

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 EZ Taxi, LLC**

Dear Secretary Chiavetta:

Attached for filing is Fabian Transportation's Motion to Dismiss the Protest of EZ Taxi, 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 EZ Taxi, 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. 13<sup>th</sup> Street  
Harrisburg, PA 17104

*Counsel for EZ Taxi, LLC*

Dated: May 20, 2015



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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, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Dated: May 20, 2015



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Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Debra L. Roscioli, Esq.  
Attorney ID No. 91014  
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[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Counsel for Fabian Transportation, Inc.



4. Protestant currently has call and demand authority in the counties of Cumberland, Dauphin, York, and Lancaster and the City of Lancaster under Docket No. A-00119741, F.2, Am-A.

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 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 EZ. . ."

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 EZ Taxi, 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



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Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Debra L. Roscioli, Esq.  
Attorney ID No. 91014  
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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 EZ Taxi, LLC



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Fabian Transportation, Inc.

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Commission Docket No.  
A-2015-2471761

**PROTEST OF  
EZ Taxi, LLC**

EZ Taxi, LLC (EZ) 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. EZ respectfully requests that this Commission deny the application for the reasons set forth below.

1. The name and business address of EZ are:

EZ Taxi, LLC  
2304 Walnut Street  
Harrisburg PA 17103

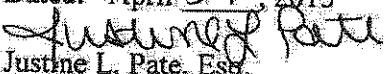
2. The name and address of Protestant's attorney is:

Justine L. Pate, Esq.  
620 S. 13<sup>th</sup> Street  
Harrisburg, PA 17104

3. Protestant possesses authority at A-00119741. 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, EZ 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, EZ 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 EZ and be detrimental to the traveling public.

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

Dated: April 24, 2015  
  
Justine L. Pate, Esq.  
620 S. 13<sup>th</sup> Street  
Harrisburg, PA 17104

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held September 13, 2007

**Commissioners Present:**

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Tyrone J. Christy  
Kim Pizzingrilli

Application of EZ Taxi, LLC, (originally filed as Maher Saber, t/d/b/a United Cab), Harrisburg, Dauphin County, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, persons, upon call or demand in the counties of Cumberland, Dauphin and York: SO AS TO PERMIT the transportation of persons upon call or demand in the city of Lancaster, Lancaster County, and points within an airline distance of six statute miles of the limits of the said city.

A-00119741  
F. 2, Am-A

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Peter B. Foster, Esquire

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**ORDER**

**BY THE COMMISSION:**

This matter comes before the Commission on an application filed September 16, 2005. Public notice of the application was given in the *Pennsylvania Bulletin* of October 1, 2005 with protests due by October 24, 2005. No protests were filed. The verified statements were requested by letter dated November 3, 2005 and due by December 5, 2005. The verified statement of applicant and nine statements in support were received on December 5, 2005. By Order entered February 27, 2006, the Commission denied the application under the premise that the record demonstrated that the applicant lacked a propensity to operate legally and safely.

On March 24, 2006, applicant filed a Petition for Review of the Commission's February 27, 2006 Order, in the Commonwealth Court of Pennsylvania. On May 18, 2006, the

Commission applied to the Court for a remand of the matter, pursuant to Pennsylvania Rule of Appellate Procedure 123. On May 19, 2006, the Commission's Petition was granted and the Court remanded the matter to the Commission for further proceedings and development of an evidentiary record. A hearing was held on November 28, 2006, before Administrative Law Judge (ALJ) Cocheres. By notice dated April 2, 2007, the ALJ in the instant proceeding was changed to Robert P. Meehan. An Initial Decision was issued May 18, 2007, by ALJ Meehan which determined that applicant has the technical, financial and legal fitness to hold the additional operating rights requested in its application. A final order was entered on June 21, 2007, which referred the proceeding to the Bureau of Transportation and Safety for review as an unopposed application and a determination as to whether the verified statements previously submitted in the proceeding established a need for the proposed service. The Bureau of Transportation and Safety was ordered to afford applicant the opportunity to submit supplemental verified statements in support of its application, if necessary. Since the applicant has been determined to be financially and legally fit by the ALJ, we will only address the need for the proposed service. The unopposed application is certified to the Commission for its decision without oral hearing.

## DISCUSSION AND FINDINGS

EZ Taxi, LLC (applicant or EZ Taxi) trading and doing business as United Cab seeks to expand its call or demand operating territory. The application for amendment to its call or demand authority was originally filed and published as Maher Saber, v/a/d/a United Cab. Applicant successfully registered in the new name EZ Taxi, LLC. All relevant issues in the application as originally filed remain unchanged in the application now before us for consideration. The application is hereby considered as EZ Taxi, LLC.

By letter dated July 6, 2007, applicant was requested to submit current, updated verified statements. Thirty supporting statements were hand delivered on July 27, 2007. Together with the nine supporting statements submitted December 5, 2005, thirty-nine parties support the instant application. Each one supports a need for call or demand service in the requested territory. The frequency of use of the service varies from daily to four times a month. The supporting statements demonstrate that applicant has met its burden of proof regarding establishing a need for the proposed service.

We advise the applicant of the obligation to become familiar with the requirements of 52 Pa. Code as applicable to the operation of a motor carrier as authorized by this grant of authority. Failure to comply with all applicable requirements may subject the carrier to penalties, including fines, suspension of operating rights or cancellation of authority. Title 52 of the Pennsylvania Code may be accessed on the World Wide Web at [www.pacode.com](http://www.pacode.com).

In particular, we urge the applicant to become familiar with the following regulation at 52 Pa. Code §29.314(d) with respect to vehicle age. By Commission Order entered June 1, 2007, at P-00072274, the effective date for vehicle age requirements was extended to January 1, 2008. Effective January 1, 2008, vehicles operated in call or demand service may not be more than eight model years old, unless otherwise permitted by the Commission.

**After complete review of the record, we find:**

1. The applicant has the equipment and financial fitness to provide the proposed service, as determined by Final Order entered June 21, 2007.
2. Thirty-nine parties support the application.
2. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

**IT IS ORDERED:** That the application is approved granting the following right:

To transport, as a common carrier, persons upon call or demand in the counties of Cumberland, Dauphin, and York: **SO AS TO PERMIT** the transportation of persons upon call or demand in the city of Lancaster, Lancaster County, and points within an airline distance of six statute miles of the limits of said city.

**IT IS FURTHER ORDERED:** That the applicant shall not provide any service granted in this order until the following is submitted to the Commission:

1. Form E evidence of Bodily Injury and Property Damage Liability Insurance.
2. A tariff establishing just and reasonable rates.

**IT IS FURTHER ORDERED:** That upon compliance with the requirements herein before set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above determined.

**IT IS FURTHER ORDERED:** That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

**IT IS FURTHER ORDERED:** That in the event said applicant has not, on or before sixty (60) days from the date of entry of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceeding.

**BY THE COMMISSION,**

James J. McNulty  
Secretary

**(SEAL)**

**ORDER ADOPTED:** September 13, 2007

**ORDER ENTERED:** September 14, 2007

## 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 11<sup>th</sup> Street

Lebanon, PA 17046

Dated:

4/24/15

Justine L. Pate