52 Pa. Code §3.38(c)(iii)(B), even without Protestants’ participation as an intervenor. In fact, given the implications of the granting of the Application for the future of motor carrier regulation, it would be a derogation of the Commission’s statutory duties to allow the Application to proceed without a hearing under 52 Pa. Code §3.38(c)(iii)(A). Thus, it is not necessarily the case, or even likely, that

interlocutory review of the ALJ decision denying Applicant's preliminary objections and allowing Protestants to intervene in this matter will expedite the conduct of proceedings.

Furthermore, the Applicant is mistaken in its assessment of how this matter will proceed in the event that interlocutory review is granted and if the ALJ decision is reversed, thereby terminating Protestants participation in these proceedings. Such action by the Commission would constitute a final decision by the Commission, subject to judicial review and a possible stay of proceedings pending appellate review, which would not serve to expedite the conduct of the present proceeding.

Thus, the granting of interlocutory review of the ALJ decision denying Applicant's preliminary objections challenging Protestants' standing to intervene will not expedite the conduct of proceedings in the present case because hearings are likely to occur regardless of the outcome and because Protestants' have the right to apply for a stay of proceedings pending judicial review of any adverse decision by the Commission.

#### **IV. INTERLOCUTORY REVIEW SHOULD BE DENIED ON THE MERITS**

In the event that the Commission reaches the merits of the material question presented by the Applicant in its Petition, Protestants assert that it should fail on the merits for the reasons set forth in the ALJ decision, which Protestants hereby incorporate by reference. In addition, Protestants assert that they have standing to protest the Application, notwithstanding the Applicant's characterization of the proposed service as "experimental", because the proposed service will facilitate the provision of illegal limousine and/or call or demand service in Allegheny County, Pennsylvania by private individuals without certificates of public convenience and such service is in actual, or potential, conflict with Protestant's limousine authority to provide limousine service throughout Pennsylvania, including Allegheny County.

At the very least, Protestant has standing to challenge the Applicant's claim that the proposed service is, in fact, motor carrier service, rather than a brokerage service, and to present evidence that the proposed service will facilitate the provision of transportation that is in actual, or potential, conflict with Protestant's service.

V. CONCLUSION

For all of the foregoing reasons, Protestants respectfully request that Applicant's Petition be denied.

Respectfully submitted,

*Michael S. Henry*

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Date: July 18, 2014

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Answer to the following:

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