

**COPY FOR CLIENT**

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF TRANSPORTATION  
Land Transportation Franchising and Regulatory Board  
East Avenue, Quezon City

LTFRB  
JUL 19 2018  
ICC  
LEGAL DIVISION

MYTAXI.PH, INC.,

*Respondent.*

Case No. CO-EB-2018-04-0039

Accreditation No. 2015-TNC-002

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**ENTRY OF APPEARANCE  
and  
MOTION FOR RECONSIDERATION**  
*(Re: Order dated 09 July 2018)*

I.

Undersigned law firm respectfully enters its appearance in the above-captioned case as collaborating counsel for respondent MYTAXI.PH, INC.

Henceforth, it is respectfully requested that undersigned law firm be likewise furnished copies of all notices, orders, affidavits, pleadings, resolutions, and other processes and papers relative to the above-captioned case at the address indicated below.

II.

Respondent MYTAXI.PH, INC., by counsel, respectfully moves for reconsideration of this Honorable Board's Order dated 09 July 2018, and in support hereof, respectfully states:

1. On 10 July 2018, respondent received a copy of this Honorable Board's Order dated 09 July 2018, the dispositive portion of which states:

**"WHEREFORE, in view of the foregoing, Respondent MY TAXI.PH, INC. (GRAB) is hereby ordered to:**

1. PAY the penalty of TEN MILLION PESOS (Php 10,000,000.00); and
2. To REIMBURSE the riders who were charged with PhP2.00/minute fare from June 5, 2017 to April 19, 2018 under the following mechanism, namely:
  - 2.1. The reimbursement shall be by way of rebate for future rides;
  - 2.2. The rebate will only apply to Grab riders who were charged the time rate of PhP 2.00 per minute, without authority from the Board.
  - 2.3. The rebate will be availed of only for Twenty days, from the time the Decision becomes final or when the Respondent shall commence the implementation of the rebate, whichever is earlier.
  - 2.4. The amount of the rebate shall be limited to the portion of the income of the Respondent only, directly related to or arising from Php 2.00 per minute, during the period of its unauthorized imposition.
3. Respondent shall submit a report of compliance of the Decision of the Board one week from the time the rebate has been fully implemented, under pain of additional penalty for non-compliance.

**“SO ORDERED.”**

2. Pursuant to *Section 11, Rule 13, Part IV of the 2011 Revised Rules of Practice and Procedure before the Land Transportation Franchising and Regulatory Board (“2011 Revised Rules”)*, respondent has fifteen (15) days from receipt of a copy of said Order, or until 25 July 2018, within which to file a Motion for Reconsideration.

3. Hence, this Motion for Reconsideration has been timely filed.

GROUNDS FOR RECONSIDERATION

A.

WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE BECAUSE IT DID NOT UPHOLD RESPONDENT'S AUTHORITY TO FIX ITS OWN FARE PURSUANT TO D.O. 2015-011 WHICH REMAINS VALID ABSENT DECLARATION OF ITS UNCONSTITUTIONALITY OR ILLEGALITY IN A DIRECT PROCEEDING FOR THAT PURPOSE.

B.

WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE BECAUSE IT FAILED TO RECOGNIZE THAT THE FARES TO BE DETERMINED BY THIS HONORABLE BOARD UNDER D.O. 2017-011 AND D.O. 2018-013 SHOULD BE APPLIED PROSPECTIVELY, AND THEREFORE, RESPONDENT SHOULD NOT HAVE BEEN PREJUDICED FOR RELYING IN GOOD FAITH ON D.O. 2015-011.

C.

WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ORDERED RESPONDENT TO PAY THE PENALTY AND REFUND TO ITS CUSTOMERS THE PORTION OF ITS INCOME RELATIVE TO THE P2.00 PER MINUTE CHARGE,

DESPITE RESPONDENT'S RELIANCE IN  
GOOD FAITH ON D.O. 2015-011.

DISCUSSION/ARGUMENTS

A.

WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE BECAUSE IT DID NOT UPHOLD RESPONDENT'S AUTHORITY TO FIX ITS OWN FARE PURSUANT TO D.O. 2015-011 WHICH REMAINS VALID ABSENT DECLARATION OF ITS UNCONSTITUTIONALITY OR ILLEGALITY IN A DIRECT PROCEEDING FOR THAT PURPOSE.

4. Department Order No. 2015-011 (D.O. 2015-011), which amended Department Order No. 97-1097, was issued on 08 May 2015 by the then Department of Transportation and Communication (DOTC), now known as the Department of Transportation (DOTr), for the purpose of promoting mobility in all forms of public land transport to respond to the needs of the modern commuter.

5. D.O. 2015-011 provides in clear and unambiguous terms that fares for a Transportation Network Vehicle Service ("TNVS") shall be set by the Transport Network Company ("TNC"), such as herein respondent, subject to oversight from the LTFRB in cases of abnormal disruptions of the market, such as but not limited to any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the President.

