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November 24, 2015

Via Electronic Filing

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

In re: Docket No. A-2015-2475776
Application of Amigo Cab, LLC

Dear Secretary Chiavetta:

We are counsel to Protestant Autocab, Inc. and are submitting, via electronic filing, its Answer to the Motion of Applicant Amigo Cab, LLC to Withdraw Restrictive Amendment and Stipulation. A copy of the Answer is being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

Enclosure

cc: Certificate of Service (w/encl.)
Timothy J. Schwartz (via email, w/encl.)

151124-Chiavetta (Ans to Motion to Withdraw RA).wpd

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Dennis J. Buckley, Presiding

Application of Amigo Cab, LLC for Approval : Docket No. A-2015-2475776
to Provide Taxi Service Between Points in the :
Counties of Berks and Lancaster to Points in :
Pennsylvania and return :

**ANSWER OF PROTESTANT AUTOCAB, INC. TO APPLICANT'S MOTION TO
WITHDRAW ITS RESTRICTIVE AMENDMENT AND STIPULATION**

AND NOW, comes Autocab, Inc., (“Protestant Autocab” or “Protestant”), by its attorneys, and, pursuant to 52 Pa. Code § 5.103, answers the Motion of Applicant Amigo Cab, LLC (“Applicant Amigo Cab” or “Applicant”) to Withdraw its Restrictive Amendment and Stipulation. In opposition to the Motion, Protestant Autocab submits as follows:

BACKGROUND

1. This proceeding concerns the Application of Amigo Cab, LLC, filed with the Public Utility Commission (“Commission”) on or about March 16, 2015, to provide call or demand service in Berks and Lancaster Counties.
2. Protestant Autocab provides call or demand service in Lancaster County and filed a timely Protest to the Application on June 3, 2015.
3. By Hearing Notice dated July 9, 2015, an initial hearing was scheduled for September 9, 2015, with Administrative Law Judge Buckley presiding.
4. Subsequently, by Prehearing Order dated August 31, 2015, Judge Buckley continued the September 9, 2015 initial hearing until a later date.

5. By Hearing Notice dated September 2, 2015, the initial hearing was rescheduled for October 14, 2015.

6. Several preliminary pleadings were filed in anticipation of the hearing, including: Motion of Applicant for Judgment on the Pleadings; Application of Applicant for Subpoena Duces Tecum; Application of Applicant for Subpoena of Timothy J. Schwartz; Application of Applicant for Subpoena of John A. Schwartz, Jr.; Application of Applicant for Subpoena of Greg Vannucci; and Motion of Protestant for a General Continuance.

7. The preliminary pleadings were not resolved and the hearing scheduled for October 14, 2015, was not held. Instead, on September 18, 2015, Applicant and Protestant entered into a Restrictive Amendment and Stipulation (“Restrictive Amendment”) limiting the applied for service territory to Berks County.

8. Two months later, on November 15, 2015, Applicant filed a Motion to Withdraw Its Restrictive Amendment and Stipulation.

9. Protestant opposes Applicant’s Motion for the following reasons:

a. Although described as a Motion to Withdraw “its” Restrictive Amendment, the Restrictive Amendment is not Applicant’s document to withdraw. The Restrictive Amendment is a bilateral agreement between Applicant and Protestant resolving litigation. Protestant does not wish to withdraw the Restrictive Amendment.

b. Applicant restrictively amended its Application, as of the execution and filing of the Restrictive Amendment on September 18, limiting its applied for service territory to points in Berks County to points in Pennsylvania and return. Paragraph 1 of the Restrictive Amendment states in clear and straightforward language that “Applicant *hereby* restrictively amends its Application” (emphasis added).

There were no conditions to the amending language. The original applied for service territory that included both Berks and Lancaster Counties is no longer part of Applicant's Application.

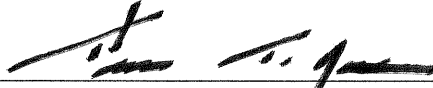
c. Applicant, however, argues, in its Motion, that the Restrictive Amendment is conditioned on Commission approval. The "conditioned" language is part of paragraph 2 of the Restrictive Amendment. Paragraph 2 addresses Protestant's withdrawal of its Protest and states, again, in clear and straightforward language, that Protestant's withdrawal of its Protest is conditioned upon Commission acceptance of the restriction presented by Applicant in paragraph 1. Paragraph 2 describes only the circumstances for which Protestant has withdrawn its Protest. It does not provide Applicant with a window of opportunity to withdraw the Restrictive Amendment up to the date the Commission acts on it.

d. Applicant Amigo Cab and Protestant Autocab made a decision to forego litigation and proceed with a mutually acceptable Restrictive Amendment. Applicant offers no substantive basis for its request to withdraw it. Allowing Applicant to withdraw the Restrictive Amendment because it has changed its mind would be contrary to and disruptive of accepted practice.

10. If Applicant wants to apply for Lancaster County operating authority it should file a new application.

WHEREFORE, for the reasons set forth above, Protestant Autocab, Inc. opposes the Motion of Applicant Amigo Cab, LLC to Withdraw its Restrictive Amendment and Stipulation at Docket No. A-2015-2475776 and requests that Administrative Law Judge Buckley deny said Motion.

Respectfully submitted,



By: Thomas T. Niesen, Esquire
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Attorney for Protestant Autocab, Inc.

DATE: November 24, 2015

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Dennis J. Buckley, Presiding

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I hereby certify that I have this 24th day of November, 2015 served a true and correct copy of the foregoing Answer of Autocab, Inc. to the Motion of Applicant Amigo Cab, LLC to Withdraw its Restrictive Amendment and Stipulation, upon the persons and in the manner set forth below:

VIA EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

The Honorable Dennis J. Buckley
Administrative Law Judge
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265
debuckley@pa.gov;

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Counsel for Amigo Cab, LLC



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