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August 20, 2020

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

Re: Application of Metro Transportation LLC
PUC Docket No.: A-2019-3011470
and
Yourway Taxi and Limo, Inc. v. Metro Transportation LLC
PUC Docket No.: C-2019-3013829

Dear Ms. Chiavetta:

Please be advised that this office represents Yourway Taxi and Limo, Inc. I am e-filing with this letter my client's Reply Brief in the above matter.

Respectfully submitted,

Richard T. Mulcahey, Jr.

RTMJR/hs
Enclosure

cc: Honorable Joel H. Cheskis, via e-mail
Craig A. Doll, Esquire and Debra L. Roscioli, Esquire, via e-mail
Yourway Taxi and Limo, Inc., via e-mail

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: APPLICATION OF : PUC DOCKET
METRO TRANSPORTATION LLC : NO.: A-2019-3011470

And

IN RE: YOURWAY TAXI AND LIMO, INC. : PUC DOCKET
: :
vs. : NO.: C-2019-3013829
: :
METRO TRANSPORTATION LLC :

**REPLY BRIEF OF PROTESTANT/COMPLAINANT
YOURWAY TAXI AND LIMO, INC.**

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Yourway Taxi and Limo, Inc. (“Yourway” or “Protestant/Complainant”), by their attorneys, Richard T. Mulcahey, Jr., Schubert, Gallagher, Tyler & Mulcahey, file this Reply Brief in response to the Main Brief of Metro Transportation LLC (“Metro” or “Applicant/Respondent”) in the docketed consolidated Application and Formal Complaint cases before the Pennsylvania Public Utility Commission (“PUC” or “Commission”). Yourway will address the four (4) issues raised by Metro in its Main Brief (Metro M.B. 3).

1. Does Yourway possess standing to file the instant complaint?

Yes. Metro filed a late Answer and New Matter to Yourway’s Formal Complaint. The response to the New Matter was not due before the hearing scheduled in this matter. Metro’s assertion that Yourway has not contested the facts, law and allegations contained in the New Matter is disingenuous. The ALJ directed the parties to address these issues in their briefs (Tr. 7, 10). Yourway has done so.

Although recognizing that this Commission has discretion to permit a party to have standing, Metro’s premise for arguing that Yourway lacks standing is based on its position that Yourway does not have “a direct, immediate and substantial interest in the subject matter of [the] proceeding” (Metro M.B. 6).

It was clear from the testimony received by the principals of both Metro and Yourway that they are competitors. The rules and regulations of this Commission provide that competitors have standing to file a complaint. The pertinent regulations are 52 Pa. Code Section 5.21 and 52 Pa. Code Section 5.22, which provides that the complaining party establish in part:

The interest of the complainant in the subject matter – for example, customer, competitor (emphasis added), and the like. *52 Pa. Code Section 5.22(a)(4)*.

The well documented unlawful activity of Metro (See generally Tr. 33-91 and Exhibits P-

2, P-2, P-3, P-6, P-7) would impact any competitor. Yourway submits that the issue of its standing to bring the instant Formal Complaint is a nonissue because of its status as a competitor and PUC regulations at 52 Pa. Code Section 5.21 and 52 Pa. Code Section 5.22.

2. Does Metro possess a presumption of fitness as an existing carrier?

Metro, as an existing licensed carrier by this Commission, enjoys a *rebuttable* (emphasis added) presumption that it is technically and financially fit under 52 Pa. Code Section 41.14. *Ace Moving & Storage, Inc., et al. v. Pa. PUC*, 935 A.2d 75 (Pa. Cmwlth. 2007).

However, Metro must present a prima facie case that the Application should be approved. *Lehigh Valley Transp. Servs. v. Pa. PUC*, 56 A.3d 49 (Pa. Cmwlth. 2012). *Citing In Re Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262, 274 (1990).

