

May 20, 2015

Via Electronic Filing – Refiled with Corrected Docket Number

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
400 North Street
Harrisburg, PA 17120

**Re: Docket No. A-2015-2471761
Application of Fabian Transportation, Inc.
Motion to Dismiss the Protest of United Cab, LLC**

Dear Secretary Chiavetta:

Attached for filing is Fabian Transportation's Motion to Dismiss the Protest of United Cab, LLC ("Protestant") in the above captioned proceeding.

A copy of the attached Motion to Dismiss has been forwarded to the Protestant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris
Debra L. Roscioli

MAM/jm
Enclosure

cc: Justine L. Pate, Esquire [w/enc.]
Leandro Brito [w/enc.]

**Re: Docket No. A-2015-2471761
Application of Fabian Transportation, Inc.
Motion to Dismiss the Protest of United Cab, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class Mail

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

Counsel for United Cab, LLC

Dated: May 20, 2015



Margaret A. Morris, Esquire
Debra L. Roscioli, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Fabian Transportation, Inc.

Docket No. A-2015-2471761

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that if you do not file a written response answering the enclosed Motion to Dismiss of Fabian Transportation, Inc. within ten (10) days from service of this notice, the facts set forth by Fabian Transportation, Inc. in the Motion to Dismiss may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Fabian Transportation, Inc., Margaret A. Morris, Esquire, and where applicable the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esquire
Debra L. Roscioli, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: May 20, 2015



Margaret A. Morris, Esq.
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Debra L. Roscioli, Esq.
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Counsel for Fabian Transportation, Inc.

4. Protestant currently has call and demand authority in the City of Harrisburg under Docket No. A-2012-2176038.

5. Protestant does not hold authority to serve either the Philadelphia International Airport or the Lehigh Valley International Airport.

6. Protestant does not hold airport transfer service authority from the Commission.

II. The Protest Should Be Dismissed For Lack of Standing.

7. Protestant lacks standing to protest the Application. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Ass'n v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991). Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-284 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993). A general interest in compliance with the law is insufficient to confer standing to protest an application. Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pennsylvania Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

8. Protestant does not hold authority to provide transportation service to or from the Philadelphia International Airport or Lehigh Valley International Airport. Well-established Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by an applicant in order to have standing to protest an application. *Application of Germantown Cab Company*, Docket No. A-2012-2294922 (Commission Final Order entered November 9, 2012).

9. Protestant does not have authority to provide airport transfer service to any of the three airports named in the Application as the authority it possesses (call and demand) is different from the authority requested in the Application (airport transfer service).

III. The Protest Should Be Dismissed for Failure to Comply with Commission Regulations.

10. 52 Pa. Code § 3.381(c)(1)(i)(A)(iv) provides that any protest filed with the Commission must set forth:

A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

11. The Protest fails to meet this standard and is predicated on nothing more than a desire to freeze out healthy competition, with, as it states explicitly, "resulting loss of revenue to United. . ."

12. In addition, the Protest fails to include a statement of any restrictions to the Application which would protect the Protestant's interest, including a concise statement of any amendment which would result in the withdrawal of the Protest as required by 52 Pa. Code § 3.381(c)(1)(i)(A)(vi).

13. Moreover, the Protest incorrectly states that the Applicant lacks the necessary financial and technical fitness by failing to include various documents and information. The Commission's regulations do not require that such documents be attached to applications.

WHEREFORE, Applicant, Fabian Transportation, Inc., respectfully requests that the Commission grant this Motion to Dismiss the Protest of United Cab, LLC, and refer the Application to the Commission's Bureau of Transportation and Safety for review and resolution pursuant to 52 Pa. Code § 3.381(c)(1)(iii)(A).

Respectfully submitted,

Dated: May 20, 2015



Margaret A. Morris, Esq.
Attorney ID No. 75048
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Counsel for Fabian Transportation, Inc.

Docket No. A-2015-2471761
In re: Application of Fabian Transportation, Inc.

Attachment 1

Protest of United Cab, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Fabian Transportation, Inc.

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:
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:

Commission Docket No.
A-2015-2471761

**PROTEST OF
United Cab, LLC**

United Cab, LLC (United) hereby files this protest to the Application of Fabian Transportation, Inc., for the right to transport persons in airport transportation service, from points in Lebanon County to the Harrisburg International Airport, Lehigh Valley International Airport, and Philadelphia International Airport. United respectfully requests that this Commission deny the application for the reasons set forth below.

1. The name and business address of United are:

United Cab, LLC
2304 Walnut Street
Harrisburg PA 17103

2. The name and address of Protestant's attorney is:

Justine L. Pate, Esq.
620 S. 13th Street
Harrisburg, PA 17104

3. Protestant possesses authority at A-6412947. Protestant's operating authority is attached hereto as Exhibit A.

4. Applicant has not attached to its application: a balance sheet, projected revenue and expense statement, or any other financial information that is indicative of its financial fitness to provide the proposed service in this area. Accordingly, United believes and therefore avers that Applicant does not possess the requisite financial fitness to provide the proposed service.

5. Applicant has attached no information to its application that would indicate how Applicant intends to operate. Accordingly, United believes and therefore avers that Applicant does not possess the requisite technical fitness to provide the proposed service in such huge area.

6. Approval of this application will not serve a useful public purpose or need, but will duplicate already existing service to the detriment of existing carriers.

7. There is no need for the proposed service.

8. It would authorize additional unnecessary and harmful competition into the area with the resulting loss of revenue to United and be detrimental to the traveling public.

WHEREFORE, Protestant, United Cab, LLC respectfully requests that this Honorable Commission deny the application of Fabian Transportation, LLC.

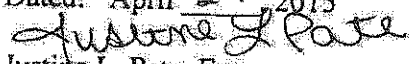
Dated: April 24, 2015

Justine L. Pate, Esq.
620 S. 13th Street
Harrisburg, PA 17104

Exhibit A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN THE MATTER OF: A-6412947

United Cab, LLC for the right to transport, as a common carrier, by motor vehicle, persons upon call or demand in the city of Harrisburg and within an airline distance of ten (10) statute miles of the limits of said city. A-2012-2176038

EFFECTIVE DATE: July 20, 2012

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval to operate.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 4th day of January, 2013.


Secretary

Certificate of Service

I hereby certify that I served the foregoing Protest by placing a true and correct copy thereof in the United States Mail, first class postage prepaid, addressed as follows:

Fabian Transportation, Inc.

444 North 11th Street

Lebanon, PA 17046

Dated:

4/24/15

Justine L. Pote