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June 15, 2015

VIA E-FILING

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

Re: Petition of Gegen, LLC For Waiver of the Commission's Limousine Tariff
Regulations at 52 Pa. Code § 29.334; Docket No. P-2015-2474633

Dear Secretary Chiavetta:

On behalf of Gegen, LLC, I am electronically filing the Reply Comments of Gegen, LLC to Comments of Airport Limousine Service, Inc., t/d/b/a Embassy Coach, in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Gegen, LLC For Waiver of :
the Commission’s Limousine Tariff : Docket No. P-2015-2474633
Regulations at 52 Pa. Code § 29.334 :

**REPLY COMMENTS OF GEGEN, LLC TO COMMENTS OF
AIRPORT LIMOUSINE SERVICE, INC., T/D/B/A EMBASSY COACH**

Gegen LLC (“Gegen”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, hereby files these Reply Comments, pursuant to the notice published in the *Pennsylvania Bulletin* on May 16, 2015 at 45 Pa.B. 2443, in response to the Comments filed by Airport Limousine Service, Inc., t/d/b/a Embassy Coach (“Airport Limousine Service”) on June 5, 2015.

Gegen filed a Petition for Waiver of the Commission’s Limousine Tariff Regulations at 52 Pa. Code § 29.334 (“Petition”) on March 30, 2015, seeking flexibility to establish market-based rates for limousine services arranged through the Internet and mobile application (“App”) developed by Uber Technologies, Inc., in a manner that effectively balances supply and demand, while providing transparency to the public by disclosing the applicable rates through the App before transportation services are provided.¹ Through its Comments urging the Commission to deny Gegen’s Petition, Airport Limousine Service seeks to stifle innovation, growth and

¹ Germantown Cab Company filed a Petition to Intervene on April 27, 2015. In its Answer opposing the Petition to Intervene, which was filed on May 13, 2015, Gegen continued to request the relief sought by the March 30, 2015 Petition, but also offered the Commission an alternative proposal. Specifically, Gegen proposed that the Commission expeditiously approve a two-year pilot program in Allegheny County, under which Gegen would partner with certificated limousine providers who would file tariffs allowing flexible ratemaking for limousine services arranged through the App. Additional details are set forth in Gegen’s Answer to the Petition to Intervene filed on May 13, 2015.

competition in Pennsylvania's limousine industry, to the detriment of consumers who would be denied choices in the way in which they arrange and pay for limousine services.

Simultaneously and inconsistently arguing that Gegen's proposal will lead to price gouging and drive fares down, Airport Limousine Service's Comments are fraught with anti-competition rhetoric that is merely designed to protect its own business model. At the heart of Airport Limousine's Comments are its overarching goals of preserving the status quo, avoiding competition, and preventing its competitors and potential competitors from using advancements in technology to improve the delivery of limousine services to the public.

While Airport Limousine Service unsuccessfully attempts to mask its Comments as protecting the interests of consumers (as opposed to its own business interests), it does not even try to hide its fundamental disdain for competition. The Commission, however, has embraced competition for industries under its jurisdiction, including most recently the motor carrier industry. On June 11, 2015, the Commission adopted the Joint Motion of Vice Chairman John F. Coleman Jr. and Commissioner Robert F. Powelson to open a proposed rulemaking to eliminate the need requirement for passenger motor carriers because it has "served to protect monopoly interests to the detriment of healthy competition." *Initiation of Proposed Rulemaking to Amend Motor Carrier Regulations*, Public Meeting Agenda No. 2485881-CMR (Joint Motion adopted June 11, 2015 at p. 1). In the same way as the Commission has observed that competition among carriers will determine whether a given carrier's service is needed by the public, the market should determine the appropriate level of rates to be charged for limousine services arranged through the App. *See also Final Rulemaking Order on Household Goods in Use Carriers and*

Property Carriers, Docket No. L-2013-2376902 (June 19, 2014) (eliminated public need requirement for household goods in use carriers).²

Only by maintaining the status quo, which involves the continued application of rules requiring the use of antiquated tariffed rates that are based solely on time, can Airport Limousine Service avoid competition and preserve its existing business model that enjoys a monopolistic hold on the market. In considering Gegen's Petition, it should be the interests of consumers, not the interests of existing carriers, which are paramount. If Airport Limousine Service ultimately loses business to other limousine providers because they are delivering a service that is desired by the riding public, it is up to it to determine how to best protect its business model going forward. That is not the obligation of the Commission.

