

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF FCA US LLC TO ESTABLISH A NEW)
MOTOR VEHICLE DEALERSHIP) PSC DOCKET NO. 15-1022
(SUBMITTED MAY 28, 2015; FILED)
JUNE 30, 2015))

ORDER NO. 8771

AND NOW, this 4th day of August, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, pursuant to 6 Del. C. §4915(a), on May 28, 2015, FCA US LLC ("FCA US") submitted to this Commission a notice of intent to establish a motor vehicle dealership (the "Notice") to be temporarily located in Millsboro, Delaware, on or after June 30, 2015, and to operate on an adjacent property upon completion of a new facility; and

WHEREAS, pursuant to 6 Del. C. §4915(a), FCA US also provided a copy of such notice to Floyd A. Megee Motors, Inc. ("Megee Motors") as a same line-make dealership within the relevant market area;¹ and

WHEREAS, on June 2, 2015, the Commission Staff ("Staff") sent a letter of deficiency to FCA US because the Notice failed to meet the minimum filing requirements set forth in 26 Del. Admin. C. §7001;

WHEREAS, on June 19, 2015, Megee Motors filed with this Commission a petition/protest (the "Protest") to protest and challenge the establishment of this new dealership based on its existing license as a motor vehicle dealer in Delaware and as an authorized sales and

¹ Under 6 Del. C. §4902(11), "relevant market area" means the area within a radius of 10 miles from the intended site of a proposed additional dealership.

service dealer for FCA US via an automobile dealer agreement with such company; and

WHEREAS, the Protest requested, inter alia, that the Commission issue an order staying the establishment of the new motor vehicle dealership pending a final determination and also hold evidentiary hearings regarding the potential award of a new motor vehicle dealership within Megee Motor's relevant market area; and

WHEREAS, on June 30, 2015, FCA US filed additional information with the Commission which, in conjunction with the Notice, met the minimum filing requirements of 26 *Del. Admin. C.* §7001; and

WHEREAS, on July 7, 2015, this Commission issued Order No. 8762 which opened the docket for this proceeding, directed that FCA US not establish any new motor vehicle dealership within the relevant market area of Megee Motors until the Commission had held evidentiary hearings on this matter, designated R. Campbell Hay as the hearing examiner, and directed the hearing examiner to timely conduct such evidentiary hearings so that the Commission could render its final determination on or before September 17, 2015. See Order No. 8762, ¶3; and

WHEREAS, thereafter FCA US and Megee Motors entered into discussions which resulted in the filing of a signed "Stipulation of Dismissal Without Prejudice" dated July 22, 2015.² See the attached **Exhibit "A"**; and

² Staff was not asked to sign this Stipulation.

WHEREAS, the "Stipulation of Dismissal Without Prejudice" states, among other things, that (i) FCA US withdraws without prejudice its Notice; (ii) Megee Motors withdraws without prejudice its Protest; (iii) the two parties expressly reserve all of their rights and remedies; and (iv) the two parties further stipulate and agree that these proceedings are now moot and can and shall be dismissed without prejudice; and

WHEREAS, the Commission has jurisdiction over this matter under 6 Del. C. §4915(a) and believes that based on the filed "Stipulation of Dismissal Without Prejudice," this docket should be closed;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 6 Del. C. §4915(a), because FCA US has withdrawn its Notice and Megee Motors has withdrawn its Protest, the Commission determines there is no need to hold evidentiary hearings on this matter and dismisses this matter without prejudice in accordance with the terms of the filed "Stipulation of Dismissal Without Prejudice," which is attached as Exhibit "A".

2. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Harold B. Gray
Commissioner

/s/ K. F. Drexler
Commissioner

/s/ Mike Karia
Commissioner

ATTEST:

/s/ Donna Nickerson
Secretary

EXHIBIT "A"

STIPULATION OF DISMISSAL WITHOUT PREJUDICE
DATED JULY 22, 2015,
SIGNED BY FCA US LLC AND FLOYD A. MEGEE MOTORS, INC.

Exhibit "A"

BEFORE THE PUBLIC SERVICE COMMISSION
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IN THE MATTER OF THE APPLICATION)
OF FCA US LLC TO ESTABLISH A NEW) PSC DOCKET NO. 15-1022
MOTOR VEHICLE DEALERSHIP)

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

IT IS STIPULATED AND AGREED, by and between the parties, pursuant to Rule 17 of the Rules of the Delaware Public Service Commission, that: (1) FCA US LLC's ("FCA US") Notice of the Establishment of an Additional New Motor Vehicle Dealership (the "Notice") and petitioner Floyd A. Megee Motors, Inc.'s ("Petitioner") Verified Petition/Protest regarding same are hereby withdrawn without prejudice and shall be of no further force or effect; (2) the parties' rights and remedies are otherwise expressly reserved, including without limitation FCA US's right to submit a new Notice and Petitioner's right to submit a protest and challenge to FCA US's new Notice of the award of any new Chrysler motor vehicle dealership (franchise) to Respondent Preston within Petitioner's relevant market area (*i.e.*, "the area within a radius of 10 miles from the intended site of a proposed additional dealership" – 6 Del. C. § 4902(11)); and (3) the parties shall bear their respective costs and attorneys' fees. The parties further stipulate and agree that these proceedings are now moot and can and shall be dismissed without prejudice.

STEVENS & LEE, P.C.

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Dated: July 22, 2015

[1195934 / 42621]

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CERTIFICATE OF SERVICE

John A. Sensing certifies that on July 22, 2015, true and correct copies of the foregoing document(s) were served upon the parties listed below via Delafile:

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