

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF
FABIAN TRANSPORTATION, INC.
NUMBER A-2015-2471761

ANSWER OF
J & J LEASING & RENTALS, INC.
TO THE
PRELIMINARY OBJECTION
(*styled as Motion To Dismiss*)
TO THE PROTEST OF
J & J LEASING & RENTALS, INC.

Comes now, Protestant, J & J Leasing & Rentals, Inc. (hereinafter referred to as J&J or Protestant), with address and place of business as 445 Business Park Lane, Allentown, Pennsylvania 18109, by and through its attorney, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission (hereinafter referred to as Commission) and the requirements of 52 Pa. Code §3.381(c), and of 52 Pa. Code § 5.101(f), submits this, its Answer to the Preliminary Objection (*styled as Motion To Dismiss*) To The Protest of J&J (hereinafter referred to as “Preliminary Objection”) of Applicant to the protest of J&J in the above captioned application proceeding.

ANSWER TO PRELIMINARY OBJECTION (*Styled at Motion To Dismiss*) OF APPLICANT

1. The filing date and content of Applicant’s instant application set forth in Paragraph 1 of the Preliminary Objection is neither a legal nor factual basis for the Preliminary Objection to which J&J can respond herein, and, therefore, leaves Applicant to its proofs of same.
2. The publication of Applicant’s instant application in the Pennsylvania Bulletin and the deadline for filing protests set forth in Paragraph 2 of the Preliminary Objection is neither a legal

nor factual basis for the Preliminary Objection to which J&J can respond herein, but J&J admits same.

3. J&J admits its protest to the instant application was timely filed and served on April 22, 2015; and avers its protest speaks for itself as a document in which J&J stated the basis of its protest was adverse impact, conflicting authority held by J&J, lack of public need for the instant application, and a challenge to Applicant's fitness to perform the proposed operations in a lawful and safe manner. J&J further avers that, pursuant to 52 Pa. Code § 5.101(d), the timely filing and service of J&J's protest to the instant application required Applicant's filing of its preliminary objections by May 12, 2015.

4. As stated in Exhibit A to its protest, J&J admits it currently holds airport transfer operating authority from this Commission to transport persons from points in the counties of Lehigh and Northampton to the Lehigh Valley International Airport, but also avers that holds operating authority from this Commission to transport persons in call and demand service, limousine service, and paratransit service between points in Lehigh and Northampton counties, and from points in said counties to points in Pennsylvania, and return.

5. As stated in its protest and in Exhibit A to its protest, J&J admits it does not hold airport transfer authority to serve the Harrisburg International Airport or the Philadelphia International Airport, but J&J avers it does hold limousine, call or demand service, and paratransit authority to serve the Harrisburg International Airport or Philadelphia International Airport.

6. J&J denies it lacks standing to protest the instant application and Applicant's request to serve the Philadelphia International Airport. Accordingly, J&J avers that: **(a)** it has standing

to protest the instant application since it possesses passenger authority to serve the territory sought in the instant application; **(b)** the case law cited by Applicant in Paragraph 6 of its Preliminary Objection is factually and procedurally inapplicable to the instant proceeding; **(c)** the statutory law cited by Applicant in Paragraph 6 of its Preliminary Objection is inapplicable to the instant proceeding; and **(d)** and the regulatory case law cited by Applicant in Paragraph 6 of its Preliminary Objection is inapplicable to the instant proceeding. J&J further avers that its protest satisfied and contained all the requisites for a protest as set forth in 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52.

7. As stated in its protest and in Exhibit A to its protest, J&J admits it does not hold airport transfer authority to serve the Harrisburg International Airport or Philadelphia International Airport, but J&J avers it does hold limousine, call or demand service, and paratransit authority to serve the Philadelphia International Airport and Lehigh Valley International Airport; and holds airport transfer authority to serve the Lehigh Valley International Airport. Accordingly, J&J further avers that it holds some of the authority in conflict with the service sought in the instant application, and it is adversely affected, directly and potentially, the Applicant's instant application.

