

LAW OFFICES
WICK, STREIFF, MEYER, O'BOYLE & SZELIGO, P.C.

1450 TWO CHATHAM CENTER
112 WASHINGTON PLACE
PITTSBURGH, PA 15219-3455
412-765-1600

FACSIMILE
412-261-3783
E-MAIL
wsmos@wsmoslaw.com

CHARLES J. STREIFF
DAVID M. O'BOYLE
VINCENT P. SZELIGO

HENRY M. WICK, JR.
(1921 - 2007)
CARL F. MEYER
(1929 - 2009)

May 16, 2016

Re: Application of Curtis W. Thompson
t/a Curtious Executive Transportation Service
Docket No. A-2016-2532191
Our File 6942

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

Filed Electronically

Dear Secretary Chiavetta:

We represent Applicant in the above captioned limousine application case. On behalf of Applicant, we are electronically filing this date with the Commission the attached Applicant's Motion to Dismiss the Protest of Extreme Health Care Service, LLC t/a Genesis Limousine Service. As indicated in the attached Certificate of Service, a copy of the Motion has been served upon counsel for the sole Protestant.

Very truly yours,

WICK, STREIFF, MEYER,
O'BOYLE & SZELIGO, P.C.


David M. O'Boyle

DOB/rms
Attachment

cc: William E. Lehman, Esq. (w/attach.)
Micah R. Bucy, Esq. (w/attach.)
Mr. Curtis W. Thompson (w/attach.)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2016-2532191

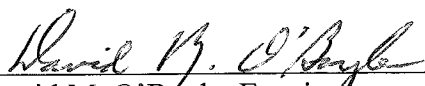
APPLICATION OF CURTIS W. THOMPSON,
T/A CURTIOUS EXECUTIVE TRANSPORTATION SERVICE

APPLICANT'S MOTION TO DISMISS PROTEST OF
EXTREME HEALTH CARE SERVICES, LLC T/A GENESIS LIMOUSINE SERVICE

David M. O'Boyle, Esquire
WICK, STREIFF, MEYER,
O'BOYLE & SZELIGO, P.C.
1450 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219-3455
Attorneys for Applicant
Curtis W. Thompson, t/a
Curtious Executive Transportation Service

Notice To Protestant Extreme Health Care
Services, LLC t/a Genesis Limousine Service:

Pursuant to the Commission's regulations,
notice is hereby given to Protestant
that an Answer to Applicant's
Motion to Dismiss must be filed with the
Commission within ten (10) days of the date
set forth on the Certificate of Service attached hereto.



David M. O'Boyle, Esquire
Attorney for Applicant

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2016-2532191

APPLICATION OF CURTIS W. THOMPSON,
T/A CURTIOUS EXECUTIVE TRANSPORTATION SERVICE

APPLICANT'S MOTION TO DISMISS THE PROTEST OF
EXTREME HEALTH CARE SERVICES, LLC T/A GENESIS LIMOUSINE SERVICE

Curtis W. Thompson, t/a Curtious Executive Transportation Service ("Applicant"), by and through his counsel, files this Applicant's Motion To Dismiss the Protest of Extreme Health Care Services, LLC t/a Genesis Limousine Service ("Motion") and requests that the Protest of Extreme Health Care Services, LLC t/a Genesis Limousine Service ("Protestant") be dismissed for failure to comply with the regulations of the Pennsylvania Public Utility Commission ("Commission") for timely filing of a protest and, in support thereof, states as follows:

1. On or about February 29, 2016, Applicant filed an application requesting that the Commission grant it authority to transport, as a common carrier, by motor vehicle, persons in limousine service, between points in Pennsylvania; excluding service that is under the jurisdiction of the Philadelphia Parking Authority ("Application").
2. Notice of the Application was published in the April 9, 2016 Pennsylvania Bulletin at 46 Pa.B 1875, and the Pennsylvania Bulletin notice stated that protests to the Application must be filed with the Commission's Secretary and a copy served on the applicant by April 25, 2016.

3. On May 5, 2016, counsel for Protestant electronically filed with the Commission the Protest of Protestant, and attached to the Protest was a Certificate of Service, dated May 5, 2016, indicating that a copy of the Protest was served that date upon Applicant via first class mail.

4. The Protest was not filed by the protest due date of April 25, 2016, but rather the Protest was filed ten (10) days after the protest due date.

5. The Protest fails to comply with the Commission's regulations at 52 Pa. Code §5.53 because the Protest was not filed within the time specified in the notice of the Application published in the Pennsylvania Bulletin. Section 5.53 states:

A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified, the protest shall be filed within 60 days of publication of the notice.

