

PLEASE REPLY TO
412.331.8998

August 8, 2014

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Docket No. A-2014-2424608, Application of Rasier-PA, LLC

Dear Secretary Chiavetta:

Transmitted herewith is the Motion to Dismiss and Answer of J B Taxi, LLC t/a County Taxi Cab responding to:

Applicant's Preliminary Objections filed, July 21, 2014

Applicant's Amended Preliminary Objections, filed July 25, 2014, and

Applicant's Motion for Partial Judgment on the Pleadings, filed July 25, 2014

Very truly yours,

/s/ electronically filed

David W. Donley
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2424608
APPLICATION OF RASIER-PA, LLC

PROTESTANT JB TAXI'S
MOTION TO DISMISS AND ANSWER
TO PRELIMINARY OBJECTIONS AND MOTION FOR JUDGMENT ON THE PLEADINGS

Comes now JB Taxi LLC t/a County Tax Cab (Protestant) and files this Answer to three pleadings recently filed by applicant, namely.

- the Preliminary Objections of Rasier-PA LLC, filed July 21, 2014,
- the Amended Preliminary Objections of Rasier –PA LLC, filed July 25, 2014, and
- the Motion for Partial Judgment on the Pleadings, filed July 25, 2014

in the above-captioned matter. This Answer is filed pursuant to 52 Pa.Code §§5.101(f.) and 5.102(b) and 52 Pa.Code §1.34.

DISMISS AND STRIKE THE PLEADING

Protestant moves to dismiss Applicant's Motion for Judgment on the Pleadings because all of its contents are duplicitous and impose unreasonable burdens on the Commission and opposing counsel. As the party requesting relief, Applicant should be required to incorporate by reference its averments and arguments presented in different pleadings on the same day for the same purpose. By failing to do so, the Commission and opposing counsel is required to parse the documents, a task easily avoidable.

For this reason, Protestant moves to dismiss the motion and strike the pleading as unnecessarily duplicitous and unreasonably burdensome or such other relief as the Commission may deem warranted.

In the alternative and in the event the relief requested by Protestant is not granted, Protestant's Answer is set forth below.

ANSWER

Protestant challenges each of the Preliminary Objections and each of the reasons advanced in support of the Motion. No valid basis has been stated for the relief requested by Applicant.

As to the Preliminary Objections, Amended Preliminary Objections and Motion, Protestant answers as follows:

1. Denied. The averments of Paragraph 1 contain conclusions of law as to which no response is required. By way of further answer, Protestant states the Preliminary Objections, the Petition for Leave to Intervene and the Protest allege that the services proposed, if authorized, would have a direct, substantial and immediate impact upon Protestant. Protestant has demonstrated an adequate basis to support its challenge to the proposed operations.

Contrary to Applicant's argument, the Commission may not have a well-established precedent with respect to standing to challenge "an experimental ride-sharing network" or any other new class of passenger service. The distinctions between the proposed operations and existing classes of service are not clear, particularly where they have been previously adjudicated as passenger brokerage. The Commission has recently stated,

The Commission is also mindful that the ETA application is for experimental service, and as such, it is not entirely clear where, and if, the service fits within Commission's current regulatory construct. *Absent a final Commission adjudication*, there is uncertainty as to whether the business model of any TNC, including Rasier, falls squarely within the definition of "broker" under Section 2501 or "common carrier" under Section 102, or neither. Docket No. A-2014-2429993, *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., For Emergency Temporary Authority to Operate An Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Order July 24, 2014, slip opinion at pages 19 and 20, hereinafter (*ETA Rasier-PA.*)

Contrary to Applicant's argument, the Commission has specifically cautioned that its determinations to date with respect to the service proposed against any suggestion that they are final. No aspect of Protestant's case has been considered or rejected. With respect to ride-sharing, the Commission has recently stated,

Although we are granting this ETA, nothing in this order prejudices the ongoing PA or the compliance proceedings before us.... none of the findings or conclusions reached in this order should be seen as limiting our future deliberations on matters relating to TNCs as this new service, and our understanding of it, evolve. The larger policy determinations for how TNC service shall be treated in Pennsylvania will be determined later, whether during Rasier's PA proceeding or by the legislature. *ETA Rasier-PA*, slip opinion at page 11.