Airport Limousine Service's numerous references to "price gouging" and "uncontrolled rates" completely mischaracterize Gegen's proposal, which seeks permission to set rates that reflect market forces and to adjust them continuously so as to effectively balance supply and demand. Under Gegen's proposal, the market – rather than regulations - would control the prices. Airport Limousine Service's references are simply a scare tactic designed to convince the Commission to protect its business model and thereby delay delivery of innovative transportation options to the public. Airport Limousine Service also seems to be confused by surge pricing and mistakenly characterizes it as price gouging. In reality, surge pricing is an approach that is used to effectively meet extreme demands and is designed to ensure that supply is available to fulfill the public's transportation needs during those peak times. Importantly, in deploying surge pricing, Gegen has already committed in the proposed tariff attached to the Petition to comply with the Pennsylvania Price Gouging Act, 73 P.S. §§ 232.1 *et seq.*

² These regulations went into effect on May 23, 2015 upon publication in the *Pennsylvania Bulletin*, 45 Pa. B. 2468.

Moreover, the public will know the applicable rates, including surge pricing, when requesting limousine services through the App and will also have the option of requesting an estimated fare. If the prices are not viewed as reasonable or a potential rider does not wish to pay the prices reflecting current market conditions, he or she will simply opt to not use the limousine services.

The real-time transparency provided by the App eliminates the need to have antiquated tariffs on file with the Commission that set forth the exact rates to be charged or to provide advance notice of changes through tariff filings. Moreover, if Gegen and its partners are permitted to charge rates that reflect current market conditions, Gegen will be able to effectively balance supply and demand so that the public has access to the limousine services that are needed at that time. This process of balancing supply and demand is the cornerstone of a free market. Citing the benefits of competition, the Commission has already endorsed flexible ratemaking for transportation network companies which rely on the use of the App to arrange transportation services. *See Applications of Rasier-PA LLC for Experimental Service of Shared-Ride Network*, Docket Nos. A-2014-2416127 and A-2424608 (Orders entered January 29, 2015) (“*Rasier-PA Orders*”). These benefits should be made available to limousine riders as well when they use the App to arrange those services.

Airport Limousine Service also makes bald and irrelevant assertions about the history of deregulation in the taxicab industry, which should be disregarded by the Commission. Gegen’s Petition relates to specific waivers of regulations governing limousine tariffs so as to allow for market-based rates when limousine services are arranged through the App. It does not propose deregulation of the taxicab or any other industry. Moreover, Gegen’s proposal has no bearing on service or safety in the taxicab or any other industry. Indeed, Gegen and any other limousine

providers using flexible ratemaking would be subject to the same safety requirements as are applicable now to limousine providers. Therefore, any review of the history of the deregulation in the taxicab industry is beyond the scope of Gegen's Petition.

Despite its claims on one hand that Gegen's proposal will lead to "price gouging," Airport Limousine Service simultaneously argues that Gegen "seeks to spread unmitigated fare wars throughout the industry." Comments at p. 2. Airport Limousine Service also asserts that if Gegen's Petition is granted, all App-based limousine services will need to seek the same relief in order to remain competitive and that "fares will be driven down by competition." Comments at p. 3. Apparently if the Commission is not persuaded by its scare tactics regarding the potential for higher prices, Airport Limousine hopes to convince the Commission to deny the Petition because it will lower prices paid by consumers. This attempt should likewise be rejected. Indeed, if approval of Gegen's Petition results in fare wars and lower fares, and in other App-based companies seeking the same relief, those factors support approval of the Petition. To the extent that market-based fares produce more choices and lower prices for consumers than regulation has been able to accomplish, the Commission should move forward expeditiously to permit flexible ratemaking for Gegen as well as any other limousine providers who wish to amend their tariffs.

Airport Limousine Service's arguments opposing competition also ignore the deficiencies of the transportation infrastructure in Allegheny County. The lack of sufficient transportation options has been well-documented and supported the approval of experimental authority to Rasier-PA. *See Rasier-PA Orders*. By increasing the utilization of limousines, more of the riding public can be served, which will generate more money for limousine providers that can be reinvested in their fleets and in the industry.

The Pennsylvania Supreme Court decision cited by Airport Limousine Service does not support the proposition that limousine rates must be established through regulation. In *Barasch v. Pennsylvania Public Utility Commission*, 516 Pa. 142, 532 A.2d 325 (1987), the Court reviewed the right of an electric utility to recover costs incurred in connection with cancelled construction projects. The case revolved around an interpretation of Section 1315 of the Public Utility Code (“Code”), 66 Pa.C.S. § 1315, which establishes a “used and useful” standard for electric utility property before it may be included in rates charged by the electric utility. Code Section 1315 has no applicability to rates charged by motor common carriers, including limousine providers. Therefore, the *Barasch* decision has no bearing on Gegen’s Petition.

Even to the extent that the overall ratemaking concepts discussed by the *Barasch* decision are applicable to limousine service, Gegen notes that the quote relied upon by Airport Limousine Service does not support denial of the Petition. Specifically, Airport Limousine Service quotes *Barasch* for the proposition that the “...the public is entitled to demand...that no more be exacted from it for the use of [utility property] than the service rendered by it are reasonably worth.” *Id.* at 335. Gegen’s Petition does not seek to charge the public more for limousine services than they are reasonably worth. To the contrary, Gegen’s Petition seeks to charge the public prices that reflect current market conditions. Any member of the public who requests limousine services through the App and then decides that the services are not reasonably worth the applicable rate that is in effect would be free to decline to be transported or to choose an alternate source of transportation.

