



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
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September 4, 2015

Via Hand Delivery

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

In re: Docket No. A-2015-2475776
Application of Amigo Cab, LLC

Dear Secretary Chiavetta:

We are counsel to Protestant Autocab, Inc. in the above matter and are filing with this letter its Answer to the Motion (Preliminary Objection) of Applicant Amigo Cab, LLC to Dismiss Protest for Lack of Standing. A copy of the Answer is being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Enclosure

cc: Certificate of Service (w/encl.)
Timothy J. Schwartz (via email, w/encl.)

150904-Chiavetta (Ans to Motion (Prel Obj)).wpd

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Dennis J. Buckley, Presiding

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

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**ANSWER OF PROTESTANT AUTOCAB, INC. TO APPLICANT'S MOTION
(PRELIMINARY OBJECTION) TO DISMISS PROTEST FOR LACK OF STANDING**

AND NOW, comes Autocab, Inc., ("Protestant Autocab"), by its attorneys, and, pursuant to 52 Pa. Code § 5.101, answers the motion (preliminary objection) of Applicant Amigo Cab, LLC ("Applicant Amigo Cab") to dismiss Protestant Autocab's protest for lack of standing. In opposition to the motion (preliminary objection), Protestant Autocab submits as follows:

BACKGROUND

1. This proceeding concerns the Application of Amigo Cab, LLC, filed with the Commission on or about March 16, 2015, to provide call or demand service in Berks and Lancaster Counties.
2. Protestant Autocab provides call or demand service in Lancaster County and filed a timely Protest to the Application on June 3, 2015.
3. By Hearing Notice dated July 9, 2015, an initial hearing was scheduled for September 9, 2015, with Administrative Law Judge Buckley presiding.
4. On or about August 27, 2015, Applicant Amigo Cab filed a motion for judgment on the pleadings as to the protest of Protestant Autocab.

5. In a Prehearing Order dated August 31, 2015, Judge Buckley concluded that the motion for judgment on the pleadings is, in fact, a motion (preliminary objection) to dismiss the *protest for lack of standing*. Judge Buckley directed Protestant Autocab to file an answer to the motion (preliminary objection) by September 8, 2015.

6. In that same Prehearing Order, Judge Buckley continued the September 9, 2015 initial hearing until a later date.

7. By Hearing Notice dated September 2, 2015, the initial hearing was rescheduled for October 14, 2015, with Judge Buckley presiding.

PROTESTANT AUTOCAB HAS STANDING TO PROTEST THE APPLICATION OF APPLICANT AMIGO CAB

8. The application of Applicant Amigo Cab seeks authority to provide call or demand service in Lancaster and Berks Counties.

9. Protestant Autocab is an authorized provider of call or demand service in Lancaster County. The Order of the Public Utility Commission (“Commission”) entered March 9, 2005 at Docket No. A-00119919, F.2, approving its application to provide call or demand authority in Lancaster County and certificate of public convenience of Autocab, Inc. are attached to this answer as Exhibit 1.

10. Protestant Autocab is, in fact, the historic provider of taxicab service in the City of Lancaster and Lancaster County. As explained in the Order entered March 9, 2005, Protestant Autocab had a sister company, Model Management Services, Inc., with service authority in the Lancaster area. The owners of Autocab have been providing transportation services in the Lancaster area for more than 35 years.

11. As a certificated provider of call or demand service in Lancaster County, Protestant Autocab has standing to protest the application of Amigo Cab. Protestant Autocab, as

a certificated provider of call or demand service in Lancaster County, has a direct, immediate and substantial interest in the subject matter of this proceeding. The authority sought by Applicant Amigo Cab is in direct conflict with the certificated authority of Protestant Autocab. The conflict created by Applicant Amigo Cab's Application is clearly stated in the protest of Protestant Autocab filed with the Commission on June 3, 2015. 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. *See William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

12. Protestant Autocab uses the name Yellow Cab of Lancaster in its call or demand business. Contrary to the argument and legal conclusions presented by Applicant Amigo Cab in its motion, the Public Utility Code does not require a certificated provider of utility service to obtain Commission approval to adopt and use a trade name.

13. Protestant Autocab, in fact, operates 26 taxicabs in Lancaster County in full compliance with Commission regulations. The Commission's Transportation Bureau inspects Autocab's taxicabs at least once a year. The Bureau has never (not even one time) questioned Protestant Autocab's use of the YELLOW CAB name.

