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May 13, 2015

VIA E-FILING

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

Re: Petition of Gegen, LLC For Waiver of the Commission's Limousine Tariff
Regulations at 52 Pa. Code § 29.334; Docket No. P-2015-2474633

Dear Secretary Chiavetta:

On behalf of Gegen, LLC, I am electronically filing the Answer of Gegen, LLC in Opposition to Petition to Intervene of Germantown Cab Company, in the above-captioned matter. Please note that in this Answer, Gegen, LLC suggests an alternative proposal for the Commission's consideration, which would entail approval of a pilot program for Allegheny County by June 11, 2015.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF GEGEN, LLC IN OPPOSITION TO
PETITION TO INTERVENE OF GERMANTOWN CAB COMPANY**

Pursuant to 52 Pa. Code § 5.43, Gegen LLC ("Gegen"), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, hereby files an answer, pursuant to 52 Pa. Code § 5.66, in opposition to the Petition to Intervene filed by Germantown Cab Company ("Germantown Cab") on April 27, 2015. In support hereof, Gegen avers as follows:

I. INTRODUCTION

1. Delaying this unopposed proceeding to permit Germantown Cab to challenge Gegen's Petition for Waiver ("Waiver Petition") seeking flexibility to establish market-based rates for limousine services arranged through the Internet and mobile application ("App") developed by Uber Technologies, Inc. would stifle innovation, growth and competition throughout Pennsylvania, to the detriment of the riding public who appreciate choices in the manner in which they arrange transportation services.

2. As a call or demand carrier, Germantown Cab does not have standing to intervene in this proceeding and lacks any direct, immediate or substantial interest in the waiver of limousine tariff regulations under the limited circumstances described by Gegen's Waiver Petition. Moreover, Germantown Cab's Petition raises issues that go well beyond the scope of the Waiver Petition, which is inappropriate when seeking intervention.

3. Gegen properly served its Petition on the statutory advocates in accordance with the Commission's regulations at 52 Pa. Code § 5.41, and no other service was required. Publication in the *Pennsylvania Bulletin*, as suggested by Germantown Cab, is unnecessary when a party seeks a waiver of existing regulations, particularly when interested parties have full access to the Commission's electronically available new case and daily actions through which they may learn about filings that are made with the Commission in which they may have an interest.

4. Evidentiary hearings, as proposed by Germantown Cab, are unwarranted since neither Gegen's Waiver Petition nor Germantown Cab's Petition to Intervene raise any material issues of fact. Rather, Gegen's Waiver Petition raises policy issues concerning the public benefits of flexible ratemaking for limousine services arranged through the App, which the Commission may address as a legal matter. Therefore, holding hearings on the Waiver Petition would be a waste of judicial and administrative resources.

5. While Gegen continues to request the relief sought by the Waiver Petition filed on March 30, 2015, which is fully supported by the arguments therein, Gegen offers the Commission an alternative proposal through this Answer opposing Germantown Cab's Petition to Intervene. Specifically, Gegen proposes that if the Commission determines that additional time is needed to evaluate its Waiver Petition from a statewide perspective, a solution would be to expeditiously permit a two-year pilot program in Allegheny County. Under such a pilot program, Gegen would partner with certificated limousine providers who have authority to operate in Allegheny County and would file tariffs with the Commission on one day's notice that mirror the terms and conditions described in Gegen's Waiver Petition. Specifically, these tariffs would describe the basis for establishing applicable charges and note the transparency that would

be afforded to consumers to obtain real-time applicable rates and to request estimated fares through the App.

6. Such a pilot program would allow Gegen to immediately focus on the need that it has identified in Allegheny County for flexible limousine rates and to partner with existing certificated limousine providers to deliver services that are in public demand. Since Germantown Cab operates only in parts of Philadelphia and Montgomery Counties, any suggestion of a direct, substantial interest in this proceeding is wholly eliminated. Under this alternative proposal, Gegen respectfully seeks Commission approval by June 11, 2015. If the Commission elects to focus on Allegheny County in the short term, the remaining Waiver Petition could be considered over the following summer timeframe on a statewide basis and/or additional counties could be added to the pilot program.¹

II. STANDARD OF REVIEW FOR INTERVENTION

7. In order to intervene in a proceeding, a party must show that it has: (1) “[a] right conferred by statute of the United States or of the Commonwealth”; (2) “[a]n interest which may be directly affected and which is not adequately represented by existing participants, and as to which the Petitioner may be bound by the action of the Commission in the proceeding”; or, (3) “[a]nother interest of such nature that participation of the petitioner may be in the public interest.” 52 Pa. Code § 5.72(a).