6. In its Order dated 09 July 2018, this Honorable Board directed respondent to pay a substantial amount of penalty and to reimburse the riders who were charged with Two Pesos (P2.00) per

**minute fare**, based on its sweeping conclusion, among others, that D.O. 2015-011 is an unauthorized delegation of legislative authority.

7. With all due respect, such finding lacks basis both in fact and in law.

*D.O. 2015-011 remains to be valid and effective until struck down as unconstitutional by a court of competent jurisdiction.*

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8. It is a well-settled rule that **where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same.** The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, **the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts,** including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.<sup>1</sup>

9. To emphasize, judicial power, which includes the determination of whether or not an administrative issuance is constitutional or valid, is vested upon the courts, and not with administrative bodies.

10. Based on the foregoing alone, it is clear that this Honorable Board, being an administrative body, has no power to declare as unconstitutional D.O. 2015-011 for allegedly being an unauthorized delegation of legislative authority.

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<sup>1</sup> Smart Communications, Inc. (Smart) v. National Telecommunications Commission, G.R. No. 151908, 12 August 2003.

11. Moreover, the validity of D.O. 2015-011 cannot likewise be assailed in an action which was not filed specifically for that purpose. Inasmuch as the validity of an administrative issuance cannot be subject to a collateral attack, it is with more reason that the unconstitutionality or invalidity of D.O. 2015-011 cannot be declared through this Honorable Board's Order dated 09 July 2018 which only originated from its Show Cause Order dated 11 April 2018.

12. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.<sup>2</sup>

13. Moreover, the Supreme Court discussed the presumption of validity of administrative issuances in the case of *ABAKADA Guro Party List v. Purisima*,<sup>3</sup> to wit:

**“Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. Congress, in the guise of assuming the role of an overseer, may not pass upon their legality by subjecting them to its stamp of approval without disturbing the calculated balance of powers established by the Constitution. In exercising discretion to approve or disapprove the IRR based on a determination of whether or not they conformed with the provisions of RA 9335, Congress arrogated judicial power unto itself,**

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<sup>2</sup> *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, 07 August 2013.

<sup>3</sup> G.R. No. 166715, 14 August 2008.

a power exclusively vested in this Court by the Constitution." (*Emphasis supplied.*)

14. In the above-cited case, the Supreme Court struck down Section 12 of RA 9335 as unconstitutional, because the said provision allowed Congress or its members to overturn any directive or ruling made by the members of the executive branch charged with the implementation of the law.<sup>4</sup>

15. Interestingly however, the Supreme Court went on to pronounce in the said case that even Congress cannot grant unto itself the power to determine the validity of an administrative issuance as the same is vested only upon the courts.

16. It is thus quite evident that under prevailing jurisprudence, D.O. 2015-011 shall be considered valid **until it is set aside with finality in an appropriate case by a competent court.**

17. Given the foregoing, this Honorable Board could not have simply declared on its own that D.O. 2015-011 is invalid and unconstitutional for being an undue delegation of legislative authority. With all due respect, this Honorable Board has no authority under the Constitution, existing laws and prevailing jurisprudence, to declare the assailed department order as invalid, not to mention that this Honorable Board is merely an attached agency of the issuing body (DOTC, now DOTr).

18. As such, when respondent began imposing the assailed P2.00 per minute fare on 05 June 2017 to ensure that its hard-working TNVS drivers would still be able to make ends meet despite the worsening traffic conditions, respondent did so in good faith and pursuant to prevailing government issuances at the time.

*Neither was there an express nor implied repeal of D.O. 2015-011.*

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19. The Supreme Court has previously delineated the line between an express repeal and implied repeal as follows:

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<sup>4</sup> *Id.*

“The question of whether a particular law has been repealed or not by a subsequent law is a matter of legislative intent. The lawmakers may expressly repeal a law by incorporating therein a repealing provision which expressly and specifically cites the particular law or laws, and portions thereof, that are intended to be repealed. **A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed is an express repeal; all others are implied repeals.**”<sup>5</sup> (*Emphasis supplied*)

20. In this case, it is undisputed that there has been no express repeal of D.O. 2015-011 in any of the Department Orders subsequently issued by the DOTr.

21. Moreover, this Honorable Board likewise failed to establish that said D.O. 2015-011 has been impliedly repealed by any of the subsequent issuances of the DOTr, whereby the provisions of the new department order are absolutely incompatible with respect to any of the provisions of D.O. 2015-11.

22. As a rule, repeal by implication is frowned upon, unless there is clear showing that the later statute is so irreconcilably inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand together.<sup>6</sup>

23. Furthermore, for an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws. **The two laws, in brief, must be absolutely incompatible.**<sup>7</sup>

24. Considering that D.O. 2015-011 is yet to be repealed, either expressly or impliedly, the same may still be validly relied upon by respondent in fixing its fare, subject only to the exercise of oversight function by this Honorable Board.