6. Section 3.381(c)(1)(ii) of the Commission's regulations (52 Pa Code §3.381(c)(1)(ii)) mandates that a protest must be filed by the due date set forth in the Pennsylvania Bulletin and that failure to file a protest in accord with that provision shall preclude a protestant from participating in the proceeding, except when permitted by the Commission for good cause shown. Section 3.381(c)(1)(ii) states:

Time of filing. A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be no less than 15 days from the date of publication. Failure to file a protest in accordance with this subsection shall bar subsequent participation in the proceeding, except when permitted by the Commission for good cause shown.

7. Historically, the Commission has ruled that, without a showing of good cause, the failure to file a timely protest is a bar to the protestant participating in the proceeding. Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish or Supply Water

Services to the Public in a portion of Franklin Township, Chester County, Docket No.

A-210111,F0003 (Opinion and Order adopted and entered on June 24, 2004 (“Artesian Water”));

Re: Milton Transportation, Inc., 56 Pa. PUC 623 (1982); Application of Lifestar Response of NJ-Lifestar Response Corp., Docket No. A-2013-2352953, Initial Decision Granting Preliminary Objections and Dismissing Two Protestants dated April 3, 2014 and Final Order without Commission action entered May 20, 2014.

8. Protestant has failed to carry its burden of proving that it meets the Commission’s four standards to determine whether good cause has been established to accept a late-filed protest to an application. The four standards were set forth in Artesian Water, supra., and the four standards are as follows:

1. Does the petitioner have a reasonable excuse for missing the protest due date?
2. Was the proceeding contested at the time of the filing of the protest?
3. Will receipt of the late filed protest delay the orderly progress of the case?
4. Will the late filed protest significantly broaden the issues or shift the burden of proof?

9. The Protest does not include any allegations explaining why the Protest was not timely filed, and there are absolutely no facts or other information set forth in the Protest that could serve as any basis for the Commission to conclude that there is good cause for the Protest not being timely filed. The issue of the timeliness of the Protest is not addressed in the Protest, and Protestant has failed to present any reasonable excuse for the late filing of the Protest. The first standard for proving good cause for the late filed Protest has not been met.

10. At the time that the Protest was filed, there were no other protestants, and the

Application was uncontested. There is no question that the Protest of Protestant is the only opposition to the Application, and so there was no opposition to the Application at the time that Protestant filed its untimely Protest. The second standard for proving good cause for the late filed Protest has clearly not been met.

11. Allowing Protestant to participate in this proceeding would be highly prejudicial to Applicant because the Application would be converted from an unopposed case as of the protest due date to a contested proceeding. As a contested proceeding, this case would involve discovery, one or more days of hearings, main briefs and reply briefs, an Initial Decision, and this case could also involve Exceptions and Reply to Exceptions, a Final Commission Order and a possible appeal of the Final Commission Order to the Commonwealth Court. Thus, allowance of the late filed Protest will, without a doubt, delay the orderly progress of this case. See Application of Jorge Bermejo, t/a JP Moving Corp., for Approval to Transport Household Goods in Use, From Points in Luzerne County, to Points in Pennsylvania, and Vice Versa, Docket No. A-2013-2379677, Initial Decision Denying Late-Filed Petition to Intervene (Order adopted March 3, 2005 and entered March 4, 2005) (“It is reasonable to apply these [late-filed protests] factors to late-filed petitions to intervene in application proceedings, since the regulations refer specifically to the deadline for protests as being the deadline for intervention.”) But for the late filed protest, this Application would be assigned to the Bureau of Technical Utility Services for handling without a hearing. Permitting Protestant to participate in this proceeding would, therefore, delay the orderly progress of the case. The third standard for proving good cause for the late filed Protest has not been met.

12. Granting Protestant permission to participate in this proceeding would result in

significantly broadening the issues involved. If Protestant's Protest is dismissed and the case is unopposed, the Application would be handled administratively pursuant to modified procedure without a hearing. If Protestant is granted status as a party and allowed to participate in this proceeding, there would be raised in discovery and/or at the oral hearing questions about many more factual and legal issues regarding Applicant's proposed operations, as well as Applicant's technical, financial and legal fitness, than would be raised in an uncontested proceeding in which Applicant would likely need only to file his Verified Statement in support of the Application in order for the Commission to approve the Application. The fourth standard for proving good cause for the late filed Protest has not been met.

13. The Commission has discretion to dismiss a protest without a hearing if a hearing is not necessary or in the public interest. A hearing is necessary only to resolve disputed questions of fact. Dee-Dee Cab, Inc. v. Pennsylvania Public Utility Commission, 817A.2d 593 (Pa. Cmwlth. 2003), petition for allowance of appeal denied, 836 A.2d 123 (2003). This Motion does not involve disputed questions of fact, and a hearing in this case is not necessary or in the public interest. See Application of K&F Medical Transport, LLC, Docket No. A-2008-2020353, Initial Decision of Chief Administrative Law Judge Veronica A. Smith, dated April 25, 2008. Applicant submits that there is no reason to schedule a hearing in this case, and Applicant requests that the Application be referred to the Bureau of Technical Utility Services for processing pursuant to modified procedure.