8. The Commission has also held that, in order to have standing in any proceeding before the Commission, the person or entity seeking standing must have “a direct, immediate and substantial interest in the subject matter of [the] proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by*

¹ Depending on how the Commission handles this alternative proposal, Gegen may file separate Petitions at a later date to request the implementation of similar pilot programs in other parts of Pennsylvania.

sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A-212285F0046/47 and A-210870F01 (July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996). This threshold discourages frivolous, harrassing and costly judicial actions that delay proceedings. *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distrib. Corp.*, 73 Pa. P.U.C. 552, 121 P.U.R.4th 434 (1990).

9. For its interest to be direct, immediate and substantial, Germantown Cab must show: (a) that it is adversely affected by the relief sought by Gegen's Waiver Petition; (b) that there is a close causal nexus between its asserted injury and the relief sought by Gegen's Waiver Petition; and (c) that it has a discernible interest other than the general interest of all citizens. *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996); *In re El Rancho Grande, Inc.*, 437 A.2d 1150 (Pa. 1981); *Empire Coal Mining & Development, Inc. v. Department of Environmental Resources*, 623 A.2d 897 (Pa. Cmwlth. 1993). Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. *Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board*, 467 A.2d 311 (Pa. 1983).

III. ARGUMENT

A. Germantown Cab has no standing to intervene in this unopposed proceeding as it has failed to show an interest that is direct, immediate and substantial.

10. Any eligibility of Germantown Cab to intervene in this uncontested proceeding must be predicated upon a showing that its interest is direct, immediate and substantial. Further,

Germantown must show that its interests are not adequately represented by existing participants and that it will be bound by the action of the Commission in this proceeding, or that its participation is otherwise in the public interest.

11. Germantown Cab has failed to satisfy these burdens, particularly since its interest is not direct, immediate and substantial. Importantly, an order entered by the Commission adjudicating Gegen's Petition will not be binding on Germantown Cab since the Petition addresses limousine tariffs and Germantown Cab is a call or demand carrier. Further, Germantown Cab's participation is not in the public interest since it would only serve to delay the delivery of innovative and competitive options for limousine riders. Particularly in the absence of any opposition by the statutory advocates, the Commission is well-equipped to evaluate the Petition without the input of Germantown Cab.

12. Additionally, Germantown Cab has failed to demonstrate a direct interest in the proceeding. In attempting to justify standing, Germantown Cab alleges that the requested waiver of limousine tariff regulations would "effectively grant Gegen authorization to provide call or demand service." Petition to Intervene ¶34. Contrary to this averment, however, nothing in Gegen's Waiver Petition would have a direct (or even indirect) impact on call or demand operations since it is solely limited to seeking flexibility in the way in which rates are charged for limousine services arranged through the App. It is not seeking to provide call or demand services and specifically notes that the limousine services would be provided in luxury type vehicles.

13. Germantown Cab has also failed to show an immediate interest in the proceeding. Seeking to avoid additional competition from the limousine industry, Germantown Cab seems to suggest that approval of Gegen's Waiver Petition may take business away from it. Speculation

about the effect of a waiver of the limousine tariff regulations is insufficient upon which to confer standing. In any event, it should be the interests of consumers that are paramount to the Commission in considering Gegen's Waiver Petition. If Germantown Cab ultimately loses business to limousine providers because they are delivering a service that is desired by the riding public, it is up to Germantown Cab to determine how to best protect its business model going forward. That is not the obligation of the Commission.

14. Germantown Cab has further failed to show that its interest is substantial. While Germantown Cab has suggested that granting the requested waiver will allow Gegen to unfairly compete with call or demand carriers, it has not explained how flexibility in setting limousine rates to reflect market conditions would place Gegen or its partners in competition with call or demand carriers. Gegen and its partners would be providing services in luxury type vehicles at rates that reflect market conditions. The riding public that prefers to use street hail, ride in non-luxury type vehicles and pay traditional taxicab rates would have no ability to use the App to arrange limousine services.

15. As Germantown Cab has failed to establish the requisite standing to participate in this unopposed proceeding, the Commission should deny the Petition to Intervene and approve Gegen's Waiver Petition.

B. The issues raised by Germantown Cab are red herrings that must be rejected by the Commission in their entirety.

16. Even if the Commission grants Germantown Cab's Petition to Intervene, it is well-settled that a petition to intervene may not be used to expand the issues in a proceeding that are not addressed in the initiating filing. *See Metropolitan Edison Co. Energy Efficiency and Conservation Plan, et al.*, Docket No. M-2009-2092222 *et al.* (ALJ Salapa Order Granting Intervention entered July 31, 2009) (recognizing that a "grant of intervention does not equal an

open invitation to discovery” and limiting the scope of intervention to the plans at issue before the Commission; *Id.* (ALJ Salapa Order entered August 2, 2009) (reiterating that the scope of intervention is limited to the original scope of plans before the Commission); *see also Thompson v. Deal*, 49 F. Supp. 366 (D.D.C. 1943).