2. Denied. The averments of Paragraph 2 contain conclusions of law as to which no response is required. By way of further Answer, Protestant argues that Applicant's partners, so-called "independent ride-sharing operators," are operating illegally and poised to compete unlawfully and unfairly with Protestant's proposed operations in Washington County. For this reason, Paragraphs 4 and 7(d) of the Petition for Leave to Intervene and Protest state specifically state Protestant's concerns of prospective unfair competition, reduced revenues, and additional operating expenses for operations proposed in Washington County PA.

With similar impact upon Protestant's current operations in four other counties, Protestant also seeks to challenge the services proposed by Applicant. These concerns are not speculative but are in fact known to the Commission and suggested in other proceedings. For example, some of the drivers engaged in unfair competition and allegedly operating unlawfully have been identified in the following proceedings, Docket No. A-2014-2429993; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Scott Howard Luff*, Docket C-2014-2418285; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Abdurrahim Altunal*, Docket C-2014-2418593; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Bernard David Keisler*, Docket C-2014-2418594; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Izzatulla Sadulla Ogli Sadullaev*, Docket C-2014-2418595; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Tamer Gokee*, Docket C-2014-2418597; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Douglas Philip Smith*, Docket C-2014-2418598; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Eric W Smith*, Docket C-2014-2418599; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Waqass S Saadoon*, Docket C-2014-2418600; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Theodore J Michalski*, Docket C-2014-2418701; *Pennsylvania P.U.C., Bureau of Investigation and*

Enforcement v. Robert Gerard Siravo Jr, Docket C-2014-2418702; *Pennsylvania P.U.C., Bureau of Investigation and Enforcement v. Ihtiyorjon Nazarov*, Docket C-2014-2418703.

Because the Commission has broad discretion in determining the issue of standing, Protestant should be permitted to challenge the proposed service and the impact of unfair competition on existing providers. An evaluation of adverse impact, if any is to be anticipated, has customarily been a part of the Commission's policy with respect to all proposed passenger operations. 52 Pa. Code § 41.14.

By way of further answer, Protestant also believes that other conclusions may be drawn distinct from those cited by Applicant and arising in the context of a "... wider-ranging, faster, or more user friendly scheduling of transportation." What could have wider range or be faster and more user friendly than the local jitney driver offering to give the senior-citizen leaving the grocery store in McKees Rocks Plaza a ride home for \$5 and to carry the patron's heavy grocery bags inside once they arrive at the destination for another \$5 ? The Commission might wish to and should reconsider conclusions reach in separate proceeding which did not include any consideration of the impact upon existing providers attempting to meet the requirements of the Public Utility Code as they have traditionally been set forth.

3. Admitted.

4. Denied as stated. The averments of Paragraph 4 contain conclusions of law as to which no response is required. The text of the Commission's regulations is not disputed but should be construed in this proceeding on the basis of the Commission's more recently conclusion, which provides:

[I]t is not entirely clear where, and if, the service fits within Commission's current regulatory construct. Absent a final Commission adjudication, there is uncertainty as to whether the business model of any TNC, including Lyft, falls squarely within the definition of "broker" under Section 2501 or "common carrier" under Section 102, or neither. The fact that at least one bill has been proposed in the Pennsylvania Senate to create a new section of the Public Utility Code to regulate these new app-based transportation models suggests, at a minimum, that their place within our current regulations is unclear. Docket No. A-2014-2432304, *Application of Lyft, Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA*. Order entered July 24, 2014, slip opinion at page 20.

5. Admitted.

6. Denied. Applicant misstates the text of the Petition for Leave to Intervene and Protest and has not considered all of the Commission's docket. As a result Applicant incorrectly states that the requisite "overlap" is not present. Protestant interests arise from, "...services currently by Protestant in Beaver, Crawford, Lawrence, and Mercer counties or the services recently proposed by Protestant in Washington County." (Petition for Leave to Intervene and Protest, at paragraph 4 and at paragraph 5 provides the required information as follows:

Protestant is authorized to provide passenger service pursuant to the rights granted at A-6310493, A-2008-2065173, namely, to transport persons upon call or demand in the counties of Beaver, Lawrence, Mercer, and Crawford. In addition to the services currently authorized, Protestant has pending before the Commission an application to expand call-and-demand services to Washington County as to which the service and operations proposed by Applicant would directly conflict. See Docket2014-2420239, Application of JB Taxi LLC t/a County Taxi Cab; a copy of the application is attached.

