

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Petition of Gegen, LLC For Waiver : Docket No. P-2015-2474633
Of the Commission’s Limousine :
Tariff Regulations under 52 Pa. Code :
§29.334 :

PETITION TO INTEVENE

Potential Intervenor, Germantown Cab Company, by and through its attorneys, Salaman, Grayson, & Henry, P.C., hereby moves this Honorable Commission to allow it to intervene in the above matter for the following reasons:

Parties

1. Prospective Intervenor, Germantown Cab Company (“Germantown”), is a motor carrier with authorization from the Commission to provide call or demand service in parts of Philadelphia and Montgomery Counties. A copy of the Commission order granting Germantown’s rights is attached hereto as Exhibit A.

2. Petitioner, Gegen, LLC (“Gegen”) has authorization from the Commission to broker passenger carriers between points in the Commonwealth of Pennsylvania and is a motor carrier with authorization from the Commission to transport, as a common carrier, by motor vehicle, persons in limousine service, from points in Bucks, Chester, Delaware, and Montgomery counties, to points in

Pennsylvania, and return, excluding the areas under the jurisdiction of the Philadelphia Parking Authority. A true and correct copy of the Commission orders granting Gegen's rights are attached hereto as Exhibits "B" and "C."

Procedural background

3. On or about March 30, 2015, Gegen filed a waiver petition, which has been assigned the above docket number.

4. Gegen did not serve the waiver petition on Germantown, no notice of the filing of the waiver petition was published in the Pennsylvania Bulletin and no order establishing a deadline for responsive pleadings has been issued.

5. Accordingly, the present petition is timely pursuant to 52 Pa. Code §5.74(b)(3) and 52 Pa. Code §553.

Relief sought by Gegen

6. Gegen's petition seeks a waiver of the requirements of 52 Pa. Code § 29.344, which pertains to limousine tariffs.¹

7. Specifically, Gegen seeks two forms of relief.

8. First, Gegen seeks the "flexibility" to change its rates "in real time" to permit it "to effectively balance supply and demand."

¹ 52 Pa. Code §29.334 provides: "Limousine rates shall be based solely on time, and shall be contained in a tariff filed, posted and published under statute and this title. The use of meters is prohibited. The initial time period and each subsequent increment must be at least 30 minutes."

9. Second, Gegen seeks authorization to charge fares based on the actual time and distance of the trips it provides.

10. There are a number of problems with these requests.

Gegen does not have clean hands

11. Gegen is currently providing unauthorized call or demand service in violation of the terms of its certificate of public convenience and is not adhering to the limousine tariff it currently has on file with the Commission.

12. Limousine service may only be provided on an advance reservation basis and rates must be based solely on time in increments of 30 minutes or more.

13. Limousine customers pay for the time a vehicle is reserved for their exclusive use, regardless of the number, time, or length of any trips provided.

14. In contrast, call or demand service is provided in response to requests for immediate service and fares are based on the actual time and distance of the trip provided.

15. At all times since the Commission approved its application for authorization to provide limousine service, Gegen's vehicles have cruised the streets like taxicabs, responded to immediate demands for service and charged rates based on the actual mileage and time of the trips they provide.

16. Gegen's lack of good faith and history of violations are sufficient grounds for denial of its waiver petition.

Automatic rates adjustments are prohibited by statute

17. Motor carriers are prohibited by statute from establishing “a sliding scale for rates or such other method for the automatic adjustment of rates.” 66 Pa. C.S. §1307

18. Accordingly, the Commission does not have power to grant Gegen’s waiver request.

Rate adjustments based on changing demand are not just or reasonable

19. Furthermore, “[e]very rate made, demanded, or received by any public utility must be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa. C.S. § 1301

20. The Commission determines whether a rate is reasonable based upon whether the public utility receives a fair rate of return on the value of the property it uses to provide its service. Barasch v. Pennsylvania Public Utility Commission, 532 A.2d 325 (Pa. 1987)

21. And “the public is entitled to demand ... that no more be exacted from it for the use of [utility property] than the services rendered by it are reasonably worth.” Barasch at 335

22. “In fixing any rate of a public utility engaged exclusively as a common carrier by motor vehicle, the Commission may, in lieu of other standards established by law, fix the fair return by relating the fair and reasonable operating

expenses, depreciation, taxes and other costs of furnishing service to operating revenues.” 66 Pa. C.S. §1311(d)

23. Accordingly, unless Gegen can demonstrate that increased demand for its service results in higher operating costs, it cannot establish that its use of “surge pricing” is “just” or “reasonable.”

The requested waiver is not necessary

24. Finally, even if motor carriers were permitted to make automatic adjustments in their rates, limousine carriers do not need real time flexibility to make such adjustments because they operate on an advance reservation basis only and thus, unlike call or demand carriers, can anticipate changes in demand.

The requested waiver will undermine the Commission’s classification scheme

25. Notwithstanding Gegen’s history of violations, the Commission should not grant Gegen authorization to charge rates based on actual time and distance because it would eliminate a fundamental distinction between limousine service and call or demand service.

26. It is in the best interest of the public and the taxicab and limousine industries for the Commission to maintain this distinction.

27. As noted, limousine service is provided on an advance reservation basis only and customers are charged for the amount of time that they have

reserved the use of the vehicle, without regard to the number, length or duration of trips provided.

28. In contrast, call or demand service is provided on the basis of immediate demand and customers are charged for the actual time or distance of the trip provided.

29. The Commission's limousine tariff restrictions impose no hardship for the public or for limousine carriers that are operating in compliance with the Public Utility Code, the Commission's regulations and the terms of their certificates.

30. Gegen seeks authorization to charge rates traditionally used by call or demand carriers because it is currently providing unauthorized call or demand service and the Commission's limousine tariff restrictions make such service unprofitable.

31. This is not a sufficient basis for granting a waiver.

Gegen's proposed tariff does not comply with basic tariff requirements

32. Gegen's proposed tariff does not comply with 52 Pa. Code §23.32, in that it fails to state rates and charges in terms of dollars and cents per unit and fails to state the exact rules that govern the calculation of fares.

Germantown's standing to intervene

33. Germantown has standing to intervene in this matter because granting the requested waiver will have a direct adverse impact on its operations.

34. The granting of the waiver will effectively grant Gegen authorization to provide call or demand service without requiring it to follow the proper procedure and without giving Germantown, and other call or demand carriers, an opportunity to protest.

35. Germantown has an interest in preserving the Commission's classification scheme for motor carriers because it prevents unlawful competition from other classes of motor carriers.

36. Gegen is already competing unfairly with Germantown by providing unauthorized call or demand service and by failing to adhere to its current tariff on file with the Commission and the granting of the waiver petition may serve to legitimate its operations.

WHEREFORE, Potential Intevenor, Germantown Cab Company seeks leave to intervene in this matter and respectfully requests that the Petition be published in the Pennsylvania Bulletin to put other interested call or demand and limousine carriers on notice of the proposed waiver and to refer this matter an administrative law judge for further proceedings.

Respectfully submitted,

Michael S. Henry

Michael S. Henry
Attorney for Potential Intervenor
Germantown Cab Company

Dated: April 27, 2015

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I have this day served a true and correct 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), via first class mail, postage prepaid:

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555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

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Commonwealth Keystone Building
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Harrisburg, PA 17105-3265

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