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May 18, 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 Yourway Transport, Inc.. 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

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

NOTICE TO PLEAD

TO: Gulam Jaffer, President
Yourway Transport, Inc.
6681 Snowdrift Road
Allentown, PA 18106

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 Yourway Transport, Inc. shall be filed within ten (10) days of the date of its service. The Motion is being served by email and first class mail today, May 18, 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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*Counsel for Applicant
Metro Transportation, LLC*

DATED: May 18, 2016

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MOTION OF APPLICANT METRO TRANSPORTATION, LLC
TO DISMISS THE PROTEST OF YOURWAY TRANSPORT, INC.**

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 Yourway Transport, Inc. (“Yourway”). In support of dismissal of the Protest, Applicant states as follows:

I. INTRODUCTION

1. On or about January 15, 2016, Applicant filed an 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 and in accordance with the requirements of 52 Pa. Code.

3. On March 23, 2016, a Protest to the Application was filed by Yourway.

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. By subsequent Notice issued May 18, 2016, the initial hearing was rescheduled to August 8, 2016.

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)(ii) of the Commission's regulations, 52 Pa. Code § 3.381(c)(1)(ii), provides that protests to a motor carrier application for authority "shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*[".]” See also 52 Pa. Code § 5.53 (providing that protests "shall be filed within the time specified in the published notice of application"). Failure to file a protest in accordance with Section 3.381(c)(1)(ii) shall bar subsequent participation in the proceeding, except for good cause shown. 52 Pa. Code § 3.381(c)(1)(ii); see 52 Pa. Code § 3.381(c)(1)(i)(B) ("Upon the filing of a *timely* protest, the protestant shall be allowed to participate in the proceeding as a party intervenor.") (emphasis added).

7. 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)(2) permits the filing of a preliminary objection to dismiss a pleading for failure to conform with the Commission's regulations.

III. DISMISSAL OF YOURWAY'S PROTEST AS UNTIMELY

8. The Commission's regulations at 52 Pa. Code §§ 3.381(c)(1)(ii) and 5.53 are clear – Protests *must* be filed within the time specified in the notice, absent good cause shown; otherwise, subsequent participation in the proceeding shall be barred. Pursuant to the notice published in the *Pennsylvania Bulletin*, all protests to the Application had to be filed with the Commission on or before February 16, 2016. 46 Pa.B. 632. Yourway failed to comply with the

Commission's directive and, instead, waited more than five (5) weeks after the deadline before filing a Protest on March 23, 2016. Its Protest is, without a doubt, untimely. The Protest, moreover, contains absolutely no explanation or excuse as to why it was late-filed or why good cause exists to justify Yourway's continued participation in this proceeding. The Commission has routinely dismissed late-filed protests without a showing of good cause and barred further participation in proceedings. *See, e.g., Application of Lifestar Response of NJ-Lifestar Response Corp*, Docket No. A-2013-2352953, Initial Decision of Administrative Law Judge Fordham dated April 3, 2014, *becoming final without further Commission action*, Final Order entered May 20, 2014 (granting preliminary objections and dismissing two untimely protests for, *inter alia*, failure to offer a reasonable excuse for the late-filed protests); *Application of Jorge Bermejo, t/a JP Moving Corp.*, Docket No. A-2013-2379677, Initial Decision of Administrative Law Judge Melillo dated February 24, 2014, *becoming final without further Commission action*, Final Order entered April 9, 2014 (denying late-filed petition to intervene for failure to establish good cause for the untimely filing).

9. Yourway has failed to comply with the Commission's regulations at 52 Pa. Code §§ 3.381(c)(1)(ii) and 5.53. Accordingly, Yourway must be barred from further participation in the proceeding, and its untimely Protest must be denied.

10. 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. However, in this case, Yourway filed its Protest more than five weeks after the pertinent closing date. As such, Applicant submits that the timing requirements under Section 3.381(c)(1)(i)(C) have been nullified due to Yourway's untimely actions.

11. Alternatively, to the extent a motion should have been filed within 20 days of March 23, 2016 (*i.e.*, on or before April 12, 2016), Applicant submits that the 20 day period should be waived in this instance and that this motion should be accepted for consideration. Until only a week ago, Applicant had been proceeding without the benefit of legal counsel, so it was not possible for Applicant's counsel to file the instant motion within the 20 day period. Upon engaging counsel, Applicant moved immediately to present this motion to dismiss.

12. The Commission's regulations allow a presiding officer at any stage of a proceeding to disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa.Code § 1.2(a), (c). Here, Yourway's substantive rights will not be affected by delay in the filing of this motion, as the motion is properly endorsed with a Notice to Plead and Yourway will still have an opportunity to file an answer to the motion. Moreover, any delay in filing the motion has not harmed Yourway (or any other Protestants for that matter) because Applicant does not have authority to provide service in the territories opposed by Protestants during the delay. Consideration of Applicant's motion for these reasons would be entirely consistent with recent Commission precedent. *See, e.g., Application of Menia Transportation, LLC*, Docket No. A-2014-2447631, Initial Decision of Administrative Law Judge Cheskis dated November 30, 2015 (considering a motion to dismiss as timely filed under 52 Pa. Code § 1.2(a) where applicant was previously unrepresented by counsel, waiving 20-day requirement provided in Section 3.381(c)(1)(i)(C), and dismissing several protests to a motor carrier application); *Application of Penn Twp. Volunteer Emergency Servs.*, Docket No. A-2014-2416649, Initial Decision of Administrative Law Judge Buckley dated April 24, 2015, *adopted by* Opinion and Order entered November 5, 2015 (treating a motion as timely under 52 Pa. Code

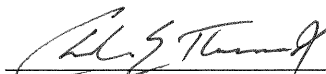
§ 1.2 where applicant was unrepresented by counsel until well after motion period elapsed and dismissing various protests).

IV. CONCLUSION

13. Yourway's untimely Protest fails to comply with applicable Commission regulations at 52 Pa. Code §§ 3.381(c)(1)(ii) and 5.53 and, accordingly, should be dismissed.

WHEREFORE, Applicant Metro Transportation, LLC requests that Administrative Law Judge Barnes and the Public Utility Commission grant this motion and dismiss the Protest of Yourway Transport, Inc. as untimely.

Respectfully submitted,



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*Counsel for Applicant
Metro Transportation, LLC*

DATED: May 18, 2016

Application of Metro Transportation, LLC

:

Docket No. A-2015-2520130

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th 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
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