



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

February 6, 2018

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Jetway Transport, Inc. t/a Main Line Taxi
Docket No. C-2017-2634219
(I&E Reply to New Matter)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Reply of the Bureau of Investigation and Enforcement to the New Matter of Jetway Transport, Inc. t/a Main Line Taxi in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Myers", is written over a light blue horizontal line.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosure

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2017-2634219
	:	
Jetway Transport, Inc. t/a Main Line Taxi,	:	
Respondent	:	

REPLY TO NEW MATTER

NOW COMES, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and replies to the New Matter of Jetway Transport, Inc. t/a Main Line Taxi, (“Jetway Transport” or “Respondent”), pursuant to 52 Pa. Code § 5.63(a). In support thereof, I&E avers as follows:

I. BACKGROUND

Jetway Transport was granted Commission approval to operate as a motor carrier of passengers in taxi authority on or about December 11, 2006, at A-00122951 and limousine authority on or about January 19, 2007, at A-00122951F0002. On or about September 7, 2016, the Commission mailed to Respondent a notice of assessment and an assessment invoice for the July 1, 2016 to June 30, 2017 Fiscal Year (“2016-2017 Fiscal Year”) in the amount of \$29,543. The 2016-2017 Fiscal Year Assessment was based on Respondent’s gross intrastate operating revenues that Respondent reported to the Commission in its assessment report for the 2015 calendar year. On September 12, 2016,

Respondent received the notice of assessment and assessment invoice for the 2016-2017 Fiscal Year. The Commission received no objections from Respondent to the assessment amount set forth in the 2016-2017 Fiscal Year Assessment Invoice. Jetway Transport did not pay its assessment to the Commission for the 2016-2017 Fiscal Year within thirty (30) days of receipt of the assessment invoice. Accordingly, on November 17, 2017, I&E filed a Complaint against Respondent at Docket No. C-2017-2634219, alleging that Respondent violated Section 510(c) of the Public Utility Code (“the Code”), 66 Pa.C.S. § 510(c), by failing to pay its 2016-2017 Fiscal Year Assessment.

In addition to the outstanding assessment, I&E seeks payment of a civil penalty in the amount of \$7,386. I&E also requests that if payment of the assessment and civil penalty is not made, that the Commission cancel Respondent’s Certificate of Public Convenience, refer the matter to the Pennsylvania Office of Attorney General for further action, and certify Respondent’s automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation.

On December 7, 2017, Respondent requested an extension to file an answer to I&E’s Complaint by December 19, 2017. On December 13, 2017, the Commission granted Respondent’s request for an extension of time to file an answer. On December 19, 2017, Respondent filed Preliminary Objections to I&E’s Complaint. Respondent argued in its Preliminary Objections that I&E failed to adhere to the Commission’s requirements set forth in 52 Pa. Code § 5.22(a)(7) in that I&E failed to attach to its Complaint the assessment invoice for the 2016-2017 Fiscal Year, the notice of assessment for the 2016-2017 Fiscal Year, and the certified mailing receipt. Respondent

claimed that the failure to attach those documents to the Complaint formed the basis for a preliminary objection pursuant to 52 Pa. Code § 5.101(a)(3) regarding insufficient specificity of a pleading.

On December 28, 2017, I&E filed an Amended Complaint attaching the assessment invoice for the 2016-2017 Fiscal Year, the notice of assessment for the 2016-2017 Fiscal Year, and the certified mailing receipt as exhibits. I&E filed its Amended Complaint as of course and in response to Respondent's Preliminary Objections in accordance with 52 Pa. Code § 5.91(b) rendering Respondent's Preliminary Objections moot.

On January 17, 2018, Jetway Transport filed its Answer with New Matter at the above docket via the Commission's electronic filing system. Respondent failed to serve I&E with an electronic mail notice stating that it had filed its Answer with New Matter on the Commission's electronic filing system as required by 52 Pa. Code § 1.54(b)(3)(ii).

II. REPLY TO NEW MATTER

19. Denied. By way of further answer, Transportation Network Company ("TNC") is defined at 66 Pa.C.S. § 102.

20. Admitted in part and denied in part. It is admitted that Uber Technologies, Inc. ("Uber") and Lyft, Inc. ("Lyft") are TNCs. As to whether Uber and Lyft are two well-known TNCs, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same are therefore denied and strict proof thereof demanded at trial.

21. Admitted in part and denied in part. It is admitted that the number of TNCs operating across the Commonwealth has increased, and as a result, may serve as an alternative service to traditional taxi cabs. It is denied that TNCs have competed illegally against Respondent free from any regulation by the Commission. By way of further answer, Act 164 was enacted on November 4, 2016 and effectively granted TNCs permanent legal authority to operate throughout Pennsylvania while being regulated by various government agencies, including, but not limited to, the Commission. For a period prior to the passage of Act 164, TNCs operated under experimental authority granted by the Commission in accordance with the Commission's regulations at 52 Pa. Code § 29.352.