8. The contents of Chapter 3 of Title 52 of the Pennsylvania Code set forth in 52 Pa. Code § 3.381(c)(1)(i)(A)(VI) speak for themselves, and J&J avers that its protest satisfied and contained all the requisites for a protest as set forth in 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52.

9. J&J denies Applicant's allegations contained in Paragraph 9 of its Preliminary Objections. J&J avers that its protest satisfies the Commission's requirements set forth at 52 Pa.

Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52. J&J further avers that the remainder of Applicant's statements contained in Paragraph 9 of its Preliminary Objection, regarding the predicated purpose of J&J's protest to "freeze out health competition, is neither a legal nor factual basis to which J&J can respond herein, contains unsubstantiated hearsay, is argumentative, and, therefore, leaves Applicant to its proofs of same.

10. J&J denies Applicant's allegations contained in Paragraph 10 of its Preliminary Objection. J&J avers J&J's protest is legally sufficient, and meets and satisfies all regulatory standards set forth in 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52.

11. J&J denies Applicant's allegations contained in Paragraph 11 of its Preliminary Objection. J&J's avers its protest statements satisfy this Commission's requirements set forth at 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52.

12. J&J denies Applicant's allegations contained in Paragraph 12 of its Preliminary Objection. J&J avers the statements set forth in Paragraph 12 of the Preliminary Objection is neither a legal nor factual basis for the Preliminary Objection to which J&J can respond herein, and, therefore, leaves Applicant to its proofs of same. J&J avers that its protest statements and exhibit satisfy this Commission's requirements set forth at 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52. J&J further avers that, in view of the paucity of information supplied by Applicant in its application as to Applicant's present operations, or its technical and financial capabilities, or public need, J&J's protest makes sufficient averments as to Applicant's fitness, public need, and conflicting operating authority held by J&J.

13. J&J denies Applicant's allegations contained in Paragraph 13 of its Preliminary Objection. J&J avers that its protest satisfies this Commission's requirements set forth at 52 Pa.

Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52.

In view of the lack of factual information supplied by Applicant in its application as to Applicant's present operations, or its technical and financial capabilities, and public need, J&J's protest makes sufficient and relevant averments as to Applicant's fitness, no public need shown, conflicting operating authority held by J&J, all which are as specific as possible in addressing the paucity of information supplied in the application. Moreover, J&J's protest satisfied and contained all the requisites for a timely filed protest as set forth in 52 Pa. Code § 3.381(c), 52 Pa. Code § 5.51(a), and 52 Pa. Code § 5.52, and, as such is a legally sufficient pleading under this Commissions Rules of Practice and Procedure.

However, as stated in Paragraph 3 above, pursuant to 52 Pa. Code § 5.101(d), the admitted timely filing and service of J&J's protest to the instant application, on April 22, 2015, required Applicant's filing of its preliminary objections by May 12, 2015. Therefore, Applicant's Preliminary Objection, styled as its Motion To Dismiss The Protest to J & J Leasing & Rentals, Inc., should be stricken and not permitted as it was filed out of time – beyond the permissible twenty (20) days from the admitted April 22, 2015 date of service.

CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, J&J seeks the relief set forth in this Commission's rules and regulations, and respectfully prays Applicant's Preliminary Objection, or Motion To Dismiss The Protest to J & J Leasing & Rentals, Inc., be stricken and denied.

Dated: May 27, 2015

By: s/Kenneth A. Olsen
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document,
Answer of J & J Leasing & Rentals, Inc. To Applicant's Motion To Dismiss The Protest of J & J
Leasing & Rentals, Inc., upon the parties listed below, in accordance with the requirements of 52
Pa. Code § 1.54 (relating to service by a party).

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120
(Via eFiling)

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(Via First Class Mail, postage prepaid)

Dated: May 27, 2015

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