

BEFORE THE
PENNSYLVANIA UTILITY COMMISSION

IN THE MATTER OF:
APPLICATION OF EAST COAST RESOURCES, LLC
NUMBER A-2014-2453533

EXCEPTIONS

OF

JOINT PROTESTANTS
EZ TAXI, LLC; UNITED CAB, LLC; GOOD CAB, LLC;
AND KEYSTONE CAB SERVICE, INC.

TO

INITIAL DECISION OF
HONORABLE DAVID A. SALAPA, ALJ
DATED: 06/08/2015; SERVED: 06/19/2015

(Document Filed Electronically)

Dated: July 8, 2015

Filed by:

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EZ Taxi, LLC; United Cab, LLC,
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Keystone Cab Service, Inc.*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of East Coast Resources, LLC	:	
a limited liability company of the	:	
Commonwealth of Pennsylvania, for the right to	:	
begin to transport, by motor vehicle, persons	:	A-2014-2453533
in the experimental service of ride sharing	:	
network for passenger trips, from points in	:	
Cumberland, Dauphin, Lancaster, Lebanon and	:	
York Counties, to points in Pennsylvania,	:	
and return, excluding service under the	:	
jurisdiction of the Philadelphia Parking Authority	:	

EXCEPTIONS OF JOINT PROTESTANTS EZ TAXI, LLC; UNITED CAB, LLC; GOOD CAB, LLC; AND KEYSTONE CAB SERVICE, INC. TO INITIAL DECISION OF HONORABLE DAVID A SALAPA, ALJ; DATED: 06/08/2015; SERVED: 06/19/2015

Comes now, Joint Protestants EZ Taxi, LLC; United Cab, LLC, Good Cab, LLC; and Keystone Cab Service, Inc., (“Protestants”) by and through their counsel John W. Sweet, Esq. and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission (the “Commission”) and pursuant to the Secretarial Letter issued June 19, 2015 on behalf of the Commission, files this, their Exceptions to the June 8, 2015 Initial Decision of the Honorable David A. Salapa, ALJ, served June 19, 2015, (“Initial Decision”) in the above captioned proceeding concerning the Application of East Coast Resources, LLC (“Applicant”) .

For the purposes of these Exceptions, Protestants adopt the History Of The Proceeding set forth at pages 1 to 3 of the Initial Decision.

I. EXCEPTIONS

1. Protestants except to Conclusions Of Law Numbers 4, 5, and 6.

These conclusions fail to address the potential conflict between the authority held by Protestants and the authority sought by Applicant.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Initial Decision*, at 6 (citing *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. P.U.C. 598, 603 (1991)). The Commission has 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. *Joint Application of Pennsylvania American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A212285F0046/47 and A210870F01 (July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975) (*William Penn*); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. P.U.C. 342 (1993); *Re Equitable Gas Co.*, 76 Pa. P.U.C. 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. P.U.C. 43 (1976); *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996).

Protestants are not required to possess directly conflicting authority with that of the applicant in order to have standing to protest an application for a certificate of public convenience, but need only possess “some operating authority in actual *or potential* conflict, with the authority sought by an applicant.” *Initial Decision*, at 7 (quoting *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, (Initial Decision, Dated: October 12, 1994; Served: December 23, 1994)) (emphasis added).

The regulations provide the Commission with the discretion to apply the regulatory requirements from any of the other classes of transportation authority and to also create additional requirements, depending on the details of the service proposed. 52 Pa.Code §§ 29.351-29.352. Where an application does not explicitly state that there would be any particular restriction on the transportation (i.e. that it would be exclusive or non-exclusive, that the transportation would exclude trips to and from airports or that vans and minivans would only transport one person at a time) and the applicant could use the proposed service to meet nearly any sort of transportation need sought, the application presents at least a potential conflict with authority which provides similar transportation services such as traditional call or demand, paratransit, airport transfer or limousine authority. *Application of Raiser-PA LLC*, A-2014-2416127, Interim Order Denying The Preliminary Objections of Raiser-PA LLC To The Protest Of Executive Transportation Inc. at 6 (ALJs Long & Watson July 1, 2014) (dismissing the applicant’s preliminary objection based on standing).

Although the restrictions on call or demand service are clearly defined under 52 Pa.Code § 29.13 (2), the regulation does not rule out “internet hails” or “hail by app.” The regulation defines call or demand service as, “Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.” Although well defined, the regulation characterizes call or demand service only by the fact that passengers normally hire by hail and telephone, but does not state that this is the exclusive means by which call or demand service may be hired.

A potential conflict between call or demand service and transportation network network company (“TNC”) service is apparent, because the restrictions on experimental authority are not well defined. is vague as to the definition of experimental authority describing only, “Common carrier service for passengers which differs from service as described in any one of the five classes set forth in paragraphs (1)—(5) and is provided in a manner described in the certificate of public convenience of the carrier and is subject to restrictions and regulations as stated in the certificate of the carrier or in this chapter.”⁵² Pa.Code § 29.13 (6). Furthermore section 29.352 does not provide clarity, because it only states that, “Holders of experimental certificates shall abide by an additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate.” ⁵² Pa. Code § 29.352. Therefore, it is impossible to determine at the preliminary objection stage of the application process whether an experimental service will possess actual or

potential conflicting authority to a call or demand service, because the Commission has yet to stipulate the additional regulations and requirements that the Applicant will be required to abide. Before such additional regulations and requirements are set forth by the Commission, the experimental service's authority could potentially conflict with any common carrier authority.

The application in question does not contain any restrictions, other than the type of vehicles and the absence of street hails, that would distinguish the service provided from call or demand service. Although the application specifically states that no service would be provided via street hail, it fails to present any restriction as to hire by telephone. The application states that the service will connect passengers with drivers via an online platform and apps, as well as social media; however, it does not state how these internet based platforms will work. If the internet service simply provides passengers with phone numbers for drivers or dispatch, then the service cannot be distinguished from call or demand service.

In Pennsylvania today, it is common knowledge that most people use cellular telephones or "mobile phones" as their preferred means of communication. The use of an app is on par with hire by telephone, because the "apps" are internet application programs that are downloaded to mobile phones, thus anyone using the app to summon a TNC driver simply using a different function on the same device.

Protestants currently provide local common carrier service for passengers, rendered on an exclusive basis, and passengers normally hire the vehicle and its driver by using their phones' cellular capabilities. Applicant seeks authority in the same

counties to provide local common carrier service rendered on an exclusive basis, and passengers will hire the vehicle and its driver by using their phones' internet capabilities. Thus, Protestants possess authority that is in potential conflict with the authority sought by the applicant, giving Protestants a direct, immediate, and substantial interest in the subject matter of the application such to confer requisite standing to protest the application.

II. CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the above premises being considered, Joint Protestants EZ Taxi, LLC; United Cab, LLC, Good Cab, LLC; and Keystone Cab Service, Inc., seek the relief set forth in this Commission's rules and regulations, and respectfully prays the Commission reject the Initial Decision of the Honorable Administrative Law Judge David A. Salapa, and find as follows:

1. That Protestants have requisite standing to protest the Application of East Coast Resources, LLC.
2. That the Application of East Coast Resources, LLC be remanded to the Honorable Administrative Law Judge David A. Salapa for further proceedings.

Date: July 8, 2015

/s/ JOHN W. SWEET, ESQ.
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Counsel for Joint Protestants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served original and true copies of the foregoing document upon the persons listed below:

VIA U.S. MAIL

Honorable David A. Salapa
Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

William E. Lehman, Esq.
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Dated: June 24, 2015

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