14. The relief requested in this Motion is for the Commission to dismiss the Protest due to the failure of Protestant to file the Protest by the due date of April 25, 2016. Applicant submits that the relief requested is clearly warranted and free from any doubt. Accordingly, this

Motion to Dismiss should be granted.

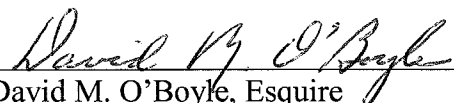
15. This Motion is being filed as Preliminary Objections pursuant to the Commission's regulations at 52 Pa. Code §5.101. Alternatively, this Motion is being filed as a Motion for Judgment on the Pleadings or Motion For Summary Judgment pursuant to the Commission's regulations at 52 Pa. Code §5.102. Applicant believes and avers that there are no issues in this Motion which involve any facts other than the facts that are of record in this proceeding. Therefore, this Motion should be considered as Preliminary Objections to the Protest. However, if it is determined that disposition of this Motion requires consideration of facts not of record in this proceeding, then Applicant submits that this Motion should be considered as either a Motion for Judgment on the Pleadings or, alternatively, as a Motion for Summary Judgment.

16. Protestant has the burden of proving that it complies with all four of the Commission's standards to establish that good cause exists for the Commission to permit Protestant to participate as a party in this Application proceeding despite its Protest being 10 days late. Protestant has not met its burden of proof as to any of the Commission's four good cause standards for accepting a late filed Protest. The fact that the Application was unopposed until after the protest due date had expired unequivocally establishes that Protestant cannot meet the burden of proof as to the second good cause standard since there are no other protestants in this proceeding except for Protestant. Accordingly, Applicant submits that this Motion should be granted, Protestant's Protest should be dismissed, Protestant should be barred from participating further in this proceeding, and this Application should be referred to the Bureau of Technical Utility Services for further processing pursuant to modified procedure.

For all the foregoing reasons, Applicant Curtis W. Thompson, t/a Curtious Executive Transportation Service, requests that the Commission grant Applicant's Motion to Dismiss, issue an Order dismissing the Protest of Extreme Health Care Services, LLC t/a Genesis Limousine Service, and include in the Order that this Application is being referred to the Bureau of Technical Utility Services for handling on a modified procedure basis without a hearing pursuant to 52 Pa. Code §3.381(c)(1)(iii)(A).

Respectfully submitted,

WICK, STREIFF, MEYER,
O'BOYLE & SZELIGO, P.C.



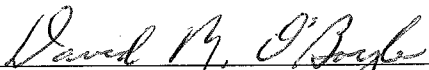
David M. O'Boyle, Esquire
1450 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219-3455
Attorneys for Applicant,
Curtis W. Thompson,
t/a Curtious Executive Transportation Service

VERIFICATION

The undersigned, David M. O'Boyle, Esquire, counsel for Applicant Curtis W. Thompson, t/a Curtious Executive Transportation Service ("Applicant"), hereby states and affirms that he is authorized on behalf of Applicant to submit this Verification, that he has read the foregoing Applicant's Motion to Dismiss Protest of Extreme Health Care Services, LLC t/a Genesis Limousine Service ("Motion"), and that the facts set forth in the Motion are true and correct to the best of his knowledge, information and belief.

The undersigned understands that any false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 5-16-2016



David M. O'Boyle, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2016-2532191

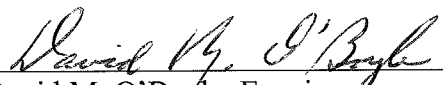
APPLICATION OF CURTIS W. THOMPSON,
T/A CURTIOUS EXECUTIVE TRANSPORTATION SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Applicant's Motion To Dismiss Protest of Extreme Health Care Services, LLC t/a Genesis Limousine Service has been served this date, via First Class, U.S. Mail, postage prepaid, upon the following:

William E. Lehman, Esquire
Micah R. Bucy, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel for Protestant,
Extreme Health Care Services, LLC t/a
Genesis Limousine Service

Dated: 5-16-2016


David M. O'Boyle, Esquire
Wick, Streiff, Meyer,
O'Boyle & Szeligo, P.C.
1450 Two Chatham Center
112 Washington Place
Pittsburgh, PA 15219-3455
Attorneys for Applicant,
Curtis W. Thompson,
t/a Curtious Executive Transportation Service