22. Admitted in part and denied in part. It is admitted that the Commission has the jurisdiction to regulate and sanction TNCs. It is denied, however, that the Commission has failed to regulate and sanction TNCs. Prior to November 13, 2014, I&E initiated prosecutions, sought cease and desist orders, and imposed sanctions in the form of civil penalties on those TNCs that were operating illegally in Pennsylvania.¹ Since

¹ On June 5, 2014, I&E filed a Formal Complaint against Lyft at Docket No. C-2014-2422713 alleging that it was acting as a broker of transportation for compensation between points within the Commonwealth without proper Commission authority and sought relief including civil penalties of \$130,000. On October 8, 2014, I&E filed an Amended Complaint at the aforementioned docket, seeking a civil penalty of \$6,986,500. I&E initiated separate enforcement proceedings against individual Lyft drivers who provided I&E Motor Carrier Enforcement with transportation for compensation without authority. On June 16, 2014, I&E filed a Petition for Interim Emergency Order at Docket No. P-2014-2426847 seeking a Commission Order requiring Lyft to immediately cease and desist from brokering transportation service for compensation between points in Pennsylvania. On July 15, 2015, the Commission entered a Final Order approving a net civil penalty settlement amount totaling \$234,000 against Lyft.

On June 5, 2014, I&E filed a Formal Complaint against Uber Technologies, Inc., Gegen, LLC, Rasier, LLC, and Rasier-PA, LLC (collectively "Uber") at Docket No. C-2014-2422723 alleging that it was acting as a broker of transportation for compensation between points within the Commonwealth without proper Commission authority and sought relief including civil penalties of \$95,000. On January 9, 2015, I&E filed an Amended Complaint at the aforementioned docket, seeking a civil penalty of \$19,000,000. I&E initiated separate enforcement proceedings against individual Uber drivers who provided I&E Motor Carrier Enforcement with transportation for compensation

November 13, 2014, TNCs operated under experimental authority granted by the Commission in accordance with the Commission's regulations at 52 Pa. Code § 29.352. As a point of reference, only three TNCs, Uber, Lyft, and Yellow Z, applied for and received an Experimental Authority Certificate from the Commission. With the passage of Act 164 on November 4, 2016, TNCs were regulated and sanctioned accordingly by the Commission. Therefore, TNCs have been regulated and, when necessary, sanctioned by the Commission.

23. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same are therefore denied and strict proof thereof demanded at trial.

24. Denied. This averment sets forth a legal conclusion to which no response is required.

25. Denied. This averment sets forth a legal conclusion to which no response is required. By way of further answer, traditional taxicabs and TNCs are *not* similarly situated because their business models are substantially different.

26. Denied. This averment sets forth a legal conclusion to which no response is required.

27. Denied. This averment sets forth a legal conclusion to which no response is required.

without authority. On June 16, 2014, I&E filed a Petition for Interim Emergency Order at Docket No. P-2014-2426846 seeking a Commission Order requiring Uber to immediately cease and desist from brokering transportation service for compensation between points in Pennsylvania. On May 10, 2016, the Commission entered a final order imposing a civil penalty of \$11.4 million on Uber.

28. Denied. This averment sets forth a legal conclusion to which no response is required. By way of further answer, I&E hereby incorporates its response to Paragraph 22. As a point of clarification, the Commission initiated prosecutions, sought cease and desist orders, and imposed sanctions in the form of civil penalties on those TNCs that were operating illegally in Pennsylvania prior to their operation under experimental authority and the passage of Act 164.

29. Denied. The Fifth Amendment of the United States Constitution, U.S. Const. amend. V, speaks for itself and any characterization of same, in whole or in part, is denied.

30. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same are therefore denied and strict proof thereof demanded at trial. If Respondent avers that it has a cognizable property interest in its Certificate of Public Convenience, I&E denies such an averment because “a certificate of public convenience is a privilege, not a contract or a property interest under which the holder acquires vested rights.” *Pa. Pub. Util. Comm'n v. Zanella Transit, Inc.*, 417 A.2d 860, 861 (Pa. Cmwlth. Ct. 1980). Furthermore, while the Commission maintains that Respondent does *not* have a cognizable property interest, having such does not include a right to be free from competition.

31. Admitted in part and denied in part. It is admitted that the Pennsylvania General Assembly passed Act 164. However, Act 164 speaks for itself and any characterization of same, in whole or in part, is denied.

32. Denied. Assuming that the term “[l]egislation” is a reference to Act 164, that Act speaks for itself and any characterization of same, in whole or in part, is denied.

33. Denied. Assuming “[i]t” is a reference to Act 164, that Act speaks for itself and any characterization of same, in whole or in part, is denied. By way of further answer, TNCs must obtain a license, not a Certificate of Public Convenience, in order to operate in Pennsylvania. Section 2604.1(b) of the Code, 66 Pa.C.S. § 2604.1(b), sets forth the conditions a TNC must satisfy in order to acquire a license and for maintaining a license to operate within Pennsylvania. These elements include, *inter alia*, proof of the required insurance coverage, maintenance of verifiable records, inspections of records, criminal background checks, driver history checks, driver training materials, and reporting of accidents. These requirements are similar to the conditions that apply to traditional taxicabs, like Respondent, seeking to obtain a Certificate of Public Convenience with the Commission.

