

# Buchanan Ingersoll & Rooney PC

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September 27, 2017

## VIA E-FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

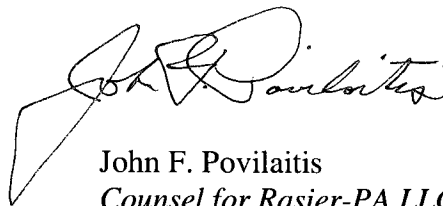
Re: Friedman Wagner-Dobler v. Rasier-PA LLC dba Uber  
C-2017-2593690

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing a Hearing Memorandum in the above-captioned case.

Thank you for your consideration of this matter.

Very truly yours,



John F. Povilaitis  
*Counsel for Rasier-PA LLC*

JFP/jls  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**FRIEDMAN WAGNER-DOBLER**

v.

**RASIER-PA LLC**

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**Docket No. C-2017-2593690**

**HEARING MEMORANDUM OF RASIER-PA, LLC**

**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Rasier-PA, LLC (“Rasier-PA” or the “Company”), by and through its counsel John F. Povilaitis, Brian C. Wauhop and Buchanan Ingersoll & Rooney PC, files this Hearing Memorandum pursuant to Section 5.222 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.222, addressing Company’s legal position on certain allegations contained in the Formal Complaint (“Complaint”) filed by Friedman Wagner-Dobler (“Complainant”).

**I. Introduction and Issues in Dispute**

On March 14, 2017, the Complainant filed a Complaint against Rasier-PA. After the setting of an initial hearing date, the ALJ granted Rasier-PA’s request for a continuance of the hearing date so that settlement of the proceeding could be explored. The ALJ granted partial relief and continued the hearing date for this proceeding until September 28, 2017.

While the parties discussed settlement of this matter, not all elements of the Complainant’s requested relief have been resolved. With respect to Complainant’s claims for alleged excessive amounts charged for rides taken on March 10, 2017 and March 13, 2017 (Complaint Requests for Relief items (A) and (B)), Rasier-PA, without admission of any liability, has provided the requested refunds to the Complainant.

On September 22, 2017, Rasier-PA moved for the setting of a procedural schedule that would establish prospective dates for this litigation, including a date for the filing of an Answer and Preliminary Motions, based on its belief that the relief sought by the Complainant was outside the Commission's subject matter jurisdiction. Upon determining that the requested relief would not be granted by the ALJ, Rasier-PA filed a Motion for Leave to File Answer *Nunc Pro Tunc* and an Answer to the Complaint on September 26, 2017 ("Motion for Leave"). The Motion for Leave was denied by the ALJ on September 27, 2017 in her Third Interim Order.

The Complaint's current dispute presents requests for the following relief:

- (1) "audit all Uber trips by any consumers in Pennsylvania, to determine excessive amounts charged, and refund such amounts,"
- (2) "correct the algorithm Uber uses to calculate fares, and ensure that if the actual trip is significantly shorter than the quoted trip, only the amount appropriate to the actual trip is charged," and
- (3) "Correct the algorithm Uber uses to calculate fares, such that the fare is recalculated when the user moves the pickup point."

## **II. Rasier-PA's Legal Position Regarding Certain Relief Requested by Complainant**

### **A. Complainant's Request for Class-action Relief**

The Complainant requests the Commission provide relief to "any consumers in Pennsylvania." This is clearly in the nature of a "class action" since it purports to address relief to more than just the Complainant.

It is well established that Commission regulations do not provide for such class actions and that this form of action is outside of the Commission's jurisdiction. In *Walter Painter and Donna Painter v. Aqua Pennsylvania, Inc.*, Docket No. C-2011-2239556 (January 7, 2014) the Administrative Law Judge ruled that the Commission lacked jurisdiction to resolve the Complainants' claims related to class action status, citing with approval ALJ Cheskis' similar

determination in *Pettko v. Pennsylvania American Water Company*, Docket No. C-2011-2226096 (Order Denying in Part Motion for Judgment on the Pleadings dated October 5, 2011). This holding was freshly applied by ALJ Cheskis in a complaint against Rasier-PA in *Robert Ely v. Rasier-PA LLC*, Docket No. C-2016-2571984 (July 20, 2017) (Order of July 20, 2017, Granting in Part and Denying in Part Preliminary Objections, p. 5, holding: “Uber is correct. Class actions are not permitted under the Public Utility Code and Mr. Ely cannot represent the interests of any other customer. The complaint cannot be brought on behalf of ‘all others similarly situated,’ as is possible in proceedings brought before a Court of Common Pleas.”). The Complainant has established no legal basis for the Commission’s adjudication of a class action against Rasier-PA.

*B. The Complainant’s Requests for Commission Review of TNC Rates or Fares*

It is well-settled that the Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa. Super. 1976). Chapter 26 of the Code deals with TNCs such as Rasier-PA. The Commission requires TNCs operating in Pennsylvania to obtain a license. *See* 66 Pa.C.S. § 2604.

However, no provision of Chapter 26 authorizes the Commission to set or review rates for TNCs. In fact, Code Section 2607(f) explicitly states that fares or charges for transportation network service “...shall not be subject to review or approval by the commission under Chapter 13 (relating to rates and distribution systems).” *See* 66 Pa.C.S. § 2607(f).

Therefore, the Code (i) does not authorize the Commission to exert ratemaking authority over TNCs; and (ii) specifically excludes TNC rates and fares from Commission review. The Complainant’s requests for relief related to how Rasier-PA “calculates its fares” and demanding to be charged an “appropriate amount” are directed squarely at Rasier-PA’s rates. As a matter of

law, the Commission is without jurisdiction to evaluate and rule upon the rates of TNCs in Pennsylvania.