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<sup>5</sup> Mecano v. Commission on Audit, G.R. No. 103982, 11 December 1992.

<sup>6</sup> Agujetas v. Court of Appeals, G.R. No. 106560, 23 August 1996.

<sup>7</sup> People v. Mateo, G.R. No. 210612, 09 October 2017.



*This Honorable Board has previously upheld the validity of D.O. 2015-011 in one of its pronouncements.*

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25. The validity of the assailed D.O. 2015-011 was likewise upheld by no less than this Honorable Board itself, through its Consolidated Order dated 22 February 2016 in the case of *1-United Transport Koalisyon v. Uber Solutions, Inc.*,<sup>8</sup> when it ruled as follows:

“Department Order No. 2015-011 deals with Transportation Network Vehicle Service. The transportation service provided by a TNVs is facilitated by an ‘internet-based technology application or digital platform technology’ provided by a Transportation Network Company. It further provides that the fare of a TNVs shall be set by the TNC, subject to oversight by the LTFRB under certain circumstances.

“It should bear emphasis that Department Order No. 2015-011 is presumed valid, legal and subsisting until nullified by court of competent jurisdiction. It has been consistently ruled by the Supreme Court that an action to declare the Constitutionality and invalidity of any government issuance or action must be done through a direct proceeding, and not by collateral attack. Thus, said Department Order and related issuances should be accorded respect.” (*Emphasis supplied.*)

26. Considering that this Honorable Board has previously ruled that D.O. 2015-011 is presumed valid, legal and subsisting until nullified by a court of competent jurisdiction, this same Honorable Board could not thereafter turn around and rule that such D.O. 2015-011 constitutes as undue delegation of legislative authority *pro hac vice*.

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<sup>8</sup> Case No. 15-11540.

Such pronouncement would constitute a violation of respondent's fundamental right to equal protection of the law which is guaranteed by no less than our Constitution itself.

*The factual backdrop of Kilusang Mayo Uno is not on all fours with this present case.*

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27. With all due respect, in ruling that respondent's imposition of P2.00 per minute fare is invalid, this Honorable Board relied heavily on the ruling in the very old case of *Kilusang Mayo Uno Labor Center (KMULC) v. Garcia*.<sup>9</sup>

28. It is noteworthy however that the said case is not entirely similar with all four corners of the instant case. *First*, the said case could not have possibly taken into consideration the current technological innovation and developments in the transport industry. *Second*, the assailed issuances in the *KMULC Case* did not entirely provide for any oversight function of LTFRB over the authority of provincial bus operators to set a fare range over and above existing fare. *Third*, respondents cannot overemphasize that the expenses incurred and challenges involved in the actual operation of TNVS nowadays are far different from those of provincial buses plying the roads way back in the earlier 1990s. *Lastly*, it was the Supreme Court, a court of competent jurisdiction, which declared the subject issuances in the *KMULC Case* as unconstitutional and invalid, not the LTFRB.

29. Considering that the factual circumstances then prevailing at the time when *KMULC Case* was decided by the Supreme Court is not anymore applicable in this present time, the doctrine of *stare decisis* could not be made to apply inasmuch as there is no substantial similarity in the facts involved in the said cases.

30. It must be noted that the doctrine of *stare decisis* requires substantial similarity of the facts involved and not only an incidental or superficial resemblance. The doctrine of *stare decisis* means that "when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are **substantially** the same."<sup>10</sup>

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<sup>9</sup> G.R. No. 115381, 23 December 1994.

<sup>10</sup> *Bino v. Cuenca*, G.R. No. 150478, 15 April 2005.

31. Based on the foregoing, it is clear that *KMULC Case* should not have been made to apply in this present case.

*This Honorable Board has previously exercised its oversight function pursuant to said D.O. 2015-011 to which respondent willingly complied with.*

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32. In validly relying on D.O. 2015-011, respondent does not claim blanket authority in setting the fares for its TNVS. Respondent has time and again respected and complied with the oversight function of this Honorable Board when it deems proper to exercise the same.

33. To recall, this Honorable Board exercised its oversight function on 27 December 2016 when it issued an Order limiting the surge imposed by TNCs to a multiplier of 2.0 after receiving several complaints on high fares during the yuletide season. This Honorable Board likewise recently issued an Order further lowering the surge rate at a multiplier of 2.0 to a cap of 1.5 due to the recent acquisition of Uber Systems, Inc. by herein respondent.

34. In both instances when this Honorable Board exercised its oversight function as expressly provided in D.O. 2015-011 due to the then existing abnormal disruptions in the market, respondent willingly and faithfully complied therewith.

35. All told, despite the uncertainty on the supposed regulations for TNCs and TNVS, respondent made a cautious and honest effort to abide by the prevailing issuances of the DOTr, as evidenced by respondent's compliance with this Honorable Board's exercise of its oversight powers.

