

May 20, 2015

**Via Electronic Filing – Refiled with Corrected Docket Number**

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

**Re: Docket No. A-2015-2471761  
Application of Fabian Transportation, Inc.  
Motion to Dismiss the Protest of J & J Leasing & Rentals, Inc.**

Dear Secretary Chiavetta:

Attached for filing is Fabian Transportation's Motion to Dismiss the Protest of J & J Leasing & Rentals, Inc. ("Protestant") in the above captioned proceeding.

A copy of the attached Motion to Dismiss has been forwarded to the Protestant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris  
Debra L. Roscioli

MAM/jm  
Enclosure

cc: Kenneth A. Olsen, Esquire [w/enc.]  
Leandro Brito [w/enc.]

**Re: Docket No. A-2015-2471761  
Application of Fabian Transportation, Inc.  
Motion to Dismiss the Protest of J & J Leasing & Rentals, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**Via First Class Mail**  
Kenneth A. Olsen, Esquire  
33 Philhower Road  
Lebanon, NJ 08833

*Counsel for J & J Leasing & Rentals, Inc.*

Dated: May 20, 2015



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Margaret A. Morris, Esquire  
Debra L. Roscioli, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Fabian Transportation, Inc.

Docket No. A-2015-2471761

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that if you do not file a written response answering the enclosed Motion to Dismiss of Fabian Transportation, Inc. within ten (10) days from service of this notice, the facts set forth by Fabian Transportation, Inc. in the Motion to Dismiss may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Fabian Transportation, Inc., Margaret A. Morris, Esquire, and where applicable the Administrative Law Judge presiding over the issue.

**File with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building – 2 North  
P.O. Box 3265  
Harrisburg, PA 17105

**With a copy to:**

Margaret A. Morris, Esquire  
Debra L. Roscioli, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Dated: May 20, 2015



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Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Debra L. Roscioli, Esq.  
Attorney ID No. 91014  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 tel.  
(215) 495-6600 fax

[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Counsel for Fabian Transportation, Inc.



4. Protestant currently holds authority to transport, as a common carrier by motor vehicle, persons, in airport transfer service, from points in the counties of Northampton and Lehigh to the Lehigh Valley International Airport under Certificate No. A-00105282, F.4.

5. Protestant does not hold authority to serve either the Philadelphia International Airport or the Harrisburg International Airport.

## **II. The Protest Should Be Dismissed For Lack of Standing.**

6. Protestant lacks standing to protest the Application. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Ass'n v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991). Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-284 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993). A general interest in compliance with the law is insufficient to confer standing to protest an application. Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pennsylvania Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

7. Protestant does not hold authority to provide transportation service to or from the Philadelphia International Airport or Harrisburg International Airport. Well-established Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by an applicant in order to have standing to protest an application. *Application of Germantown Cab Company*, Docket No. A-2012-2294922 (Commission Final Order entered November 9, 2012).

**III. The Protest Should Be Dismissed for Failure to Comply with Commission Regulations.**

8. 52 Pa. Code § 3.381(c)(1)(i)(A)(iv) provides that any protest filed with the Commission must set forth:

A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

9. The Protest fails to meet this standard and is predicated on nothing more than a desire to freeze out healthy competition, with, as it states explicitly, "jeopardizing [J&J Leasing & Rental's] service to the public. . ."

10. In addition, the Protest incorrectly states that the Applicant lacks the necessary financial and technical fitness by failing to include various documents and information. The Commission's regulations do not require that such documents be attached to applications.

11. Moreover, 52 Pa. Code § 3.381(c)(1)(i)(A)(V) provides that any protest filed with the Commission must set forth:

A list of all Commission docket numbers under which the protestant operates, *accompanied by* a copy of any portion of the protestant's authority upon which its protest is predicated. (*Emphasis added*).