7. Denied. The averments of Paragraph 7 contain conclusions of law as to which no response is required. By way of further answer, Protestant asserts that the Commission recognizes that standing arises not only from an actual conflict but also from potential conflict. Application of Glen Alsace Water Company, 45 PA PUC 472 (1971.) The Commission has recognized a pending application is sufficient to confer standing. Re Francis M. Bauer, 50 PA PUC 825 (1977.)

8. The averments of Paragraph 8 contain conclusions of law as to which no response is required.

9. Admitted.

As to the Preliminary Objections, Protestant answers as follows:

10. Admitted.

11. Denied as stated. The averments of Paragraph 11 contain conclusions of law as to which no response is required. By way of further answer, Protestant suggests disposition should be governing by rule that "... any doubt must be resolved in favor of the nonmoving party by refusing to sustain the preliminary objections." Boyd v. Ward, 802 A.2d 705 (Pa.Cmwlt. 2002)

12. Denied. Protestant here incorporates by reference its response at Number 6 above.

13. Admitted.

14. Denied as stated. The averments of Paragraph 14 contain conclusions of law as to which no response is required. By way of further answer, Protestant suggests the discussion in the cited cases produces a contrary result from that advanced by Applicant because the Commission has specifically recognized that Protestant's pending application for call-and-demand services in Washington County at Docket A-2014-2420239 confers standing upon Protestant to challenge the operation proposed by Applicant.

15. Denied. The averments of Paragraph 15 contain conclusions of law as to which no response is required. By way of further answer, Protestant incorporates its answers to Numbers 6 and 13 set forth above.

16. Denied. The averments of Paragraph 16 contain conclusions of law as to which no response is required.

17. Denied. The averments of Paragraph 17 contain conclusions of law as to which no response is required. By way of further answer, Protestant incorporates by reference its answer previously set forth at Number 2 above.

18. Denied as stated. The averments of Paragraph 18 contain conclusions of law as to which no response is required. By way of further answer, Protestant asserts that the Commission, in authorizing temporary operations on July 24, 2014, included additional points of view that may be better considered upon an evidentiary record in which adversely affected call-and-demand providers should be permitted to participate.

19. Denied. The averments of Paragraph 19 contain conclusions of law as to which no response is required. By way of further answer, Protestant notes the Commission has scheduled an *en banc* hearing for August 28, 2014, 10 days after the hearing in this proceeding is to be convened. Were the relief sought by Applicant granted, the first opportunity Protestant would have to address issues similar to those considered in the cited case (the *Household Goods* rulemaking proceeding) and would not be a part of the record in this proceeding. If changes in important policies are to be directed following a rulemaking proceeding for

household goods carriers, the similar rulemaking proceeding should be the premise for changes affecting passenger service providers.

20. Denied. The averments of Paragraph 20 contain conclusions of law as to which no response is required. By way of further answer, the service proposed is substantially the same as that to be provided by Protestant in Washington County as well as in other counties in which Protestant operates.

21. Denied. The averments of Paragraph 21 contain conclusions of law as to which no response is required. By way of further answer, Protestant incorporates by references its answer at numbers 1,2 and 14 above.

22. Denied. The averments of Paragraph 22 contain conclusions of law as to which no response is required. By way of further answer, By way of further answer, Protestant incorporates by references its answer at numbers 1,2 and 13, 14 and 16 above.

23. Denied. The averments of Paragraph 23 contain conclusions of law as to which no response is required. By way of further answer, By way of further answer, Protestant incorporates by references its answer at numbers 13,14 and 16 above

24. Denied. The averments of Paragraph 24 contain conclusions of law as to which no response is required. By way of further answer, By way of further answer, Protestant incorporates by references its answer at numbers 1 and 16 above

25. Denied. The averments of Paragraph 25 contain conclusions of law as to which no response is required. By way of further answer, By way of further answer, Protestant incorporates by references its answer at numbers 1,2 and 19 above

26. Denied. The averments of Paragraph 26 contain conclusions of law as to which no response is required. By way of further answer, By way of further answer, Protestant incorporates by references its answer at number 20 above.

27. Denied. The averments of Paragraph 27 contain conclusions of law as to which no response is required.

As to the Motion for Judgment on the Pleadings, Protestant answers as follows:

10. Denied. Protestant here incorporates by reference its response at Number 6 above.

11. Admitted.

12. Denied as stated. The averments of Paragraph 12 contain conclusions of law as to which no response is required. By way of further answer, Protestant suggests the discussion in the cited case at page 9 (*Germantown*) produces the opposite result from that urged by Applicant because the Commission has specifically recognized that Protestant's pending application for call-and-demand services in Washington County at Docket A-2014-2420239 confers standing upon Protestant to challenge the operation proposed by Applicant.