17. By Germantown Cab’s Petition to Intervene, it raises issues that go well beyond the scope of Gegen’s Waiver Petition and must be rejected in their entirety. Specifically, Germantown Cab offers bald assertions about rates being charged by Gegen for limousine services currently being provided in the Philadelphia suburbs pursuant to its certificate of public convenience issued at Docket No. A-2012-2339043 and refers to a “history of violations” by Gegen. Petition to Intervene ¶16. Not only do these allegations go beyond the scope of the Gegen Waiver Petition, Germantown Cab does not cite to a single complaint or adjudication involving Gegen’s limousine rates or any other regulatory issue.

18. The legal issues raised by Germantown Cab in response to Gegen’s Waiver Petition likewise have no merit. Referring to Section 1307 of the Public Utility Code, 66 Pa. C.S. § 1307 (“Code”), Germantown Cab argues that common carriers may not establish a sliding scale of rates or other method for automatic adjustment of rates. Gegen’s Waiver Petition does not seek permission to establish an automatic adjustment clause of the type envisioned by Code Section 1307. Rather, it seeks flexibility to effectively balance supply and demand and charge rates that reflect market conditions, thereby optimizing service to the riding public that chooses to arrange limousine services through the App. Recognizing the inherent benefits of flexible ratemaking, the Commission has already permitted this type of ratemaking for transportation network companies. *See Applications of Rasier-PA LLC for Experimental Service of Shared-*

Ride Network, Docket Nos. A-2014-2416127 and A-2424608 (Orders entered January 29, 2015 and Tariffs filed March 2, 2015) (“*Rasier-PA Orders*”).

19. Referring to Code Sections 1301 and 1311, Germantown Cab also claims that rate adjustments based on changing demand are not just or reasonable. Again, these arguments are meritless since Commission has already exercised its statutory authority under these provisions to approve market-based rates for transportation services arranged through the App. *See Rasier-PA Orders*.

20. Germantown Cab further seeks to maintain a distinction between the taxicab and limousine industries in the way that rates are charged. In advancing this argument, Germantown Cab seeks to avoid competition from the limousine industry and offers no good public policy reason for unduly limiting the way in which limousine providers price their services. Moreover, under Gegen’s proposal, the rates charged for limousine services would not mirror taxicab rates but rather would reflect market conditions. Also, the types of vehicles that are used would continue to distinguish limousine from call or demand services.

IV. CONCLUSION

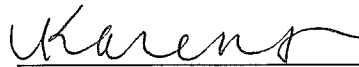
21. By granting the relief requested by Gegen in the Waiver Petition, the Commission can promote the use of technology and innovation to give consumers choices in the way that they arrange limousine services. As part of an already competitive industry, limousine carriers using the App would be unduly restricted by the existing regulations that limit rates to time and require advance notice of changes. Paving the way for more competition in the limousine industry, particularly given the transparency of the App in disclosing applicable charges to the riding public, the Commission can ensure that Pennsylvanians have access to reliable and affordable limousine services and receive optimum benefits from advancements in technology.

22. While Gegen continues to request the relief sought by the Waiver Petition filed on March 30, 2015, which is fully supported by the arguments therein, Gegen offers the Commission an alternative proposal through this Answer opposing Germantown Cab's Petition to Intervene. Specifically, Gegen proposes that if the Commission determines that additional time is needed to evaluate its Waiver Petition from a statewide perspective, a solution would be to expeditiously permit a two-year pilot program in Allegheny County. Under such a pilot program, Gegen would partner with certificated limousine providers who have authority to operate in Allegheny County and would file tariffs with the Commission on one day's notice that mirror the terms and conditions described in Gegen's Waiver Petition. Specifically, these tariffs would describe the basis for establishing applicable charges and note the transparency that would be afforded to consumers to obtain real-time applicable rates and to request estimated fares through the App.

23. Such a pilot program would allow Gegen to immediately focus on the need that it has identified in Allegheny County for flexible limousine rates and to partner with existing certificated limousine providers to deliver services that are in public demand. Since Germantown Cab operates only in parts of Philadelphia and Montgomery Counties, any suggestion of a direct, substantial interest in this proceeding is wholly eliminated. Under this alternative proposal, Gegen respectfully seeks Commission approval by June 11, 2015. If the Commission elects to focus on Allegheny County in the short term, the remaining Waiver Petition could be considered over the following summer timeframe on a statewide basis and/or additional counties could be added to the pilot program.

WHEREFORE, Gegen LLC respectfully requests that the Commission deny the Petition to Intervene filed by Germantown Cab Company and grant its Petition for Waiver of the Commission's Limousine Tariff Regulations at 52 Pa. Code § 29.334, or alternatively, grant the Petition for Waiver in part to permit Gegen to immediately launch a pilot program in Allegheny County where it partners with certificated limousine providers to implement flexible ratemaking for limousine services arranged through the App.

Respectfully submitted,



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Dated May 13, 2015

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