BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of East Coast Resources, LLC a limited liability company of the Commonwealth of Pennsylvania, for the right to begin to transport, by motor vehicle, persons in the experimental service of ride sharing network for passenger trips, from points in Cumberland, Dauphin, Lancaster, Lebanon and York Counties, to points in Pennsylvania, and return, excluding service under the jurisdiction of the Philadelphia Parking Authority	:	A-2014-2453533

PROTESTANT CAPITAL CITY CAB SERVICE'S EXCEPTION TO THE INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS AND DISMISSING PROTESTS OF GOOD CAB, LLC, UNITED CAB, LLC, KEYSTONE CAB SERVICE, INC., EZ TAXI, LLC AND CAPITAL CITY CAB SERVICE

Protestant Capital City Cab Service, through its attorney Joseph T. Sucec, Esq., hereby makes the following Exception to the above-stated Initial Decision of Administrative Law Judge David Salapa, rendered June 19. 2015:

Exception Number One:

The Initial Decision, in denying standing to Protestant Capital City Cab Service, ignores its own precedent.

On June 19, 2015, the Initial Decision in this matter dismissed all of the Protests filed on this matter (converting Applicant's Motion for Dismissal to Preliminary Objections),

including that of Protestant Capital City Cab Service (Capital City). Standing (or lack thereof) is the reason given for dismissal, and is the primary basis for this Exception.

In short, Capital City submits the Initial Decision is based on a narrow view that Call and Demand carriers, who are required to abide by Commission law and regulations, have no Standing to Protest an "Experimental Service," which is not Call and Demand by name only, but which seeks to take advantage of a classification which apparently allows private vehicles, with minimal designation as a Common Carrier, and which has relaxed inspection and service standards.

An administrative agency is not subject to the principle of stare decisis to the same degree as is an appellate court, although if an agency renders inconsistent decisions it should distinguish or overrule its own precedents. **Bell Atlantic-Pennsylvania, Inc., v. Pennsylvania Public Utility Commission, 672 A.2d 352 (Pa.Cmwlth. 1995), Dee-Dee Cab v Pa PUC, 817 A.2d 593 (Pa. Cmwlth 2003)**

On August 11, 2014, two other Commission Administrative Law Judges ruled on precisely the same issue, standing, in a case (**Application of Rasier-PA LLC et al, A-2014-2424608**) with a fact pattern nearly identical to this one:

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency .**Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991)** "In simple terms, "standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court. **In re Milton Hershey School, 867 A.2d 674, 683 (Pa.Cmwlth. 2005), reversed on other grounds, 911 A.2d 1258 (Pa. 2006) (citing Baker v. Carr, 369 U.S. 186 (1962))**

Accordingly, we reject the notion that only carriers holding experimental authority which uses "App-based" technology are in a position to challenge the application. By its very nature, the purpose of experimental authority is to provide the Commission with the flexibility to consider "innovative" transportation schemes that do not fit within the other types of service defined by the Commission's regulations:

(52 Pa.Code § 29.352, cited in full)

The regulation provides the Commission with the discretion to apply the regulatory requirements from any of the other classes of transportation authority and to also create additional requirements, depending on the details of the service proposed.**52 Pa.Code §§ 29.351-29.352** To adopt the narrow view of standing espoused by the Applicant would be so limiting, that virtually no carriers would be in a position to protest.

Application of Rasier-PA LLC et al, A-2014-2424608 (INTERIM ORDER, August 11, 2014, at 5-6) (emphasis added)

The Pennsylvania legislature defines, at **66 Pa. CS 102**, the meaning of "common

carrier:" and "common carrier by motor vehicle:"

"Common carrier." Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth

"Common carrier by motor vehicle." Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle,...

53 Pa. Code 5701, which applies specifically to service under the jurisdiction of the Philadelphia Parking Authority, defines "Call and Demand" most clearly:

"Call or demand service" or **"taxicab service."** Local common carrier service for passengers, rendered on either an exclusive or nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.

Applicant is, at very least, a **"common carrier by motor vehicle"** under Pennsylvania law. It is not the individual operator who is "holding out, offering, or undertaking, directly or indirectly, service for compensation to the public;" rather Applicant is.