*In imposing such time-based charges, respondent validly relied on D.O. 2015-011 in good faith.*

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36. To further bolster the validity of respondent's reliance in good faith on D.O. 2015-011, this Honorable Board itself admitted to the confusion brought about by the issuance of said administrative rule.

37. To borrow the words of this Honorable Board in its Order dated 09 July 2018, "*DO No. 2018-013 corrects the confusion the DO No. 2015-011 has created not only in the mind of the Respondent, but also to operators of other modes of land-based public transport and the riding public as well.*"

38. Thus, following this Honorable Board's train of thought, the confusion on the regulation of fare-setting for TNVS was just supposedly put to rest recently by DO 2018-013, which was issued on 11 June 2018 or more than a year after respondent imposed the time-based charge of P2.00 per minute.

39. As such, it cannot be said that "[r]espondent failed to impress the Board that its imposition of the per minute travel fare is within the purview of its discretion or authority. On the contrary, it was clearly shown that such imposition of Respondent TNC is invalid and without authority from the Board, for which the Respondent is to suffer its consequences."<sup>11</sup>

40. Corollary, if there was a confusion that was brought about by the issuance of D.O. 2015-011 not only in the mind of respondent but also with the operators of other modes of land-based public transport and the riding public as well, this Honorable Board could not make an exception insofar only as respondent is concerned by simply concluding that its imposition of the per minute travel fare is invalid and outside the purview of its discretion or authority. Otherwise, that would again constitute a violation of respondent's Constitutional right to equal protection of the law.

41. In other words, there was legal basis for respondent to rely on the said D.O. 2015-011 in good faith.

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<sup>11</sup> Page 6 of the Order dated 09 July 2018.

B.

WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE BECAUSE IT FAILED TO RECOGNIZE THAT THE FARES TO BE DETERMINED BY THIS HONORABLE BOARD UNDER D.O. 2017-011 AND D.O. 2018-013 SHOULD BE APPLIED PROSPECTIVELY, AND THEREFORE, RESPONDENT SHOULD NOT HAVE BEEN PREJUDICED FOR RELYING IN GOOD FAITH ON D.O. 2015-011.

42. To recall, respondent imposed the subject travel time rate of Two Pesos (P2.00) per minute on 05 June 2017.

43. Subsequently, DOTr issued Department Order No. 2017-011 ("D.O. 2017-011") dated 19 June 2017 entitled "Omnibus Guidelines on the Planning and Identification of Public Road Transportation Services and Franchise Issuance" wherein it states in part that the fare collection for TNVS shall be "pre-arranged fare as authorized by LTFRB."

44. Furthermore, DOTr also issued Department Order No. 2018-013 ("D.O. 2018-013") entitled "Authority of the Land Transportation Franchising Board (*sic*) (LTFRB) to Regulate the Transport Network Companies (TNCs) and Transport Network Vehicles Service (TNVS)" which provides that "the fare for the TNVS shall be determined by the LTFRB, after public hearing or in consultation with the TNCs and TNVS."

45. It is clear from the aforementioned issuances that LTFRB was simply given the power to determine the fare that may be charged by TNCs and TNVS. However, such power has not yet been exercised by LTFRB as no public hearing or consultation has yet been conducted for the determination of such fare.

46. Thus, as the fare that may be charged by TNCs and TNVS are yet to be determined by this Honorable Board, the said issuances cannot be made basis for this Honorable Board's ruling that

respondent overcharged its fees to the riding public. As long as D.O. 2015-011 remains valid and effective and until the same has been declared unconstitutional or unlawful by a court of competent jurisdiction, the fare for TNVS may still be set by TNCs such as herein respondent, subject only to the oversight function by this Honorable Board in cases of abnormal disruptions of the market.

47. Thus, any issuance by this Honorable Board which would ultimately determine the fare that may be charged by TNCs and TNVS should only be applied prospectively and should not prejudice respondent for relying on a valid and subsisting D.O. 2015-011. The said prospective issuance could not be used as basis for imposing a penalty upon respondent for acts or omissions done prior, on the ground of whimsical and arbitrary finding that the same constitutes overcharging of fees. Otherwise, the same would be utterly confiscatory.

48. Moreover, the Honorable Board has been fully informed of the implementation of the Two Pesos (P2.00) per minute rate.

49. It must be noted that the respondent had previously informed this Honorable Board about the charging of Two Pesos (P2.00) per minute as early as 27 July 2017 during its meeting with the Honorable Board's Technical Working Group ("TWG") when respondent presented its business model including its pricing scheme.

50. In page 19 of the 22-paged presentation, respondent clearly stated therein that the base fare is Forty Pesos (P40.00) plus a per minute rate of Two Pesos (P2.00) and distance rate of Eight Pesos (P8.00) per kilometer.

