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Via **ELECTRONIC FILING**

August 27, 2015

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

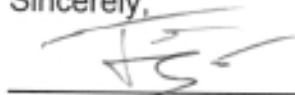
**RE: Application of Amigo Cab, LLC, Docket No. A-2015-2475776.**

Secretary Chiavetta,

Please find enclosed, Applicant's Motion for Judgment on the Pleadings as to the Protest of Autocab, Inc.

Thank you for your time and consideration. Should there be any questions or concerns please do not hesitate to contact me.

Sincerely,

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John W. Sweet, Esq.  
Counsel for Amigo Cab, LLC

cc:

Thomas T. Niesen, Esquire

THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101

Honorable Dennis J. Buckley  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

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Application of Amigo Cab, LLC

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Docket No. A-2015-2475776

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of Amigo Cab, LLC within twenty (20) days from the service of this Notice, the facts set forth in the Motion may be deemed to be true, thereby requiring no further proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to opposing counsel and where applicable the Administrative Law Judge presiding over the case.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Amigo Cab, LLC	:	Commission Docket No.
for Approval to Provide Taxi Service	:	A-2015-2475776
Between Points in the Counties of Berks	:	
and Lancaster to Points in Pennsylvania	:	
and Return	:	

**APPLICANT'S MOTION FOR JUDGEMENT ON THE PLEADINGS AS TO THE PROTEST  
OF AUTOCAB, INC.**

COMES NOW, Applicant Amigo, LLC ("Applicant"), by and through its undersigned counsel, file this Motion for Judgement on the Pleadings, pursuant to Pennsylvania Public Utility Commission (the "Commission") regulations, 52 Pa. Code § 5.102(a), requesting dismissal of the protests filed by Autocab, Inc. ("Autocab") and in support thereof, avers as follows:

**I. HISTORY.**

On or around March 16, 2015, Applicant filed with the Pennsylvania Public Utility Commission (the "Commission") an Application for Motor Common Carrier of Persons upon Call or Demand (Taxi Service), requesting authority to perform taxi service in Berks and Lancaster Counties. The Application was accepted and assigned the the above captioned Commission Docket Number.

On or around May 26, 2015, Protestant Grab-A-Cab, of Berks County, filed a timely protest of the above captioned application. On or around May 29, 2015, Protestants Reading Yellow Cab, Reading Metro Cab, and Reading Checker Cab, all of Berks County, filed timely protests of the above captioned application. On or around

June 3, 2015, Protestant Autocab, Inc. ("Autocab"), of Lancaster County, filed a timely protest of the above captioned Application.

Subsequently, the discovery process commenced. Upon service of discovery, all Berks County Protestants withdrew their protests. On or around July 30, 2015, Protestants Reading Checker Cab, Reading Metro Cab, and Reading Yellow Cab withdrew their respective protests, stating that their concerns had been satisfied. On or around July 31, 2015, Protestant Grab-A-Cab withdrew its protest, citing internal business and economic reasons.

On or around July 6, 2015, a Hearing Notice was issued, scheduling an Initial In Person Hearing on the Application for August 21, 2015 at 10:00 a.m. at Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania.

## **II. AUTOCAB'S PROTEST SHOULD BE DISMISSED FOR LACK OF STANDING**

A Motion for Judgment on the Pleadings is appropriate when the pleadings show that there is no factual dispute and the moving party is entitled to judgment as a matter of law. 52 Pa. Code 52 Pa. Code § 5.102(a). The Commission's Rule of Practice and Procedure at 52 Pa.Code § 5.102 governs motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Employees*

*International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003)

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. P.U.C. 598, 603 (1991). Under the Commission's regulations at 52 Pa.Code § 5.484(a), a presiding officer may perform no duties inconsistent with the act (*i.e.* the Pennsylvania Public Utility Code). 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). 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 Public Utility Commission v. National Fuel Gas Distribution Corp.*, 73 Pa. P.U.C. 552 (1990).

52 Pa. Code 29.71(a) commands that common carrier must paint or affix to every vehicle in operation the name or insignia approved by the Commission. Autocab, Inc. was granted authority to operate as a common carrier in Lancaster County at Certificate Number 00119919 folder 2. However, after reviewing discovery responses and through its own investigation, Applicant has discovered that there are currently no cabs operating under the name Autocab, Inc. anywhere in Pennsylvania. Autocab operates solely under the trade name "Yellow Cab;" however, Autocab has never requested nor been granted permission by the Commission to operate under any trade name. Thus, Autocab does not have any vehicles currently operating in accordance with the Commission's regulations. Therefore, Autocab does not have a direct, immediate and substantial interest in the subject matter of Applicant's application for common carrier service.

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, *See also, Application of Glen Alsace Water Company*, 45 PA PUC 472 (1971), standing denied to uncertificated protestant; *Re Francis M. Bauer*, 50 PA PUC 825 (1977), late-filed protest allowed where protestant had an application for conflicting authority pending; *Re Capitol Bus Company*, 53 PA PUC 590 (1979), call or demand authority conferred no standing to protest scheduled route service application; *Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking*, A-00107696, F.2 (entered February 21, 1989), operations under temporary authority

with permanent authority application pending sufficient to confer standing upon a protestant; *Application of Team Brokerage, Inc.*, A-00105267 (entered March 6, 1985) and *Application of Interstate Express, Inc.*, A00111077 (entered April 1, 1994), certificated common carriers lack standing to protest applications for brokerage authority; and *Application of Commercial Aggregates Transportation and Sales, L.P.*, A-0011085, F0003 (entered June 22, 1994), certificated common carrier lacked standing to continue to prosecute the protest after restrictive amendment eliminated all areas of operating authority between the protestant and the applicant. *Id.*

In order to have standing to protest an Application, the protestant must have some valid operating authority. *Id.* The most recent document entered into Autocab's document folder on file at the Commission's Secretary's file room is a Notice of Suspension of PUC Taxi Operating Authority, issued to Autocab January 14, 2014, for expiration/cancellation of Liability. According to the document, Autocab's Operating Authority was suspended as of January 18, 2014, due to its "failure to maintain evidence of insurance on file with the Commission." This Notice of Suspension is the most recent entry into Autocab's document folder and there is no subsequent Notice to Lift Suspension of PUC Operating Authority on file. The presence of the most recent Notice of Suspension along with the absence of any subsequent notice that the suspension has been lifted indicates that Autocab's Operating Authority is suspended. Thus, Autocab currently holds no operating authority in actual or potential conflict with the authority sought by Applicant.

**IV. CONCLUSION.**

For the reasons stated above, Applicant Amigo Cab, LLC respectfully requests that Autocab, Inc.'s Protest be dismissed, and that Amigo Cab, LLC's Application to begin Call or Demand service in the counties of Berks and Lancaster be referred to the Bureau of Technical Utilities.

Date: 8/27/15

Respectfully Submitted,



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John W. Sweet, Esq.  
620 South 13th Street  
Harrisburg, PA 17104  
*Counsel for Amigo Cab, LLC*



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION

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Application of Amigo Cab, LLC

Docket No. A-2015-2475776

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served original and true copies of the foregoing *Motion for Judgement on the Pleadings* upon the persons listed below:

VIA U.S. MAIL

Thomas T. Niesen, Esquire  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101

Honorable Dennis J. Buckley  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Date: \_\_\_\_\_

8/27/15



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*Counsel for Amigo Cab, LLC*