12. The Protest filed in this case is not accompanied by a copy of any portion of its authority upon which its Protest is predicated. The Commission has for many years and on numerous occasions held that a failure to attach a copy of a protestant's existing authority to its protest warrants dismissing the defective protest. *Application of RIZK-CO-ZANN Foods Corporation t/a International Food Mart*, Docket Number A-00123650F0002, (Commission Final Order entered July 28, 2009).

13. In this case, the Protest filed by J&J Leasing & Rentals, Inc. is defective on its face, as well as deficient in omitting required attachments mandated by 52 Pa. Code §

3.381(c)(1)(i)(A)(V). Consequently, Fabian's Motion should be granted and the Protest dismissed.

WHEREFORE, Applicant, Fabian Transportation, Inc., respectfully requests that the Commission grant this Motion to Dismiss the Protest of J & J Leasing & Rentals, Inc., and refer the Application to the Commission's Bureau of Transportation and Safety for review and resolution pursuant to 52 Pa. Code § 3.381(c)(1)(iii)(A).

Respectfully submitted,

Dated: May 20, 2015



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Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Debra L. Roscioli, Esq.  
Attorney ID No. 91014  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 tel.  
(215) 495-6600 fax  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Counsel for Fabian Transportation, Inc.

Docket No. A-2015-2471761  
In re: Application of Fabian Transportation, Inc.

Attachment 1

Protest of J & J Leasing & Rentals, Inc.



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN RE: APPLICATION OF :  
FABIAN TRANSPORTATION, INC. : Docket No. A-2015-2471761  
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**PROTEST OF J & J LEASING & RENTALS, INC.**

Comes now, Protestant, J & J Leasing & Rentals, Inc., 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 Commission, submits this, its Protest, to the above captioned Application, for a certificate of public convenience, and states the basis of which is as follows:

1. Applicant's name and Application docket number are: Fabian Transportation, Inc., 444 North 11<sup>th</sup> Street, Lebanon, PA 17046, and Docket No. A-2015-2471761.

2. Protestant's business name, address, and telephone are: J & J Leasing & Rentals, Inc., 445 Business Park Lane, Allentown, Pennsylvania 18109, telephone (610) 776-1516.

3. Protestant's attorney's name, address, and telephone are: Kenneth A. Olsen, Esq., 33 Philhower Road, Lebanon, NJ 08833, telephone (908) 832-9207, fax (908) 832-9207.

4. The name and address of Applicant's attorney are presently unknown.

5. The nature of Protestant's interests in the Application and statement of adverse impact upon Protestant and the public is as follows:

(A) The nature of Protestant's interests is the scope of authority sought in the application, with respect to the Lehigh Valley International Airport. Applicant seeks authority to transport persons, in airport transfer service from points in Lebanon County, to the Harrisburg International Airport, Lehigh

Valley International Airport and Philadelphia International Airport.

Protestant presently holds operating authority from this Commission under Certificate of Public Convenience issued in No. A-633859, and operates thereunder to transport as a common carrier, by motor vehicle, persons, in call or demand service, to and/or from points within Lehigh and Northampton Counties. Protestant presently also holds operating authority from this Commission under Certificate No. A-00105282, Folder 1, Am-A and Am-C, to transport as a common carrier, by motor vehicle, persons, in limousine service, between points in the counties of Lehigh and Northampton, and from points in said counties to points in Pennsylvania, and return; and from points in the counties of Carbon, Luzerne and Monroe, and from points in said counties to points in Pennsylvania, and return. Moreover, Protestant presently holds operating authority under Certificate No. A-00105282, Folder 3, to transport as a common carrier, by motor vehicle, persons in paratransit service between points in the Counties of Lehigh and Northampton, and from points in said counties to points in Pennsylvania, and return. Furthermore, Protestant presently holds operating authority under Certificate No. A-00105282, Folder 4, to transport persons in airport transfer service, from points in the Counties of Lehigh and Northampton, to the Lehigh Valley International Airport.