51. In addition thereto, respondent's Policy Head, Emmanuel K. Gonzales, sent an electronic mail to this Honorable Board's Chairman Martin B. Delgra ("Chairman Delgra") on 24 August 2017 to provide him with a brief explanation of respondent's pricing scheme. Respondent further assured Chairman Delgra that despite such pricing scheme, the surge has been fixed at a multiplier of 1.8 which is much lower than the 2.0 limit set by the Honorable Board pursuant to its Order dated 27 December 2016.

52. Thus, the said charging of Two Pesos (P2.00) per minute rate has been known to this Honorable Board as early as 27 July 2017, or for nine (9) months already, until respondent was ordered to suspend such implementation on 19 April 2018. During those nine (9) months, the Honorable Board implicitly recognized respondent's good faith in informing it about the charging scheme.

53. On further analysis, the said charging was not struck down through the proper procedure as the Honorable Board swiftly issued the Show Cause Order dated 11 April 2018 on the basis of a mere GMA News Report published on 10 April 2018, and required respondent to explain as to why its Certificate of Accreditation as TNC should not be suspended or cancelled for charging Two Pesos (P2.00) per minute of travel time allegedly without authority from the Honorable Board.

54. It bears stressing that the disallowance of the Two Pesos (P2.00) per minute charge is in the nature of Fare Adjustment under *Rule 12, Part IV of the 2011 Revised Rules*, for which notice and publication are indispensable requisites.

55. At any rate, whatever fare the Honorable Board may determine pursuant to its power under D.O. 2017-011 and D.O. 2018-013 should only be applied prospectively and cannot be made basis for the imposition of penalty upon respondent for acts done prior said fare determination and especially in the absence of clear violation on respondent's part in charging the said time-based fees.

### C.

**WITH ALL DUE RESPECT, THE ORDER DATED 09 JULY 2018 WAS ISSUED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ORDERED RESPONDENT TO PAY THE PENALTY AND REFUND TO ITS CUSTOMERS THE PORTION OF ITS INCOME RELATIVE TO THE P2.00 PER MINUTE CHARGE, DESPITE RESPONDENT'S RELIANCE IN GOOD FAITH ON D.O. 2015-011.**

*Considering that the imposition of the said fees is in accordance with D.O. 2015-011, there is no basis for this Honorable Board to order the payment of penalty in the amount of Ten Million Pesos (P10,000,000.00)*

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56. As extensively discussed above, respondent had all the legal reason to rely on D.O. 2015-011 in imposing the charge of Two Pesos (P2.00) per minute.

57. In fact, granting for the sake of argument that, as found by this Honorable Board, this issuance brought about a confusion not only in the minds of operators of other modes of land-based public transport but also on the riding public in general, good faith must be attributed upon respondent when it relied on a department order which was neither declared as unconstitutional or invalid by a court of competent jurisdiction nor repealed by a subsequent law or issuance, whether expressly or impliedly.

58. As such, there is simply no basis for this Honorable Board to order the respondent liable to pay Ten Million Pesos (P10,000,000.00) as punishment for relying on a department order which was previously upheld as valid by this very same Honorable Board.

59. Thus, respondent respectfully submits that it did not violate any of the conditions of its Certificate of Accreditation which could have warranted the imposition of an excessive fine of Ten Million Pesos (P10,000,000.00).

60. Further assuming for the sake of argument that this Honorable Board will maintain the imposition of such penalty, respondent shall place the same in an escrow account, to be withdrawn subsequently in the event that such imposition would be determined with finality.



*This Honorable Board has no authority to order respondent to refund a portion of its income to its customers.*

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61. As regards the directive in the Order for respondent to refund a portion of its income to the customers, respondent respectfully maintains that this Honorable Board has no jurisdiction or authority to order respondent to refund the supposed excess fare in the form of the Two Pesos (P2.00) per minute charge.

62. It must be taken into consideration that nowhere in Executive Order No. 202 dated 19 June 1987, the law creating the Honorable Board, whereby it is stated that this Honorable Board has the power to order the refund or reimbursement of supposed excess fare collected from the riding public.

63. Under Section 5 of E.O. 202, the Honorable Board is given only the following powers:

“SECTION 5. Powers and Functions of the Land Transportation Franchising and Regulatory Board. – The Board shall have the following powers and functions:

“a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans and programs approved by the Department of Transportation and Communications;

“b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor;

“c. To determine, prescribe and approve and periodically review and adjust, reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles;

"d. To issue preliminary or permanent injunction, whether prohibitory or mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the Rules of Court shall apply;

"e. To punish for contempt of the Board, both direct and indirect, in accordance with the pertinent provisions of, and the penalties prescribed by, the Rules of Court;

"f. To issue subpoena and subpoena duces tecum and summon witnesses to appear in any proceedings of the Board, to administer oaths and affirmations;

"g. To conduct investigations and hearings of complaints for violation of the public service laws on land transportation and of the Board's rules and regulations, orders, decisions and/or rulings and to impose fines and/or penalties for such violations;

"h. To review *motu proprio* the decisions/actions of the Regional Franchising and Regulatory Office herein created;