Metro did not establish a prima facie case (See Yourway M.B. 6-7). In a last moment attempt to establish a prima facie case, Metro argues that a late filed exhibit (T-1), which contains the Application and a Statement of Applicant, should be admitted into evidence *and* that Yourway had the ability to cross examine Mr. Tolla on that document. There are several errors in this position: (a) Metro never produced the exhibit in discovery (Metro M.B. 10); (b) Metro never produced the exhibit before the hearing as directed by the ALJ (Yourway M.B. 10); (c) the Statement as purported written testimony does not comply with 52 Pa. Code Section 5.412; (d) Mr. Tolla did not have the exhibit with him at the time of the hearing (Tr. 20) and (e) the Statement is dated July 8, 2019 and is stale. Yourway needs to repeat an important point regarding its constitutional right to cross examine a witness: How could Yourway meaningfully cross examine Mr. Tolla on a document not in his possession at the time of the hearing?

Contrast the instant Application with the Applicant in the *Lehigh Valley Transp. Servs. v. Pa. PUC*. The Applicant in *Lehigh Valley* was a long time licensed carrier with multiple

Certificates of Public Convenience and, notwithstanding the presumption of fitness, developed a record that included:

Additionally, J & J [Applicant] offered the testimony of Ms. Cali, the supervisor of J & J's finances, employees, facilities and vehicles, and who submitted numerous exhibits which were admitted into the record. J & J has the necessary federal permits to provide interstate services and has been licensed by the PUC since 1985 to provide limousine, group and party service, para-transit, and airport transfer services. J & J employs approximately 80 drivers, who, together, speak five different languages. Those drivers must pass a pre-employment examination and receive on-the-job training before they can drive for J & J, the drivers must maintain all the licenses required to operate the appropriate vehicles, and J & J requires ongoing testing, training, and evaluations of its drivers. Additionally, J & J uses mystery shoppers to evaluate its drivers, and has rules and a program to address driver training, accidents, vehicle maintenance, and safety. J & J maintains all of the necessary bodily injury and property damage insurance on its vehicles, and already has the meters necessary to provide the call and demand service. J & J operates 24 hours per day, 7 days per week, year round from its offices in Allentown, where 14–16 people work, including day and night supervisors, bilingual dispatchers, 4 mechanics who are on call 24 hours per day, and a safety supervisor. Ms. Cali testified as to J & J's financial particulars, which are not at issue in this appeal. J & J has received two PUC complaints, one of which was withdrawn by the PUC and the other was resolved by settlement. There was no evidence that J & J, or any of its drivers, have been convicted of a crime of moral turpitude and remains under the supervision of a court or prison. (FOF ¶¶ 1–8, 10–17.) *Lehigh Valley*, Id.

Yourway submits that a record similar to *Lehigh Valley* should have been developed based on the extensive geographic area requested, the fact that Metro is not operating in Lancaster under a current issued Certificate of Public Convenience and based on the allegations in the Formal Complaint.

3. Has Yourway rebutted that presumption?

Yes. Remarkably, Applicant/Respondent argues that “no evidence was introduced by Yourway regarding the sufficiency of capital, equipment, etc. of Metro to provide the proposed service” (Metro M.B.13). It is simply not the Protestant’s/Complainant’s responsibility to establish a prima facie case for Applicant/Respondent.

Metro's presumption of fitness has been rebutted by: (a) Metro's failure to establish a prima facie case and (b) Yourway presenting evidence of Metro's unlawful and fraudulent activities.

The issue of failing to establish a prima facie case has been set forth above and at Yourway M.B. 5-7.

The issue of rebutting the presumption of fitness goes hand-in-hand with the testimony warranting that the ALJ sustain the Formal Complaint. Metro's response to Yourway's rebuttal and complaint is to benignly characterize the unlawful transportation as "extraterritorial service" (See generally Metro M.B. 16) and to attack the credibility and motives of the witnesses.

Let's not sugar coat Metro's activities – they are unlawful and the record keeping is fraudulent (Yourway M.B. 5, 8-10). Furthermore the witnesses presented by Protestant/Complainant were all credible.

