

PLEASE REPLY TO
412.331.8998

October 20, 2014

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

Docket Nos. A-2014-2416127, Application of Rasier-PA, LLC

Dear Secretary Chiavetta:

Transmitted herewith for filing is Protestant J.B. Taxi LLC's Reply Exceptions in the above-referenced proceedings.

Very truly yours,

/s/ electronically filed

David W. Donley
Attorney for Protestant
412.331.8998

DAVID W. DONLEY ATTORNEY AT LAW
3361 STAFFORD STREET - PITTSBURGH PA 15204-1441
412.331.8998 DWDONLEY@CHASDONLEY.COM

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2416127
APPLICATION OF RASIER-PA, LLC

PROTESTANT JB TAXI'S REPLY EXCEPTIONS

Statement of the Case

By application for authorization to operate in experimental service, the Applicant proposes to operate a ride-sharing network service to provide passenger transportation in Allegheny County. Protestant challenges the application because the ride-sharing network service, as proposed by Applicant, would most likely have significant, negative implications for Protestant's call and demand services if and when ride-sharing network services are proposed in counties where Protestant currently operates and in Washington County, wherein protestant has a pending request to provide call and demand service.

Hearings were convened during which Applicant and Protestants provided testimony and exhibits. Among the witnesses, was Matthew Gore, an employee of Uber Technologies, Inc. who was called by Applicant to be the primary witness supporting the business model of ride-sharing and Applicant's qualifications and proposed methods of operating Applicant's brand of ride-sharing. During the course of the hearings, Applicant's counsel instructed Witness Gore to withhold his testimony and not to answer questions which the Commission had previously ruled to be relevant subject matter.

The Recommended Decision was entered on September 25, 2014, dismissing the application and recommending the Applicant's request to provide service be denied.

Applicant has filed exceptions requesting that the Commission reverse the Recommended Decision and authorize the services as proposed in an amended form from those originally proposed. These Reply Exceptions are offered in response to Applicant's arguments.

Summary of the Basis for the Recommended Decision

In applying the standards for formal proceedings before the Commission, the Presiding Officers determined that Applicant was required to abide by an Interim Order of the Commission directed to the parties and requiring that they produce certain evidence at the oral hearings convened in this proceeding. That evidence was known to Applicant and previously determined to be relevant to the request for permanent operating authority. That evidence was not known to any other parties. The Presiding Officers also noted the subject matter of the evidence was also the subject matter of related proceedings, and at no point prior to the oral hearing on August 18, 2014, had Applicant objected to the requirement to produce the evidence or notified the Commission or other parties that it did not intend to comply with the requirements of the Interim Order.

The Recommended Decision, at pages 7 and 8, sets forth the remedies available to Applicant in advance of the oral hearing, none of which were pursued by Applicant. The Recommended Decision concludes that the Applicant has obstructed the Commission's hearing process into the proposed service which inquiry is required under the Public Utility Code. Because Applicant has chosen to obstruct the hearing process without adequate justification, the Presiding Officers concluded that the application should be dismissed without reaching other findings or conclusions as to the merits, if any, of the ride-sharing network service proposed by Applicant.

Exceptions

Applicant files its exceptions as follows:

Exception No. 1 The Recommended Decision should be reversed because it completely ignores the compelling evidence of a critical need for ridesharing in Allegheny County and Rasier-PA's fitness to provide the proposed service.

Exception No. 2. The Recommended Decision should be reversed because outright dismissal of the applications is not warranted for failure to comply with an Interim Order of the Administrative Law Judges that sought the production of highly proprietary information that is irrelevant to this Proceeding.