"i. To promulgate rules and regulations governing proceedings before the Board and the Regional Franchising and Regulatory Office: Provided, That except with respect to paragraphs d, e, f and g hereof, the rules of procedure and evidence prevailing in the courts of law should not be controlling and it is the spirit and intention of said rules that the Board and the Regional Franchising and Regulatory Offices shall use every and all reasonable means to ascertain facts in its case speedily and objectively and without regard to technicalities of law and procedures, all in the interest of due process;

"j. To fix, impose and collect, and periodically review and adjust, reasonable fees and other related charges for services rendered;

"k. To formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standards of measurements and/or design, and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote

safety, protection, comfort and convenience to persons and property in their charges as well as the safety of persons and property within their areas of operations;

“l. To coordinate and cooperate with other government agencies and entities concerned with any aspect involving public land transportation services with the end in view of effecting continuing improvement of such services; and

“m. To perform such other functions and duties as may be provided by law, or as may be necessary, or proper or incidental to the purposes and objectives of this Executive Order.”

64. Moreover, a perusal of the Order dated 09 July 2018 would show that this Honorable Board did not provide or cite any law authorizing it to order the refund and/or reimbursement of excess fare collected from a passenger.

65. It is a fundamental rule that an administrative officer or agency has only such powers as are **expressly granted to him by the statute, and those necessarily implied in the exercise thereof.**<sup>12</sup>

66. None from the above-enumeration of the powers of this Honorable Board can it be said that the Honorable Board is expressly or impliedly authorized to order such refund of a portion of respondent's income to its customers.

67. From the foregoing, there is more than ample reason to reconsider the Order dated 09 July 2018 which directed respondent to refund the P2.00 per minute charge to Grab riders who were charged the same.

68. In sum and based on all the foregoing discussion, there is legal, just, and valid basis for this Honorable Board to reconsider and set aside in full its Order dated 09 July 2018.

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<sup>12</sup> People v. Maceren, G.R. No. L-32166, 18 October 1977; Makati Stock Exchange, Inc. v. Securities and Exchange Commission, G.R. No. L-23004, 30 June 1965.

**PRAYER**

WHEREFORE, respondent MYTAXI.PH, INC. respectfully prays that this Honorable Board:

- a.) NOTE the foregoing Entry of Appearance; and
- b.) thereafter REVERSE AND SET ASIDE its Order dated 09 July 2018, and in lieu thereof, issue a new one DISMISSING the above-captioned Show Cause Order and case for utter lack of merit.

Respondent likewise prays for such further or other relief as may be deemed just or equitable.

Pasig City for Quezon City,  
18 July 2018.

**MEDIALDEA ATA BELLO & SUAREZ**  
*Collaborating Counsel for Respondent MYTAXI.PH, Inc.*  
17<sup>th</sup> Floor, The Taipan Place  
F. Ortigas, Jr. Road, Ortigas Center  
Pasig City  
Tel. No. (02) 635 42 76 to 83  
mailbox@mabgslaw.com.ph

By:



**RENATO Q. BELLO**

Roll of Attorneys No. 31182  
PTR No. 4032294ME; 01-31-2018; Pasig City  
IBP No. 022579; 01-03-2018; Quezon City  
MCLE Compliance No. V-0012744; 12-15-2015

**JON PAULO V. SALVAHAN**

Roll of Attorneys No. 59159  
PTR No. 3862909ME; 01-11-2018; Pasig City  
IBP No. 022576; 01-03-2018; Makati City  
MCLE Compliance No. V-0023487; 08-12-2016

  
**GOLDA MARGARETH D. ARGEL**

Roll of Attorneys No. 64158  
PTR No. 3862913ME; 01-11-2018; Pasig City  
IBP Lifetime No. 013648; 04-16-2015; Ilocos Sur  
MCLE Compliance No. V-0019267; 04-13-2016

  
**RYAN JOSEPH N. JAVIER**

Roll of Attorneys No. 66685  
PTR No. 3862908ME; 01-11-2018; Pasig City  
IBP Lifetime No. 015167; 06-14-2016; Quezon City  
Admitted to the Bar - Year 2016<sup>^</sup>

  
**ADRIAN NIGEL H. YAP**

Roll of Attorneys No. 68090  
PTR No. 3862910ME; 01-11-2018; Pasig City  
IBP No. 022580; 01-03-2018; Quezon City  
Admitted to the Bar - Year 2017<sup>^</sup>

**REQUEST FOR AND  
NOTICE OF HEARING**

**ATTY. SAMUEL A.M. JARDIN**

Executive Director  
Land Transportation Franchising and Regulatory Board  
East Avenue, Quezon City

**NOGRALES LAW OFFICES**

*Counsel for Rep. Jericho Jonas B. Nograles*  
22<sup>nd</sup> Floor, Philippine Stock Exchange Centre  
West Tower, Exchange Road  
Ortigas Center, Pasig City

**HON. JERICHO JONAS BENDIGO NOGRALES**

Pwersa ng Bayaning Atleta (PBA)  
Room 410, Ramon V. Mitra Building  
House of Representatives  
Constitution Hills, Quezon City

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<sup>^</sup> MCLE Governing Board Order No. 01, Series of 2008, 04 July 2008.

