



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

December 4, 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-2015-2472506
Application of Andrews Transportation, LLC

Dear Secretary Chiavetta:

We are counsel for Protestants Homestead Taxi, LLC and Homestead Transportation, LLC in the above matter and are submitting via electronic filing their Motion to Dismiss Application for Failure to Respond to Discovery. A copy of the Motion is being served upon Administrative Law Judge Jones and the Applicant as 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.)
Nicholas Chermela (via email, w/encl.)

151204-Chiavetta (Motion).wpd

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Angela T. Jones, Presiding**

**In re: Application of Andrews : Docket No. A-2015-2472506
Transportation, LLC : :**

**MOTION OF HOMESTEAD TAXI, LLC AND HOMESTEAD
TRANSPORTATION, LLC, TO DISMISS APPLICATION
FOR FAILURE TO RESPOND TO DISCOVERY**

AND NOW, comes Homestead Taxi, LLC and Homestead Transportation, LLC (“Protestants”), by their attorneys, and, pursuant to 52 Pa. Code § 5.371, *et seq.*, moves to dismiss the Application of Andrews Transportation, LLC (“Applicant”) for Failure to Respond to Discovery as follows:

BACKGROUND

1. This proceeding concerns the Application of Andrews Transportation, LLC to provide airport transfer service from points in the Counties of Bucks, Delaware and Montgomery to the Philadelphia International Airport, excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

2. Protestants filed a timely Protest to the Application on July 20, 2015.

3. On August 5, 2015, Protestants served Interrogatories and Document Requests on Applicant.

4. Applicant’s responses to the Interrogatories and Document Requests were due within 20 days of service or by August 25, 2015.

5. When responses were not received by August 25, 2015, Protestant sent a follow up letter to Applicant on August 31, 2015, asking for responses by September 10, 2015.

6. Applicant did not answer or object to Protestants' discovery.

7. On September 23, 2015, Protestants filed a motion to compel Applicant to answer Protestants' discovery. Applicant did not answer the motion to compel.

8. By Order Re: Joint Protestants' Motion to Compel, dated November 20, 2015, Administrative Law Judge Angela T. Jones granted Protestants' motion to compel and ordered Applicant to answer Protestants' discovery no later than the close of business (4:30 p.m.) on Monday, November 30, 2015.

9. Applicant did answer Protestants' discovery as ordered by Judge Jones. Applicant has not answered Protestants' discovery.

10. In her Order Re Motion to Compel, Judge Jones made it clear that she would entertain an appropriate motion to dismiss the Application if Applicant failed to provide timely and sufficient answers to Protestants' discovery.

DISMISSAL OF APPLICATION

11. Section 5.371, *et seq.*, of the Public Utility Commission's Rules of Practice, 52 Pa. Code § 5.371, *et seq.*, allows a presiding officer to sanction a party for failing to respond to discovery. Appropriate sanctions include a judgment against the disobedient party and an order which is just under the circumstances. 52 Pa. Code § 5.372.

12. Applicant was advised in the Order Re Motion to Compel that a motion to dismiss would be entertained if Applicant failed to provide timely and sufficient responses to discovery by November 30, 2015. Applicant did not answer discovery as directed by Judge Jones.

Applicant has not answered Protestants' discovery. A motion to dismiss is, thus, appropriate for consideration.

13. Protestants served their discovery on August 5, 2015, early in the proceeding, to reasonably prepare for hearing. Sufficient courtesies have been extended by Protestants and Judge Jones but Applicant has simply ignored Protestants' interrogatories and document requests. Applicant should not be allowed to waste the time and efforts of the presiding officer or the Protestants. Order Re Motion to Compel at 5. It is appropriate that the Application be dismissed.

WHEREFORE, Protestants Homestead Taxi, LLC and Homestead Transportation, LLC request that Administrative Law Judge Angela T. Jones and the Public Utility Commission dismiss the Application of Andrews Transportation, LLC at Docket No. A-2015-2472506.

Respectfully submitted,



By: Thomas T. Niesen, Esquire
PA Attorney ID No. 31379
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101

*Attorney for Protestants
Homestead Taxi, LLC and Homestead
Transportation, LLC*

DATE: December 4, 2015

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Angela T. Jones, Presiding

In re: Application of Andrewes : Docket No. A-2015-2472506
Transportation, LLC :

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of December 2015 served a true and correct copy of the foregoing Motion to Dismiss, upon the persons and in the manner set forth below:

FIRST CLASS MAIL, POSTAGE PREPAID

The Honorable Angela T. Jones
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, 4th Floor, Suite 4063
Philadelphia, PA 19107

Dwayne Andrews
Andrews Transportation, LLC
151 East Main Street
Lansdale, PA 19446



Thomas T. Niesen, PA ID No. 31379