Airport Limousine Service further argues for the need to maintain limousine services separate from transportation network company (“TNC”) services. Notably, Gegen’s Petition does not seek to eliminate primary distinctions between limousine services and TNC services.

Specifically, limousine services would still be provided in commercially-licensed luxury type vehicles while TNC services would be provided in personally-owned vehicles that meet the requirements established by the Commission for TNCs. *See Application of Rasier-PA LLC*, Docket No. A-2014-2416127 (Order adopted December 5, 2014 at pp. 41-45). Gegen's Petition is simply seeking to offer the benefits of flexible ratemaking to the limousine industry, which have already been recognized by the Commission for the TNC industry, so that rates reflect market conditions and optimize service to the riding public that chooses to arrange limousine services through the App. *See Rasier-PA Orders*. It makes no sense to deprive limousine passengers of the benefits enjoyed by taxicab and TNC riders derived from the use of technology that allows drivers and riders to be matched in real-time based on supply and demand.

It has also been suggested that limousine rates should be charged only on the basis of time because limousines offer a different experience from TNCs or taxicabs. While historically a time-based rate for limousine services may have been appropriate due to their use primarily for special occasions, consumers today use limousine services for many reasons, including day-to-day transportation that involves relatively short distances, and do not wish to use stretch limousines. For instance, a small group or solo business traveler may be seeking to utilize a luxury vehicle rather than a regular sedan or sports utility vehicle for a short trip. Allowing limousines to charge for time and distance would give consumers access to these services for any length of trip. Even consumers wanting to use limousine services for special occasions would have the option of only paying for the time they are being transported rather than paying for a three-hour window during which the limousine provider waits for them. Again, flexible ratemaking in the limousine industry would give consumers more alternatives to obtain the transportation services that best meet their needs.

Limiting limousine providers to antiquated time-based rates is also harmful to drivers in situations where the trip is short by measure of time but covers a great distance because of the higher speed at which the driver can go (such as on a highway). A common example of this situation is when a business traveler is going from the airport to downtown when there is little or no traffic.³ A tariff based solely on time would under-compensate the driver for gas consumption and distance of service, and therefore reduce the supply that is available for reliable limousine rides at the airport.

Airport Limousine Service further challenges the Petition on the basis that as a broker, Gegen has an obligation to arrange services that best meet the rate needs of the passenger. Under Section 39.11(a) of the Commission's regulations, a broker is required to "fairly protect the interest" of a traveler employing his services by providing transportation services which, "because of rates, schedules, type of motor carrier, or otherwise, will best meet the needs" of the traveler. 52 Pa. Code § 39.11(a). Nothing about this provision precludes Gegen from providing transportation services that a traveler arranges through the App with the knowledge of the applicable rates that are in effect. Pricing needs of the traveler are not the only factor identified in Section 39.11 and a traveler who arranges limousine services through the App has opted in favor of the conveniences of requesting and paying for transportation services in that manner. Moreover, the prices charged for limousine services arranged through the App would reflect market conditions, ensuring that the services being demanded by the public at that time are being timely and adequately filled by the carriers who are available to offer transportation.

By granting the relief requested by Gegen in the Petition, the Commission will promote the use of technology and innovation to give consumers choices in the way that they arrange limousine services. As part of an already competitive industry, limousine carriers using the App

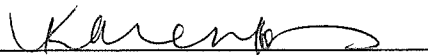
³ In Pittsburgh, the airport is over 17 miles from downtown but the trip can take less than 25 minutes.

would no longer be restricted to charging rates based solely on time and providing advance notice of changes to the Commission. By paving the way for more competition in the limousine industry, particularly given the transparency of the App in disclosing applicable charges to the riding public, the Commission will ensure that Pennsylvanians have access to reliable and affordable limousine services and receive optimum benefits from advancements in technology.

WHEREFORE, Gegen LLC respectfully requests that the Commission reject the Comments filed by Airport Limousine Service and grant its Petition for Waiver of the Commission's Limousine Tariff Regulations at 52 Pa. Code § 29.334, or alternatively, grant the Petition for Waiver in part to permit Gegen to immediately launch a pilot program in Allegheny County where it partners with certificated limousine providers to implement flexible ratemaking for limousine services arranged through the App.

Respectfully submitted,

Dated June 15, 2015


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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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The Commission's Limousine Tariff : Docket No. P-2015-2474633
Regulations at 52 Pa. Code § 29.334 :

CERTIFICATE OF SERVICE

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


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Dated this 15th day of June, 2015.



Karen O. Moury, Esq.