13. Denied as stated. The averments of Paragraph 13 contain conclusions of law as to which no response is required. By way of further answer, Protestant suggests that a contrary result has reached in two similar controversies and should be following here. Those two cases are, A-2014-2415045, *Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County*, and A-2014-2415047, *Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania*.

14. Denied. Protestant's interest, as set forth in the Petition for Leave to Intervene Protest, are not abstract but are well-grounded upon the circumstances present at the time it was filed as well as when considered in the light of developments occurring since that filing. The Commission has not taken into account the impact of the proposed operations on existing providers.

The marketplace will be fundamentally unfair, for example,

- where existing providers are prohibited under the Public Utility Code from adjusting their fares based upon demand at the time service is requested, or
- where some providers are not required to disclose the fare structure to the public by tariff, while others are not, See Applicant's proposed tariff "Experimental - Pa.P.U.C. No.1, Rasier-PA LLC, issued August 8, 2014, and effective on three-days notice, Items 2.1 through 2.5, or
- where some providers are precluded by regulation from using the services of uncertificated owner-operators while others are not. With respect to call-and-demand services currently provided, see 52 Pa.Code§29.101(a)(5). See *Rasier-PA ETA*, supra, slip opinion at pages 15 and 16.

15. Denied. The averments of Paragraph 15 contain conclusions of law as to which no response is required. By way of further answer, Protestant asserts that its Petition for Leave to Intervene and Protest at Paragraphs 4 and 7 contain all of the requirements to sustain a conclusion that the Protestant's interests in the outcome of this proceeding are direct, substantial and immediate.

16. Denied. The averments of Paragraph 16 contain conclusions of law as to which no response is required. The Commission's determination in the cited case (*YellowX*) was not based upon a record prepared with the benefit of an oral hearing or the examination of any witnesses who might provide additional evidence bearing upon the criteria established by the Commission at 52 Pa.Code §41.14(c).

17. Denied. The averments of Paragraph 17 contain conclusions of law as to which no response is required. The Commission has never concluded that technology confers any right, privilege or immunity under the Public Utility Code nor an excuse for Applicant's senior management to discount the requirements of the Public Utility Code when providing passenger services. Experimental service as proposed by Petitioner raises at least two important issues with respect to the marketplace and Protestant's operations proposed in Washington County. The issues are: (1) does experimental service include an obligation to serve any and all potential patrons, and (2) does experimental service permit the Applicant or its drivers to serve a defined and limited group of patrons? These questions are not abstract but bear directly upon the marketplace Petitioner has chosen.

18. Denied. The averments of Paragraph 18 contain conclusions of law as to which no response is required. By way of further answer, Protestant incorporates by reference its answer previously set forth at Number 1 above.

19. Denied. The averments of Paragraph 19 contain conclusions of law as to which no response is required. By way of further answer, Protestant believes its case is not so limited as portrayed by Applicant, and an evidentiary hearing would permit a record to be established by existing providers in the western Pennsylvania marketplace who would directly affected were Applicant's management permitted to continue its operations in the fashion it has chosen.

20. Denied. The averments of Paragraph 20 contain conclusions of law as to which no response is required. By way of further answer, Applicant continues to advance the fiction that its insurance is superior to that required by the Commission and justifies continuing operations in defiance of the Commission's orders. See the transmittal letter of counsel dated August 7, 2014, addressing the Commission's requirements entered on July 24, 2014, in Rasier ETA, supra. Applicant suggests that, notwithstanding any continuing operations that may be occurring, it still is not able to produce evidence of insurance.

21. Denied. The averments of Paragraph 21 contain conclusions of law as to which no response is required.

CONCLUSION

For the reasons stated above, the Preliminary Objections and Amended Preliminary Objections should be dismissed and all of the relief requested by Applicant be denied. The Motion for Judgment on the Pleadings should be dismissed and the pleading stricken for the reasons stated above. In the alternative the Motion should be denied and all of the relief requested by Applicant denied.

Respectfully submitted,

electronically filed
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Certificate of Service

I hereby certify that I have this day served a copy of the foregoing Protest upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

By first-class mail, postage prepaid

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Dated this 8th day of August, 2014

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