14. Applicant Amigo Cab's argument that Commission approval is required for a trade name is based entirely on the language 52 Pa. Code Section 29.71. The regulation addresses vehicle marking, not a filing or approval process for using a business name. The language of the regulation, moreover, is somewhat vague. The "approval" wording, upon which Applicant Amigo Cab relies, follows the word "insignia," not the word "name." More important, in terms of the actual wording of the regulation and its practical application, is the "A" docket number, which appears in quotes in the regulation – "Pa.P.U.C. No. A"– and is prominently

displayed on the side of every Autocab taxi vehicle. A picture of an Autocab taxicab is attached to this objection as Exhibit 2.

15. The Commission, in any event, is aware of Protestant Autocab's use of the Yellow Cab name. Protestant Autocab submitted its 2007 rate filing to the Commission as Autocab, d/b/a Yellow Cab of Lancaster. The transmitting cover letter from the rate filing is attached to this objection as Exhibit 3. The "doing business as" name "Yellow Cab of Lancaster" is also shown on Autocab's insurance identification card. A copy of the currently effective insurance card is attached to this objection as Exhibit 4.

16. In sum, Applicant Amigo Cab has failed to present any support for its claim that *Autocab lacks standing to protest Applicant Amigo Cab's application*. Protestant Autocab is an authorized and existing provider of call or demand (taxicab) service in Lancaster County with, presently, 26 taxicabs meeting the taxi service needs of the Lancaster County public. None of the Commission decisions cited by Applicant Amigo Cab on pages 5 and 6 of its motion (preliminary objection) has any application to this proceeding.

17. Finally and in further support of its motion (preliminary objection), Applicant Amigo Cab states that the most recent document entered into Autocab's document folder is a January 2014 notice of suspension for expiration/cancellation of liability insurance and, on the basis of this almost two year old notice, which Applicant Amigo Cab did not provide with its motion (preliminary objection), argues that Protestant Autocab has no current operating authority.

18. Protestant Autocab has evidence of insurance on file with the Commission and its operating authority is not suspended. The insurance company is sometimes late in sending in a new Form E at the beginning of a new year, which is apparently what happened at the end of

2013/beginning of 2014. The notice reflects a timing circumstance with the insurance company, not an actual lapse of insurance. A copy of Protestant Autocab's currently effective insurance card is attached to this objection as Exhibit 4 as set forth above.

CONCLUSION

19. Protestant Autocab is an authorized provider of call or demand (taxicab) service in Lancaster County with, presently, 26 taxicabs meeting the taxi service needs of the Lancaster County public. It has a direct, immediate and substantial interest in the subject matter of this proceeding and standing to participate in it as an active protestant.

WHEREFORE, for the reasons set forth above, Protestant Autocab, Inc. requests that Administrative Law Judge Buckley and the Public Utility Commission deny the motion (preliminary objection) of Applicant Amigo Cab, LLC to dismiss the protest of Autocab, Inc. for lack of standing.

Respectfully submitted,



By: Thomas T. Niesen, Esquire
PA Attorney ID No. 31379
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101

Attorney for Protestant Autocab, Inc.

DATE: September 4, 2015

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EXHIBIT 1

**75PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 3, 2005

Commissioners Present:

**Wendell F. Holland, Chairman
Robert K. Bloom, Vice-Chairman
Kim Pizzingrilli**

Application of Autocab, Inc., a corporation of the Commonwealth of Pennsylvania, for the right to begin to transport, as a common carrier, by motor vehicle, persons upon call or demand, in the county of Lancaster.

A-00119919
F. 2

Thomas, Thomas, Armstrong & Niesen by Thomas T. Niesen for the applicant.

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed April 7, 2004. Public notice of the application was given in the *Pennsylvania Bulletin* of June 5, 2004 with protests due by June 28, 2004. No protests were filed. By letter dated July 12, 2004 verified statements were requested and due by August 12, 2004. Applicant requested four 30-day extensions of time to file the verified statements that were granted and the statements were received on December 14, 2004. The unopposed application is certified to the Commission for its decision without oral hearing.