(B) The adverse impact of the Application on Protestant is that, if Applicant is granted the authority to transport persons, in airport transfer service, to the Lehigh Valley International Airport, Allentown, PA, an area in which Protestant currently renders service, it will adversely affect Protestant's ability

to render a airport transfer serviceto the public in its authorized territory. A grant of the Application will jeopardize Protestant's traffic in a substantial portion of its authorized territory, thereby jeopardizing its service to the public. There is no need for the certificate of public convenience requested.

(C) Further, Protestant challenges the Applicant's fitness to perform the proposed service due to: (1) Applicant's failure to demonstrate that it has sufficient capital, equipment, facilities, and other resources necessary to safely and lawfully serve the requested territory; (2) Applicant's failure to demonstrate it and its employees have sufficient technical expertise and experience to serve the requested territory; (3) Applicant's failure to demonstrate its ability to secure adequate and continuous insurance coverage; and (4) Applicant's failure to demonstrate it has appropriate plans or policies required to comply with Commission orders and regulations, the Commission's driver and vehicle safety regulations and service standards, and the Commission's regulations regarding driver criminal and moral turpitude convictions history.

6. The Commission's docket numbers under which Protestant operates its authorized paratransit, limousine, call and demand service, and airport transfer service is Certificate No. A-633859; Certificate No. A-00105282, Folder 1, Am-A and Am-C; and Folders 3 and 4 (an abstract of which is attached hereto as Exhibit A).

7. A restriction to the Application that would protect Protestant's interest herein and result in the withdrawal of the instant Protest would be for Applicant to restrict against

providing airport transfer service to the Lehigh Valley International Airport, as such would not adversely impact upon the present operations and authority of Protestant.

8. Pursuant to 66 Pa. C. S. § 333(c), demand is hereby made upon Applicant to provide Protestant's attorney with a list identifying the names, addresses, and group or company affiliation of any or all witnesses expected to testify in this Application proceeding, together with the subject matter of their expected testimony and supporting documents.

WHEREFORE, the above premises be considered, Protestant respectfully prays this (corrected) Application be dismissed and denied.

Dated: April 22, 2015

By: s/ Kenneth A. Olsen  
Kenneth A. Olsen  
Attorney for Protestant  
33 Philhower Road  
Lebanon, New Jersey 08833  
Phone (908) 832-9207  
Pennsylvania Attorney ID No. 29681

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, 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  
400 North Street  
Harrisburg, PA 17120  
(Via eFiling)

Fabian Transportation, Inc.  
444 North 11<sup>th</sup> Street  
Lebanon, PA 17046  
Applicant  
(Via First Class Mail, postage prepaid)

Dated: April 22, 2015

By: s/ Kenneth A. Olsen  
Kenneth A. Olsen  
Attorney for Protestant  
33 Philhower Road  
Lebanon, New Jersey 08833  
Phone (908) 832-9207  
Pennsylvania Attorney ID No. 29681

**EXHIBIT A**

Certificate No. A-00105282  
Folder 1, Am-A and Am-C

To transport as a common carrier, by motor vehicle, persons, in limousine service, between points in the Counties of Lehigh and Northampton, and from points in said counties to points in Pennsylvania, and return; and

To transport as a common carrier, by motor vehicle, persons, in limousine service, between points in the Counties of Carbon, Luzerne and Monroe, and from points in said counties to points in Pennsylvania, and return.

Certificate No. A-633859

To transport as a common carrier, by motor vehicle, persons, in call or demand service, to and/or from points within Lehigh and Northampton Counties.

Certificate No. A-00105282, Folder 3

To transport as a common carrier, by motor vehicle, persons, in paratransit service between points in the Counties of Lehigh and Northampton, and from points in said counties to points in Pennsylvania, and return.

Certificate No. A-00105282, Folder 4

To transport as a common carrier, by motor vehicle, persons, in airport transfer service, from points in the Counties of Lehigh and Northampton, to the Lehigh Valley International Airport.