34. Denied. This averment sets forth a legal conclusion to which no response is required. By way of further answer, Section 2610 of the Code, 66 Pa.C.S. § 2610, permits the Commission to assess program costs associated with the regulation of TNCs in accordance with Section 510 of the Code, 66 Pa.C.S. § 510. Section 510(b) of the Code sets forth the calculation that the Commission uses to levy assessments upon public utilities, including TNCs and taxicabs like Respondent, and this calculation considers a public utility’s gross intrastate operating revenues for the preceding calendar year.

35. Denied. This averment sets forth a legal conclusion to which no response is required. By further answer, I&E hereby incorporates its response to Paragraph 34.

Additionally, Respondent's assessment for the July 1, 2016 to June 30, 2017 Fiscal Year was based on Respondent's gross intrastate operating revenues that *Respondent reported* to the Commission in its assessment report for the 2015 calendar year in accordance with 66 Pa.C.S. § 510. Therefore, if Respondent did in fact sustain losses of income due to competition with TNCs, then such loss was taken into consideration as Respondent's 2016-2017 Fiscal Year Assessment was based upon the revenues that Respondent *reported* to the Commission.

36. Denied. Act 164 speaks for itself and any characterization of same, in whole or in part, is denied. By way of further answer, Section 2609 of the Code, 66 Pa.C.S. § 2609, authorizes the Commission to impose fines and penalties and other appropriate remedies on TNCs that have violated the Code. TNCs that operated illegally in Pennsylvania have paid civil penalties for their prior illegal operations.

37. Paragraph 37 [*sic* 34]² is denied. This averment sets forth a legal conclusion to which no response is required.

38. Paragraph 38 [*sic* 35] is denied. This averment sets forth a legal conclusion to which no response is required.

39. Paragraph 39 [*sic* 36] is denied. This averment sets forth a legal conclusion to which no response is required. By way of further answer, I&E hereby incorporates its response to Paragraph 34. Moreover, traditional taxicabs and TNCs are similarly assessed in accordance with the provisions of Section 510 of the Code, 66 Pa.C.S. § 510.

² Jetway Transport's New Matter is misnumbered after Paragraph 36. I&E has numbered its Reply to New Matter according to the correct paragraph numbers for the New Matter.

40. Paragraph 40 [*sic* 37] is denied. This averment sets forth a legal conclusion to which no response is required.

41. Paragraph 41 [*sic* 38] is denied. By way of further answer, I&E hereby incorporates its response to Paragraph 30. Additionally, Respondent holds a Certificate of Public Convenience with the Commission, not a license.

42. Paragraph 42 [*sic* 39] is denied. This averment sets forth a legal conclusion to which no response is required.

43. Paragraph 43 [*sic* 40] is denied. This averment sets forth a legal conclusion to which no response is required.

44. Paragraph 44 [*sic* 41] is denied. As Respondent received its assessment invoice for the 2016-2017 Fiscal Year on September 12, 2016, objections to the assessment were due on or before September 27, 2016 pursuant to 66 Pa.C.S. § 510(c). Act 164 was introduced on September 8, 2015 by Pennsylvania Senate Bill No. 984, S.B. 984, 199th Gen. Assemb. (Pa. 2015). Act 164 was later approved on November 4, 2016. Therefore, Act 164 did “exist” at the time any objection to the assessment was due.

45. Paragraph 45 [*sic* 42] is denied. This averment sets forth a legal conclusion to which no response is required.

46. Paragraph 46 [*sic* 43] is denied. This averment sets forth a legal conclusion to which no response is required.

47. Paragraph 47 [*sic* 44] is denied. This averment sets forth a legal conclusion to which no response is required.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Commission and the Office of Administrative Law Judge sustain I&E's Amended Complaint, dismiss Respondent's Answer and New Matter, and direct Respondent to immediately pay its outstanding assessment of \$29,543 and I&E's requested civil penalty of \$7,386 for a total payment of \$36,929.

Respectfully submitted,



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PA Attorney ID No. 316494

Timothy K. McHugh
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Bureau of Investigation & Enforcement
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Date: February 6, 2018

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

v.

Jetway Transport, Inc. t/a Main Line Taxi

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Docket No. C-2017-2634219

VERIFICATION

I, Yvonne Hess, Chief of Finance and Assessments, Bureau of Administrative Services, Finance and Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 6, 2018



Yvonne Hess, Chief of Finance and Assessments
Finance and Assessment Section
Bureau of Administrative Services
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

v.

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CERTIFICATE OF SERVICE

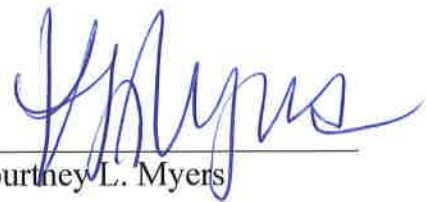
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by First Class Mail and Electronic Mail:

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Counsel for Jetway Transport, Inc. t/a Main Line Taxi



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Dated: February 6, 2018