DISCUSSION AND FINDINGS

Autocab, Inc. (applicant or Autocab) is a Pennsylvania corporation seeking the initial right to transport persons upon call or demand in the county of Lancaster. Procedurally, when two applications are filed close together and the first application has not been adjudicated, the second application is also referred as the initial right, even though both applications may be seeking the same type of authority. This happened in this case. Applicant applied for and was issued a certificate on August 17, 2004 at Folder 1 to transport persons upon call or demand in the city of Lancaster and within an airline distance of six statute miles of the limits of said city.

Autocab will use the facilities of Model Management Services, Inc., an affiliated company regulated by the PUC, located at 625 East Orange Street, Lancaster, Lancaster County, to store, dispatch and repair its vehicles. There is a three acre parking lot and service facility with ten service bays. Communications will be by telephone lines into the office, two-way radios, cell phones and fax machine. Applicant initiated service with 14 subcontracted drivers and five dispatchers. The safety program includes driver training, defensive driver training course, drug testing, criminal background check and applicant's safety and health statements. Operations commenced with six 2001 Ford Taurus's owned by Autocab.

Timothy J. Schwartz and John A. Schwartz, Jr. are the owners of Autocab. They are also the owners, president and vice president, respectively, of Model Management Services, Inc. Model Management is a certificated PUC carrier at Docket No. A-00100664 holding call or demand, paratransit and limousine authority. Applicant is also affiliated with Friendly Messenger Service, Inc. a motor carrier of property under PUC docket number A-00111930. Timothy J. and John A. Schwartz, the owners of the common stock of applicant, are also the owners of the common stock of Model Management Services, Inc. and Friendly Messenger Service, Inc. They have been involved in the transportation business for over 25 years and are involved in the businesses on a daily basis.

The pro forma balance sheet of the applicant shows total current assets of \$50,230, total assets of \$55,000, and total liabilities of \$54,990 and total owners' equity of \$10.

Eight businesses in the county of Lancaster submitted statements that demonstrate a requirement for call or demand transportation services between points in Lancaster County. The statements show that service is required by the businesses for their customers and employees from the Lancaster Airport to restaurants, lodging and to numerous other destination points in Lancaster County and vice versa; for clients from inns to restaurants and vice versa; for clients from various hotels to attractions and to nightly entertainment and vice versa; employee transportation between work facilities and for employees between hospitals for pre-employment physicals and drug testing.

Even though applicant currently has a Form E, evidence of bodily injury and property damage insurance, on file with the Commission, it will have to file a new Form E to cover the grant of expanded operations herein.

After complete review of the record, we find:

1. Applicant was issued a certificate on August 17, 2004 to provide call or demand service in the city of Lancaster and points within six miles thereof; applicant seeks to expand the service area to include the county of Lancaster.
2. The application is supported by eight parties.
3. Applicant has the equipment, ability and fitness necessary to render the service.
4. The evidence of record is sufficient to establish necessity for the service.
5. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the application be and is hereby approved granting the following right:

To transport, as a common carrier, persons upon call or demand, in the county of Lancaster.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation authorized by this order until the following is submitted to the Commission:

1. Form E, as evidence of bodily injury and property damage liability insurance to cover the expanded operations herein.
2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 3, 2005

ORDER ENTERED: March 9, 2005

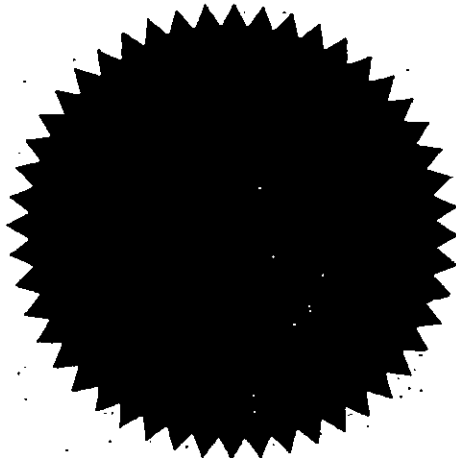
**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

IN THE MATTER OF THE APPLICATION OF: A-00119919

Autocab, Inc.

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval to operate.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 17th day of August, 2004.



James J. McKeely
Secretary

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EXHIBIT 2

90

YELLOW CAB
Lancaster, Pa.
717-392-2222

This vehicle is operated by
an independent contractor.