It is interesting to note that Metro provided no rebuttal testimony against the evidence received that Metro consistently provided unlawful transportation and doctored trip manifest to commit fraud on this Commission. The only apparent rebuttal with respect to the fraud was Mr. Tolla's self serving testimony denying such activity. Applicant's tact was to unsuccessfully attack Protestant/Complainant and the witnesses. Yourway submits that the fact that the witnesses knew the principal or were employed by Yourway (Metro M.B. 17) is irrelevant. The fact that some of the witnesses were reimbursed by Yourway for trips at issue (Metro M.B. 17) is also irrelevant. What is relevant is the fact that numerous unlawful trips occurred.

Metro claims errors and misstatements with respect to Mr. Perez testimony regarding a receipt and the date of the receipt for Mr. McCleave's trip. Yourway does not understand the argument offered about the latter witness. With respect to the actual testimony of Mr. Perez, the

error occurred with Metro in its poor or intentional false record keeping (Tr. 56-57). This testimony complements the testimony of Mr. Santee who stated that Mr. Tolla directed drivers to falsify manifests to cover up unlawful transportation.

Metro goes to some length attempting to discredit Mr. Santee because his testimony was damaging to Applicant's/Respondent's case and helpful in sustaining the complaint. It is argued that Mr. Santee's exhibits did not show points of destination; that he could not recall specific drop off points; that he took a vehicle home for an extended period of time; and that he could not be reached by Mr. Tolla concerning the time off (Metro M.B. 18-19). For these reasons, Metro claims that Mr. Santee's motives may not be "altruistic" (Metro M.B 18).

While the exhibit Metro references may not show points of destination, the testimony was that Mr. Tolla used that form of communication to dispatch drivers for unlawful trips. (Tr. 88-89). The critical testimony remains that Mr. Tolla directed drivers "all the time" (Tr. 87) to doctor the manifests to indicate a pick up or drop off in the city of Allentown, when in fact the trip points of origination and destination were outside the City of Allentown and outside the scope of the Applicant's/Respondent's operating authority (Tr. 86-89 and Exhibit "P-7"). Mr. Santee testified that the reason Mr. Tolla gave for his directive was:

Because we weren't supposed to be picking up in Bethlehem, so in order to get around it, we were supposed to change where we picked up. So that it wasn't listed in our manifest so that when they checked we wouldn't be fined or get in trouble, is what I was told (Tr. 89-90).

All Metro drivers were instructed by Mr. Tolla to doctor manifests to avoid fines and other penalties by this Commission (Tr. 90-91).

Yourway submits that it is impossible for cab drivers, performing numerous trips daily, to recall specific drop off points on a specific dates. The testimony regarding taking time off with

one of Metro's vehicles has no relevance and seems to be a weak argument for questioning Mr. Santee veracity in his testimony of fraud by Mr. Tolla.

This Commission sustained two complaints against Metro; one for unlawful transportation from Bethlehem to a point outside the City of Allentown and the other for poor record keeping and lack of supervision by permitting a driver to operate a vehicle, in service for the public, without a valid driver's license (Tr. 21-23). It is submitted that the sustained PUC complaints just prove and confirm the credibility of Yourway's witnesses and the validity of their testimony.

4. Has Metro met all of the requirements of 52 Pa. Code Section 41.14 so as to grant the application?

No. For the reasons set forth in Yourway's Main Brief and this Reply Brief, Metro has failed to establish a prima facie case that it has the technical and financial fitness to warrant additional authority. Furthermore the presumption of fitness has been successfully rebutted by Yourway.

For the reasons set forth above, the Application should be denied in its entirety and the Formal Complaint should be sustained with civil fines issued.

Respectfully submitted,

**SCHUBERT, GALLAGHER, TYLER
& MULCAHEY**

BY: 

RICHARD T. MULCAHEY, JR.
Attorney for Protestant/Complainant
Yourway Taxi and Limo, Inc.

Dated: August 20, 2020

CERTIFICATE OF SERVICE

I, Richard T. Mulcahey, Jr., Esquire, hereby certify that on the date below, I forwarded by e-filing and e-mail the Reply Brief of Yourway Taxi and Limo, Inc. to the parties addressed as follows:

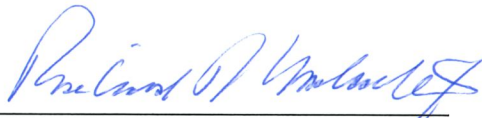
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