<sup>^</sup> *Id.*

Greetings:

Please submit the foregoing *Motion for Reconsideration (Re: Order dated 09 July 2018)* for the consideration and approval of the Honorable Board on 24 July 2018 at 09:00 o'clock in the morning, or as soon thereafter as counsel and matter may be heard.

  
ADRIAN NIGEL H. YAP

**EXPLANATION**  
(*Re: Service by Registered Mail*)

Pursuant to Section 11, Rule 13 of the Rules of Court, undersigned counsel respectfully manifests that a copy of the foregoing *Entry of Appearance and Motion for Reconsideration (Re: Order dated 09 July 2018)* was served upon Hon. Jericho Jonas Bendigo Nograles by registered mail in lieu of personal service due to distance constraints and lack of messengerial personnel in the office of the undersigned counsel.

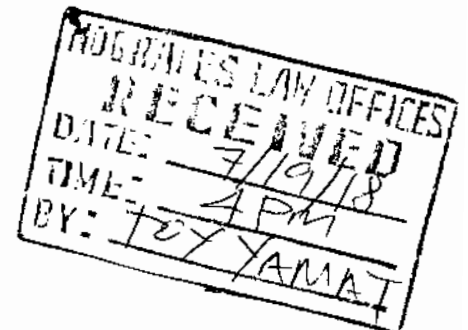
To ensure timely receipt nonetheless, an advance copy of this *Entry of Appearance and Motion for Reconsideration (Re: Order dated 09 July 2018)* will thereafter be served upon Hon. Jericho Jonas Bendigo Nograles by personal service and/or licensed courier service.

The registry receipt evidencing the mailing of a copy of the foregoing *Entry of Appearance and Motion for Reconsideration (Re: Order dated 09 July 2018)* is attached to the Affidavit of Service annexed hereto.

  
ADRIAN NIGEL H. YAP

Copy furnished:

**NOGRALES LAW OFFICES**  
*Counsel for Rep. Jericho Jonas B. Nograles*  
22<sup>nd</sup> Floor, Philippine Stock Exchange Centre  
West Tower, Exchange Road  
Ortigas Center, Pasig City



**HON. JERICO JONAS BENDIGO NOGRALES**

Puwersa ng Bayaning Atleta (PBA)  
Room 410, Ramon V. Mitra Building  
House of Representatives  
Constitution Hills, Quezon City

Republic of the Philippines)  
Pasig City ) S.S.

### VERIFICATION

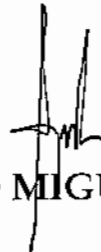
I, **ERASTO MIGUEL G. AGUILA**, of legal age, Filipino, with office address at 12<sup>th</sup> Floor, Wilcon I.T. Hub Building, 2251 Chino Roces Avenue, Makati City, state under oath that:

1. I am the Corporate Secretary and duly authorized representative of the respondent in the above-captioned case;

2. I have caused the preparation and filing of the foregoing *Entry of Appearance with Motion for Reconsideration (Re: Order dated 09 July 2018)*; and

3. I have read and understood the contents of the foregoing *Entry of Appearance with Motion for Reconsideration*, and I attest that the same are true and correct out of my own personal knowledge and based on authentic records in my possession.


IN WITNESS WHEREOF, I have hereunto set my hand this 18 July 2018 in Pasig City.



**ERASTO MIGUEL G. AGUILA**

SUBSCRIBED AND SWORN to before me this 18 July 2018 in Pasig City, affiant exhibiting to me competent evidence of his identity in the form of his Passport EC6977241.

Doc. No.: 317 ;  
Page No.: 65 ;  
Book No.: I ;  
Series of 2018.



**MA. MIKHAILA GUINARIO Z. SOLIANO**  
Notary Public for and in the Cities of Pasig and San Juan,  
and Municipalities of Paternos  
Commissioned on 14 September 21, 2018  
17th Flr, Talpa Place, F. Ortigas Jr. Rd., Ortigas Center, Pasig  
AJPT No. 91 (2017-2018), Roll No. 65811  
PTR No. 33629113E; 01-11-18; Pasig City  
IBP Lifetime No. 014891; 05-20-16; R.S.M.



**SECRETARY'S CERTIFICATE**

I, **ERASTO MIGUEL G. AGUILA**, of legal age, Filipino and with office address at 12<sup>th</sup> Floor, Wilcon I.T. Hub Building, 2251 Chino Roces Avenue, Makati City, state under oath:

1. I am the Corporate Secretary of **MYTAXI.PH, INC.** (the "Corporation"), a corporation duly organized and existing under the laws of the Philippines, with principal office address at 12<sup>th</sup> Floor, Wilcon I.T. Hub Building, 2251 Chino Roces Avenue, Makati City.

