

May 17, 2016

*Via Electronic Filing*

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

Re: Application of Metro Transportation, LLC  
Docket No. A-2015-2520130


Dear Secretary Chiavetta:

Enclosed for filing on behalf of Metro Transportation, LLC in the above-referenced matter is its Motion to Dismiss the Protest of Capital City Cab Service, Inc. for Lack of Standing. Copies of the Motion are being served in accordance with the certificate of service attached to it.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By   
Charles E. Thomas, III

Enclosure

cc: Certificate of Service (w/encl.)  
Kusa Tolla (w/encl.) (via email)

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Application of Metro Transportation, LLC : Docket No. A-2015-2520130

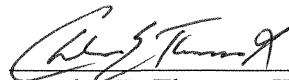
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**NOTICE TO PLEAD**

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TO: Ayal Salame  
Capital City Cab Service, Inc.  
362 South Front Street  
Steelton, PA 17112

As required by 52 Pa. Code § 3.381(c)(1)(i)(C) and § 5.101(b), you are hereby notified that an answer to the following Motion of Applicant Metro Transportation, LLC to Dismiss the Protest of Capital City Cab Service, Inc. for Lack of Standing shall be filed within ten (10) days of the date of its service. The Motion is being served by first class mail today, May 17, 2016. All pleadings such as an answer must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Applicant Metro Transportation, LLC.



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Charles E. Thomas, III (PA ID # 201014)  
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*Counsel for Applicant  
Metro Transportation, LLC*

DATED: May 17, 2016

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Application of Metro Transportation, LLC : Docket No. A-2015-2520130

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**MOTION OF APPLICANT METRO TRANSPORTATION, LLC  
TO DISMISS THE PROTEST OF CAPITAL CITY CAB SERVICE, INC.  
FOR LACK OF STANDING**

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AND NOW, comes Applicant Metro Transportation, LLC (“Applicant”), by and through its attorney, and, pursuant to 52 Pa. Code § 3.381(c)(1)(i)(C), moves to dismiss the Protest of Capital City Cab Service, Inc. (“Capital City”) for lack of standing. In support of dismissal of the Protest, Applicant submits as follows:

**I. INTRODUCTION**

1. On or about January 15, 2016, Applicant completed the filing of its Application with the Pennsylvania Public Utility Commission (“Commission”) seeking the right to begin to transport persons upon call or demand, in the City of Erie, Erie County, in the City of Reading, Berks County, and in the City of Allentown, Lehigh County.

2. Notice of the filing of the Application was published in the *Pennsylvania Bulletin* on January 30, 2016. 46 Pa.B. 632. As presented in the published notice, formal protests and petitions to intervene were to be filed with the Commission on or before February 16, 2016.

3. On February 16, 2016, a Protest to the Application was filed by Capital City.

4. The matter was assigned to Administrative Law Judge Elizabeth H. Barnes and an initial hearing scheduled for May 25, 2016 by Notice dated March 25, 2016.<sup>1</sup>

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<sup>1</sup> On even date herewith, Applicant submitted a request to ALJ Barnes for a continuance of the May 25, 2016 hearing date.

5. On May 10, 2016, the undersigned counsel entered his appearance for Applicant. Applicant, theretofore, had been proceeding without the benefit of legal counsel.

## II. LEGAL STANDARDS

6. Section 3.381(c)(1)(i)(C) of the Commission's regulations, 52 Pa. Code § 3.381(c)(1)(i)(C), provides for the filing of motions to strike or dismiss a protest to a motor carrier application, as provided in 52 Pa. Code § 5.101 (relating to preliminary objections). The regulation at 52 Pa. Code § 5.101(a)(7) permits the filing of a preliminary objection to dismiss a pleading for lack of standing.

7. A party has standing in Commission proceedings only when it has a direct, immediate and substantial interest in the subject matter of the proceeding. *Application of Select Ambulance, Inc.*, Docket No. A-2014-2441095, Initial Decision of Administrative Law Judge Salapa dated February 17, 2015, at 6, *affirmed by* Final Order entered April 3, 2015. "A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest, and is substantial if the protestant has a discernible interest other than the general interest of all citizens in seeking compliance with the law." *Id.* at 7.

