

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of : Commission Docket No.  
Eagle Ride Taxi Cab Limited : A-2017-2621976  
Liability Company :

**JOINT PROTESTANTS EZ TAXI LLC, EXPRESS TAXI LLC, READING CITY  
CAB, LLC and AMIGO CAB, LLC’S ANSWER TO APPLICANT’S MOTION TO  
DISMISS JOINT PROTEST OF EZ TAXY, LLC, EXPRESS TAXI, LLC,  
READING CITY CAB, LLC and AMIGO CAB, LLC**

AND NOW comes Joint Protestants EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC by and through their attorney, Anthony J. DelGrosso, Esq., and files the following Answer to Applicant, Eagle Ride Taxi Cab Limited Liability Company’s Motion to Dismiss, and in support thereof, avers the following:

**I. COUNTER STATEMENT OF THE CASE**

1. On or about June 26, 2017, Applicant Eagle Ride Taxi Cab, LLC (“Applicant”) filed an application seeking authority to provide call or demand service in the City of Lancaster, and within an airline distance of 15 miles of the limits of said city.

2. The June 26 application provided “Wanica Technical Services LLC” as the applicant, and “Eagle Ride Taxi Cab LLC” as the trade name.

3. By letter dated July 13, 2017, the Public Utility Commission (“Commission”) notified Applicant of missing items within the application related to the name in line one of the application and an issue with the form of payment for the filing fee.

4. Upon information and belief, applicant then filed a deficient “correction page” to the June 26 application with the Commission.

5. By letter dated August 14, 2017, the Commission notified Applicant that the correction page which was received was for a property carrier application rather than a call or demand application.

6. Finally, on or about August 21, 2017 Applicant filed its Application seeking authority to provide call or demand service in the City of Lancaster, and within an airline distance of 15 miles of the limits of said city.

7. The Application contained no financial or operations information and was filed without a Verified Statement of Applicant.

8. The Application was published in the Pennsylvania Bulletin on or about September 30, 2017.

9. On October 12, 2017, EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC (collectively "Joint Protestants") through their attorney timely filed a Joint Protest.

10. The Joint Protest challenges the validity of the Application insofar as the Application failed to include any financial information demonstrating Applicant's financial fitness.

11. The Joint Protest also challenges the validity of the Application insofar as the Application failed to include any information indicating how Applicant intends to operate as to demonstrate the requisite technical fitness.

12. On the same day, October 12, 2017, Joint Protestants served discovery requests in the form of Interrogatories on the Applicant relevant to Applicant's financial and technical fitness to provide the service.

13. On or about October 31, 2017, Applicant filed a Motion to Dismiss Joint Applicants' Protest.

14. The same day on October 31, 2017, Applicants filed a Verified Statement with financial and operations information. The Verified Statement was filed a month and a half after the Application submitted despite the Commission's requirement that a verified statement be submitted simultaneously with the application.

## II. DISCUSSION

15. Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, Applicant has the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J Lansberry, Inc. v. Pa. P. U C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

16. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa. C.S. § 704; *Mill v. Pa. P. U C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P. UC.*, 623 A.2d 6 (Pa. Cmwlth. 1993).

17. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. P. UC.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

18. Applicant, in its Motion to Dismiss, correctly points out that as of June 3, 2017, the Commission's regulations were revised to eliminate the requirement for applicants to establish "public need" for the proposed service.

19. While the requirement of a showing of public need is no longer necessary, “[The Commission] stress[es] that passenger carrier applicants are still required to establish, in the application process at 52 Pa. Code § 3.381, that they have the technical and financial ability to provide the proposed services safely, reliably and legally and that they are fully insured in accordance with the requirements of state law and our regulations.” See, Proposed Rulemaking Order at \*8, Docket No. L-2015-2507592.

20. In addition, the Commission’s regulations were also revised to require the applicant to file its verified statement along with the initial application. *Final Rulemaking Order* entered October 27, 2016 at \*14, Docket No. L-2015-2507592.

**III. THE PROTEST WAS PROPER BECAUSE THE APPLICATION WAS DEVOID OF ANY INFORMATION WITH REGARD TO ITS FINANCIAL AND TECHNICAL FITNESS AND THUS THE APPLICANT FAILED TO MEET ITS BURDEN OF PROOF AS REQUIRED BY 52 PA. CODE 41.41(b)**

21. As provided more fully in the Joint Protest, the Application contained no specific information demonstrating Applicant’s financial or technical fitness to provide the service.

22. In addition, when Joint Protestants filed the Joint Protest on October 12, 2017, Applicant had not filed a Verified Statement with specific information to demonstrate financial or technical fitness to provide the service. See, *Final Rulemaking Order* entered October 27, 2016 at \*14, Docket No. L-2015-2507592.

23. Thus, the Joint Protest, when filed raised legitimate questions as to the Applicant’s financial and technical fitness to provide the service and cannot be deemed “anti-competitive”.

24. While the requirement of a showing that the approval of the application pursuant to §41.14 will serve a public purpose has been removed, an applicant still has the burden to show their financial and technical ability to provide the service.

25. Applicant, in the Motion to Dismiss, arbitrarily labels the Joint Protest as “specious” and “anti-competitive.” To the contrary, the Joint Protest is proper as the Application fails to provide any information related to Applicant’s financial and technical fitness, and fails to include the required Verified Statement.

26. Should the Commission be persuaded by Applicant’s argument that the Joint Protest was “anti-competitive” because it was filed by an existing common carrier, a precedent would be established essentially precluding an existing common carrier from filing any legitimate protest.

27. Such a precedent would run afoul to both §41.14 and the aforementioned *Final Rulemaking Order* entered October 27, 2016 as nowhere in the Final Rulemaking Order does it state that an existing common carrier is precluded from filing a legitimate protest.

28. Joint Protestants are properly entitled to conduct discovery to determine whether the information provided in the Verified Statement is supported by additional evidence to ensure Applicant met his burden of proof.

29. In addition, a hearing is necessary with cross-examination of the Applicant, so the Commission can determine the veracity of the information in the Verified Statement and any additional supporting evidence provided by the Applicant.

#### **IV. CONCLUSION**

WHEREFORE, based upon the foregoing, Joint Protestants EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC respectfully request that the

Commission deny Eagle Ride Taxi Cab LLC's Motion to Dismiss and ORDER the parties to proceed with discovery.

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**CERTIFICATE OF SERVICE**

Pursuant to the Commission's Rules of Procedure, I hereby certify that on this 3rd day of November, I served the following parties with the foregoing Joint Protestant's Answer to Eagle Ride Taxi Cab Limited Liability Company's Motion to Dismiss via the means listed below:

**Via First Class Mail:**

Eagle Ride Taxi Cab Limited, Limited Liability Company  
c/o: Karen O. Moury, Esq.  
Exkert Seamans Cherin & Mellot, LLC  
213 Market St., 8<sup>th</sup> Fl.  
Harrisburg, PA 17101

**VIA First Class Mail and Email:**

Auto cab, Inc.  
c/o: Thomas T. Niesen, Esq.  
Thomas, Niesen & Thomas, LLC  
212 Locust St., Suite 600  
Harrisburg, PA 17101  
Attorney for Protestant, Autocab, Inc.

Date: November 3, 2017

Respectfully Submitted,



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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of Applicant's Motion to Dismiss and any response/ answer thereto, it is hereby ORDERED that Applicant's Motion to Dismiss is DENIED. The parties are ORDERED to proceed to discovery.

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J.