Protestant's Argument

Exception No. 1 -

Protestant urges the Commission to reject Applicant's suggestion that public need, assuming it has been demonstrated, would ever justify a grant of permanent authority without addressing the other requirements of the Public Utility Code. Commission proceedings to evaluate a request for permanent authority have always conformed to the standard of the enabling legislation, that is, that a favorable decision follow a showing that an applicant's proposal is necessary or proper for the accommodation of the public. 66 Pa.Code § 1103(a). With respect to passenger transportation services, that showing customarily includes the elements set forth by the Commission's policy which specifically includes aspects of the proposed operations going beyond public need. A showing of fitness is customarily required. 52 Pa. Code § 41.14(b). Even were public need demonstrated, it would not trump the requirements for a showing of fitness as well as a showing that the operations proposed will meet the related requirements of the Public Utility Code. Accordingly, the Commission should not conclude that its inquiry is concluded once an applicant demonstrates a need. Other determinations must also follow before a public utility service may be authorized.

Exception No. 2 -

The Commission should support the findings and conclusion that intentional obstruction of the hearing process by one party and the resulting deficiencies in the record to be developed through the hearing process justify dismissal of an application. The Recommended Decision summarizes at least options available to a party subject to an evidentiary requirement of the Commission with which the party does not agree. An aggrieved party may seek interlocutory review or a protective order. A third option would also permit an aggrieved party to request a continuance of the hearing while either of the foregoing avenues are appealed. The Commission should also reject Applicant's dissatisfaction with the provisions of Pennsylvania's Right to Know Law, 65 P.S. § 67.101 et seq., as a valid justification to obstruct a Commission proceeding. The Commission should similarly reject the overtures suggested at footnote on page 11 of Applicant's Exceptions that, in the related proceeding, an avenue other than a public

airing of information determined to be relevant in public proceeding would be permitted or appropriate.

Points that should not go uncorrected are Applicant's suggestions, at pages 13 and 14 of the Exceptions, that the parties were not prejudiced by Applicant's obstruction at the hearing and that only the fourth of four protestant's requested the evidence required by the Interim Order of July 31, 2014. Protestant argues that an adversary should not have to anticipate defiance of the Commission requirement at the time of a scheduled hearing. Protestants were entitled to anticipate that evidence bearing upon the Applicant's fitness, as determined relevant in the Commission's Interim Order of July 31st, if available to Applicant, would not be withheld without justification and without notice to opposing counsel.

As to the timing of protestant's inquiries, there should be no incentive to encourage repetitive questioning of a single witness on cross-examination at the expense of a more orderly and coordinated effort among protestants' counsel. The protestants holding certificates of public convenience do share common points of view as to many issues to be determined on the record. And, the record will show that, in order to accommodate Applicant's scheduling of its witnesses, some of the protestants were expected to proceed with cross-examination before Applicant's case in chief had been concluded. Applicant resumed its direct testimony after some of its witness' were cross-examined.

Conclusion

For these reasons, Protestant requests that the Exceptions be denied and all of the relief requested by Applicant be denied.

Respectfully submitted,

electronically filed

David W. Donley
Attorney for Protestant
3361 Stafford Street
Pittsburgh PA 15204-1441
(412) 331-8998
Pa ID 19727

Certificate of Service

I hereby certify that I have this day served a copy of the foregoing Reply Exceptions 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

Karen O. Moury, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg PA 17101-1357

Justine Pate, Esquire
620 S 13th Street
Harrisburg PA 17104

Michael S. Henry, Esquire
Michael S. Henry LLC
2336 South Broad Street
Philadelphia PA 19145

Joseph T Sucec, Esquire
325 Peach Glen-Idaville Road
Gardners PA 17324

Lloyd R. Persun, Esquire
Persun and Heim, PC
P.O Box 659
Mechanicsburg PA 17055

By email

Admin. Law Judge Mary D. Long
Pennsylvania Public Utility Commission
Piatt Place - Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Admin. Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place - Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated this 20th day of October, 2014

electronically filed

David W. Donley
Attorney for Protestant
3361 Stafford Street
Pittsburgh PA 15204-1441
(412) 331-8998
Pa ID 19727