The Complainant has requested that Rasier-PA “correct” the algorithm so that the charges will be calculated differently. Changing the basis on which the charge is calculated is the same as setting the charge. The Commission has been explicitly denied this authority under the Code.

Under Chapter 26 of the Code, Rasier-PA is obligated to disclose its terms and conditions of service and the basis of its fares, including the use of dynamic pricing, in a tariff, and provide estimates upon request for the cost of a trip. 66 Pa.C.S. § 2706(b),(c). These are notice requirements, not fare-setting standards the Commission can enforce. By seeking to change the method of calculating fare estimates, the Complainant seeks to change the basis on which Rasier-PA sets fares. The Commission lacks jurisdiction to provide this relief.

The Complainant disputes the estimated charges provided by Rasier-PA for a ride and seeks to have the basis for the estimate changed by the Commission. The “estimate” is an upfront fare provided to the rider so that the rider can determine if they wish to accept the ride and the quoted fare. The Code requires that “[t]he transportation network company must provide estimates upon request for the cost of a trip.” 66 Pa.C.S. § 2607(c). Rasier-PA has met the Code’s requirements not only by providing Complainant and other riders an estimate of the charge (as the Complainant admits in the Complaint), but also by disclosing the basis for the calculation of rates in the tariff Rasier-PA filed with the Commission.<sup>1</sup>

The rider can accept or decline the ride after receiving an upfront fare. The Complainant has not alleged that Rasier-PA did not actually charge an estimated fare it provided to the Complainant before a ride was accepted. However, the Code does not permit riders to litigate

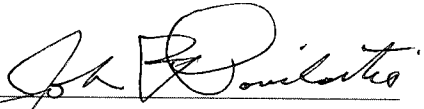
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<sup>1</sup> Recognizing that pursuant to 52 Pa. Code § 5.406(a)(1), Rasier-PA’s tariff—a public document on file with the Commission—need not be produced or marked for identification at hearing, a copy is attached hereto as Exhibit A for the convenience of the Complainant and the Presiding Officer.

before the Commission the basis for the calculation of the ride's fare and obtain the relief sought by the Complainant, which is the ordering of a specific estimation methodology preferred by the Complainant.

Respectfully submitted,

Dated: September 27, 2017



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*Attorneys for Rasier-PA, LLC*

# **EXHIBIT A**

**Certificate No. A-2014-2416127**

**Experimental - Pa. P.U.C. No. 2**

## **Rasier-PA LLC**

### **Rates and Rules Governing the Transportation of Persons in Experimental Service Between Points in the Commonwealth of Pennsylvania**

#### **Description of the Authorized Rights:**

**To transport, by motor vehicle, persons in the experimental service of  
passenger trips between points in Allegheny County, Pennsylvania**

**Issued under authority of 52 PA Code Section 23.42**

**By: Rasier-PA LLC  
7821 Bartram Avenue  
Philadelphia, PA 19153  
717-237-4820**

**Issued: January 15, 2016**

**Effective: January 18, 2016**

**Rules and Regulations**

- 1.1. Riders will request transportation through the Internet or a mobile application (“App”) on their smartphones. Operators may not solicit or accept street-hails.**
- 1.2. When an operator responds to the request, the rider will receive the vehicle type and a photo of the operator, along with an indication of the operator’s current location and estimated time of arrival.**
- 1.3. Upon completion of a trip, an electronic receipt will be transmitted to the customer’s email address or smartphone App documenting the details of the trip.**

**Issued: January 15, 2016**

**Effective: January 18, 2016**

### Schedule of Rates

- 2.1. Rates are calculated on the basis of the distance and/or time between the point of origination and the destination and include a minimum base fare and other costs, which may include “safe ride” fees, booking fees, delivery fees, tolls, airport pickup fees, applicable taxes, and/or regulatory and compliance costs.
- 2.2. Flat fees may be charged for trips.
- 2.3. Rates may increase or decrease in real time for the purpose of balancing supply and demand. At times of insufficient supply and/or higher demand, which may include special events or holidays, dynamic pricing (also known as “surge pricing”) goes into effect.
- 2.4. When a natural disaster or emergency results in a state of disaster emergency being declared by the Governor of Pennsylvania, the dynamic pricing will be computed to comply with the Pennsylvania Price Gouging Act, 73 P.S. §§ 232.1 *et seq.*
- 2.5. In all situations, the prospective customer will be advised of the applicable rates being charged and will have the option of receiving an estimated fare before booking the ride.
- 2.6. Cancellation fees and cleaning fees may be applied as necessary, with advance notice to the customer.

Issued: January 15, 2016

Effective: January 18, 2016

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FRIEDMAN WAGNER-DOBLER	:	
	:	
v.	:	Docket No. C-2017-2593690
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RASIER-PA LLC	:	

**CERTIFICATE OF SERVICE**

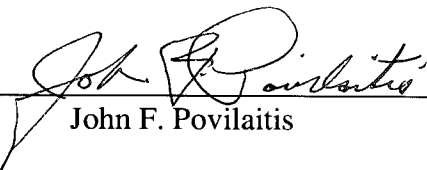
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via First Class Mail and Email**

Katrina L. Dunderdale  
Administrative Law Judge  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
[kdunderdal@pa.gov](mailto:kdunderdal@pa.gov)

Friedman Wagner-Dobler  
5729 Walnut Street  
Pittsburgh, PA 15232  
[friedmanwd@gmail.com](mailto:friedmanwd@gmail.com)

Dated this 27th day of September, 2017.

  
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John F. Povilaitis