2. At a special meeting of the Board of Directors of the Corporation on 18 July 2018, at which meeting a quorum was present, the following resolutions were passed and approved:

**"RESOLVED**, that the Board of Directors of the Corporation names, constitutes, and appoints, as it hereby names, constitutes and appoints, **ERASTO MIGUEL G. AGUILA**, as attorney-in-fact to represent the Corporation in connection with the case docketed as Case No. CO-EB-2018-04-0039 entitled "**MYTAXI.PH, INC. (GRAB)**, Respondent" pending before the Land Transportation Franchising and Regulatory Board, including any and all incidents, appeals, and petitions for review/certiorari that may arise from the case, with full and special power and authority to do and perform the following:

- a) to cause the preparation and filing of the Motion for Reconsideration to be filed by the Corporation, including any and all other pleadings, documents, papers, and instruments that may be necessary as an incident or appeal therefrom; and
- b) to sign and execute the necessary Verification and/or Certification of Non-Forum Shopping attached to the Motion for Reconsideration and/or any other pleadings, documents, papers, and instruments that may be necessary as an incident or appeal therefrom;


**"RESOLVED FURTHER**, that **ERASTO MIGUEL G. AGUILA** and the law firm of **MEDIALDEA ATA BELLO & SUAREZ** or any of its lawyers, be authorized to represent the Corporation in the foregoing action and in any or all other incidents or actions arising therefrom, including, but not limited to, representation in other proceedings for the purpose of stipulation of facts, simplification of issues, entering into amicable settlement and all other incidents pertaining to such related proceedings; and

**"RESOLVED FINALLY**, that **ERASTO MIGUEL G. AGUILA** and the law firm of **MEDIALDEA ATA BELLO & SUAREZ** or any of its lawyers, be authorized, as they are hereby authorized, to individually or

jointly represent the Corporation in any negotiation or settlement in connection with the foregoing actions and to enter into any agreement, sign any papers, and receive any cash or property, in behalf of and for the benefit of the Corporation in conformity with the terms and objectives of this resolution.”


3. The foregoing resolutions are in accordance with the records of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this 18 July 2018 in Pasig City.

  
ERASTO MIGUEL G. AGUILA  
Corporate Secretary

SUBSCRIBED AND SWORN to before me this 18 July 2018 in Pasig City, affiant exhibiting to me his competent evidence of identity in the form of his passport with No. EC6977241.

Doc. No. 318;  
Page No. 65;  
Book No. I;  
Series of 2018.

  
MA. MIKHAELLA ROSARIO Z. SOLLANO  
Notary Public for and in the Cities of Pasig and San Juan  
and Municipality of Putero  
Commission until December 31, 2018  
17th Flr, Taipan Place, E. Ortigas Jr. Rd. Ortigas Center, Pasig City  
APPT No. 91 (2017-2018); Roll No. 65811  
PTR No. 3862911ME; 01-11-18; Pasig City  
IBP Lifetime No. 014891; 05-20-16; R.S.M.

REPUBLIC OF THE PHILIPPINES)  
PASIG CITY ) SS.

**AFFIDAVIT OF SERVICE**

I, **ANACLETO HULAR**, an employee of **MEDIALDEA ATA BELLO & SUAREZ**, with office address at the 17<sup>th</sup> Floor, The Taipan Place, F. Ortigas Jr. Road, Ortigas Center, Pasig City, after being duly sworn, depose and say:

On 19 July 2018, I served the following:

**ENTRY OF APPEARANCE**  
and  
**MOTION FOR RECONSIDERATION**  
(Re: Order dated 09 July 2018)

in Case No. CO-EB-2018-04-0039 Accreditation No. 2015-TNC-002, entitled "MYTAXLPH, INC., Respondent", by registered mail to:

**HON. JERICHO JONAS BENDIGO NOGRALES**  
Pwersa ng Bayaning Atleta (PBA)  
Room 410, Ramon V. Mitra Building  
House of Representatives  
Constitution Hills, Quezon City


by depositing a copy thereof on 19 July 2018 at the Ortigas Post Office as evidenced by Registry Receipt No. RD965634126ZZ attached hereto, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered pursuant to Sections 3, 4, 5, 10, 11 and 13, Rule 13 of the 1997 Rules of Civil Procedure.

Pasig City, 19 July 2018.

  
**ANACLETO HULAR**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me on 19 July 2018 in Pasig City, affiant exhibiting to me his competent evidence of his identity in the form of Social Security System I.D. No. 03-7105470-1.

Doc. No. 74;  
Page No. 17;  
Book No. I;  
Series of 2018.

  
MARK  
Notary Public for the Philippines  
Office: Pasig and San Juan  
City, Metro Manila  
1908, 2018  
Notary Public for the Philippines  
Office: Pasig and San Juan  
City, Metro Manila  
1908, 2018