While the **Rasier-PA** Interim Order above is cited at page 8 of the present Initial Decision, no attempt is made to overrule or distinguish the reasoning therein, except to cite a series of cases involving, mainly limousine, trucking, or medical transport services protested by Call and Demand carriers **(Initial Decision 7**). The Initial Decision further cites **Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, (Initial Decision, dated October 12, 1994, entered December 23, 1994) for the concept of "potential conflict,"** (also **ID 7**) but ignores the obvious similarities between the proposed operation and Call and Demand service.

The service sought to be offered by Applicant will apparently entail the following procedure:

A Prospective customers will contact the Applicant through the “App” using their cellular telephones or connected tablet computers.

B The prospective driver (who will be using their private vehicle) is contacted by the Applicant, either by two way radio or cellular telephone.

C The driver transports the passenger to the intended location.

D Payment is made either via a credit/debit card or through a cash exchange with the driver.

The Commission should please note that, while many of the details of Applicant's planned operation are unclear, the present Application is extremely similar, in function and effect, to that offered in the **Rasier-PA** case.

Applicant's likely “trip acquisition” process is nearly identical to Call and Demand Service in all but two respects. First is the use of the “App” to schedule the trip. Using only software to make the connection may mean that a trip is either assigned after a waiting period of hours or not at all. If a human being is forced to become involved, based on a computer or data, the dispatching process becomes identical.

The second difference between existing Call and Demand Service and the Application is in the proposal to use drivers who use their own vehicles. Given the stringent standards that the Commission imposes and enforces on Call and Demand carriers; it is surprising that this aspect of the Application would be entertained at all. There will be no one but the Commission to enforce any standards. This is also notwithstanding the vulnerability that any software may be "hacked," also exposing the public. Applicant would necessarily like the Standing of any of its potential competitors to be removed; thereby allowing it to act with impunity regarding these issues.

If Applicant is seeking authority to offer a de facto Call and Demand Service in Protestant's coverage area, then the issue of Standing is moot. Protestant Capital City Cab Service certainly has standing to challenge a potential competitor offering the same service in its coverage area **See <u>Application of Carriage Limousine Services, Inc,</u> supra.** Further, any such Commission Protest challenging the Applicant's ability to meet all the requirements of **52 Pa.Code 41.14** is and has been routinely valid; the Applicant always has the burden of meeting the Commission's standards.

Applicant is, in short, hiding behind its self-designation as an "experimental service" in order to skirt any and all Commission regulations regarding the service it actually plans to offer.

To revisit **In re Milton Hershey School**, the "concrete interest" held by Capital City here lies in the glaring similarity of the proposed services: point-to-point transportation services, serving the public individually or in small groups, for compensation that varies according to the length and duration of the trip.

The basis for standing in cases similar to the present was established in the **Rasier-PA** case. The Initial Decision does nothing to challenge that precedent. The Initial Decision must be reversed.

WHEREFORE, Protestant Capital City Cab Service prays that the Pennsylvania Public Utility Commission reverse the Initial Decision in this matter and Order the following:

1 That Capital City Cab Service, Inc, has valid Standing to Protest the present Application.

2 That the present Application be remanded back to the Office of Administrative Law Judge for further proceedings.

7/9/2015

Respectfully submitted,

/s/ Joseph T. Sucec. Esq

Joseph T. Sucec, Esq.
Attorney for Capital City Cab Service
325 Peach Glen-Idaville Road
Gardners, PA 17324
717-315-2359
joesucec@comcast.net

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of East Coast Resources, LLC a limited liability company of the Commonwealth of Pennsylvania, for the right to begin to transport, by motor vehicle, persons in the experimental service of ride sharing network for passenger trips, from points in Cumberland, Dauphin, Lancaster, Lebanon and York Counties, to points in Pennsylvania, and return, excluding service under the jurisdiction of the Philadelphia Parking Authority	:	A-2014-2453533

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document, by first-class mail, on the following:

John W Sweet, Esq
620 South 13th Street
Harrisburg, PA 17104
(Joint Protestants)

William E. Lehman, Esq.
PO Box 1778
Harrisburg, PA 17105
(Applicant)

Honorable David A. Salapa
Administrative Law Judge
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105

Date: 7/9/15 /s/ Joseph T, Sucec, Esq.