PJC-A-00119919



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EXHIBIT 3

January 28, 2008

Pennsylvania Public Utility Commission
Bureau of Transportation and Safety
First Floor, Barto Building
231 State Street
Harrisburg, PA 17101

EB756595154US

USPS

10:16 AM 1/29/08

Dear PUC Commission:

This letter and the accompanying supporting detail are being sent to you for the purpose of requesting increases to the taxi tariff as currently filed, of Autocab, Inc. (d/b/a Yellow Cab of Lancaster).

The newly filed tariffs are as indicated on the accompanying Schedule of Proposed Rate Changes, and are proposed to become effective March 3, 2008.

It has been three years since our last tariff increase. In the past three years we have seen significant increases in many of our expense categories. The greatest financial burden has been increases created by the petroleum industry. The outlook for the price of fuel does not look promising. The temporary fuel surcharge that the PUC has put into place has only helped to reduce the burden of high fuel prices, not relieve it. Not only does fuel move the vehicles that are essential to our business, but the price of fuel affects our maintenance of the vehicles, utilities, trash removal and many other general expenses. With the uncertainty of the extension of the fuel surcharge, we are looking to add it to our drop price. Once the new rate is approved, we would stop using the monthly adjustment that the PUC issues on their website. We are requesting an approximate 17.29% rate increase, which is modest considering the increases we have seen from the industries related to our business in each of the last three years and the rollercoaster of fuel prices that have left us wondering where the price will be the next morning. In addition to fuel prices, the start up costs for the last three years have exceeded our budget significantly. In order to increase our lease prices, we must obtain a greater revenue stream for the independent contactors who driver for of company.

Therefore, we request approval of the requested increase as a vital part of returning our company to financial stability.

Enclosed with this letter you will also find the following supporting data required by 52 PA Code Sec. 23.63, 23.64 and 23.61.

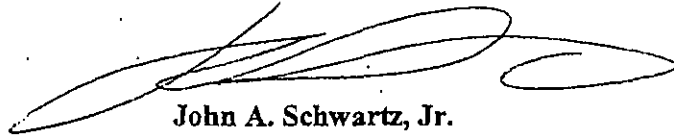
1. Schedule of proposed rate changes.
2. Balance Sheet as of December 31, 2007.

3. Schedule of passenger motor vehicles as of December 31, 2007.
4. Income Statement for the 12 months ended December 31, 2007, with Adjustments and Projected Year.
5. Explanations of Adjustments and Projected Year.
6. Affidavit of Timothy J. Schwartz.
7. Public Notice of Proposed Rate Increases.

In the event of any proceedings before the Public Utility Commission with respect to the proposed rates, it is agreed that the tariff and the financial data submitted therewith will be offered in evidence as an exhibit.

Based upon our request and all additional detail submitted in support of our request, we respectfully request that the commission approve our newly filed tariffs as submitted.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Schwartz, Jr.", written over a horizontal line.

John A. Schwartz, Jr.
Vice President

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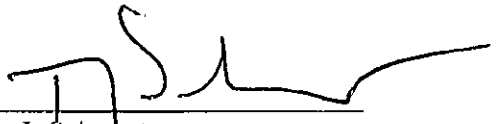
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EXHIBIT 4

VERIFICATION

I, Timothy J. Schwartz, President of Autocab, Inc., hereby state that the facts set forth concerning Autocab, Inc., in the foregoing Answer to Applicant's Motion (Preliminary Objection) are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).



Timothy J. Schwartz

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Dennis J. Buckley, Presiding

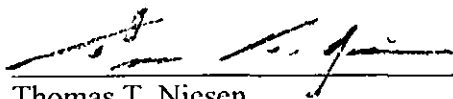
Application of Amigo Cab, LLC for : Docket No. A-2015-2475776
Approval to Provide Taxi Service Between :
Points in the Counties of Berks and :
Lancaster to Points in Pennsylvania and :
return :

I hereby certify that I have this 4th day of September, 2015 served a true and correct copy of the foregoing Answer to the Motion (Preliminary Objection) of Applicant Amigo Cab, LLC to Dismiss the Protest of Protestant Autocab, Inc. for Lack of Standing, upon the persons and in the manner set forth below:

VIA EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

The Honorable Dennis J. Buckley
Administrative Law Judge
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265
debuckley@pa.gov;

John W. Sweet, Esquire
The Sweet Firm
620 South 13th Street
Harrisburg, PA 17104
John@SweetFirm.com
Counsel for Amigo Cab, LLC



Thomas T. Niesen
PA Attorney ID No. 31379