8. In the context of motor carrier application proceedings, a protestant must also possess some form of operating authority in actual or potential conflict with the authority sought by an applicant to have the requisite standing to protest the application. *Id.* at 8 (citing *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision of Administrative Law Judge Meehan dated October 12, 1994, *affirmed by* Final Order entered December 23, 1994).

### **III. DISMISSAL OF CAPITAL CITY'S PROTEST FOR LACK OF STANDING**

9. In its Protest, Capital City avers that it holds authority from the Commission at A-00113875 F.1 Am-A in conflict with the authority sought by Applicant. A copy of the Commission's Order entered February 28, 2002 granting Capital City's operating authority, subject to customary compliance items, was appended to the Protest. While the actual Certificate of Public Convenience authorizing the authority was not appended (which constitutes a technical violation of 52 Pa. Code § 3.381(c)(1)(i)(A)(V)), the Order entered February 28, 2002 indicates that the Capital City *does not* have authority in conflict with the territory sought by Applicant. Rather, the scope of Capital City's service authority is limited to transporting persons upon call or demand, in the counties of Dauphin, Cumberland, Perry, and York. Significantly, Capital City has no authority to transport anywhere within Berks, Lehigh, or Erie Counties, including the Cities of Reading, Allentown, and Erie.

10. Despite the averments in its Protest to the contrary, Capital City holds no authority in actual or potential conflict with the authority sought by Applicant in this proceeding. Absent conflicting authority, Capital City cannot be adversely affected by the granting of Applicant's Application or the outcome of this proceeding and, thus, is not aggrieved. Consequently, Capital City has no direct, immediate or substantial interest in the subject matter of this application proceeding, and its Protest should, accordingly, be dismissed.

11. Capital City's Protest should also be dismissed because it appears to challenge a completely different application for call or demand service – viz. the application of Empty Pockets Whitetail Preserve, LLC (“Empty Pockets”). Indeed, the Protest identifies “Empty Pockets” as the applicant and references an entirely different applied for territory involving Lancaster and York Counties. The Protest never identifies Metro Transportation, LLC anywhere within the Protest, and the only connection to the instant proceeding is the inclusion of the

docket number in the case caption. Applicant believes that Capital City may have used another protest as a template and inadvertently failed to change the docket number.

12. Applicant acknowledges that Section 3.381(c)(1)(i)(C) contemplates the filing of a motion to dismiss within 20 days after the closing date for the filing of protests and that it is beyond the 20 day period. Applicant, however, submits that the 20 day period should be waived in this instance and that this motion should be accepted for consideration.<sup>2</sup> Until only a few days ago, Applicant had been proceeding without the benefit of legal counsel. Upon engaging counsel, Applicant moved immediately to present this motion to dismiss.

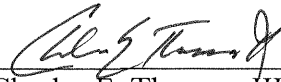
13. Moreover, it is well established that Commission regulations, including the provision at 52 Pa. Code § 5.101(a)(7), seek to serve judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. *Application of Select Ambulance, Inc., supra*. Here, there is no factual issue raised by Capital City's Protest which is pertinent to the resolution of this case. Judicial economy, therefore, will be furthered in this case by granting Applicant's motion and dismissing the Protest of Capital City, as Capital City lacks standing to challenge the Application.

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<sup>2</sup> The Commission's regulation at 52 Pa. Code § 1.2(a) provides that the presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Here, no substantive rights are being affected by this Motion.

WHEREFORE, Applicant Metro Transportation, LLC requests that Administrative Law Judge Barnes and the Public Utility Commission grant this motion and dismiss the Protest of Capital City Cab Service, Inc. for lack of standing.

Respectfully submitted,



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*Counsel for Applicant  
Metro Transportation, LLC*

DATED: May 17, 2016

Application of Metro Transportation, LLC

:

Docket No. A-2015-2520130

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17<sup>th</sup> day of May, 2016, served a true and correct copy of the foregoing document upon the parties and in the manner listed below in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA EMAIL AND FIRST CLASS MAIL**

Honorable Elizabeth H. Barnes  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
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Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)

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**VIA FIRST CLASS MAIL**

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362 South Front Street  
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Charles E. Thomas, III (PA ID # 201014)