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**BEFORE THE
PHILADELPHIA PARKING AUTHORITY**

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IRRC

2011 SEP 12 P 3 41

In re: Philadelphia Taxicab and
Limousine Regulations

: Docket No. PRM - 10-001
:

COMMENTS TO FINAL FORM REGULATIONS

PRELIMINARY STATEMENT

These comments are being submitted on behalf of non-medallion taxicab carriers whose operating rights include the right to provide call or demand service in part of Philadelphia. These comments are also being submitted on behalf of limousine carriers that provide executive car service in Philadelphia.

OBJECTION TO THE FAIRNESS OF THE RULEMAKING PROCESS

These comments are being submitted under protest. Because the Authority published its Final Form Regulations three business days before approving them for submission to the Independent Regulatory Review Commission ("IRRC"), despite numerous objections from the regulated community at the Authority Board meeting, the regulated community did not have sufficient time to review and comment upon the 224 pages of Final Form Regulations or engage in any meaningful dialogue with Authority staff prior to the submission to IRRC.

The Authority's rush to get its Final Form Regulations approved without meaningful input from the regulated community certainly violates the spirit of the Regulatory Review Act if not the letter of the law. Another consequence of the Authority's haste in proceeding is that the Final Form regulations that were submitted to IRRC, along with the 229 page Final Rulemaking Order failed to address many issues that were raised by IRRC and various commentators. After discussions with IRRC, the Authority realized that there are many issues it must address before IRRC may consider the Final Form Regulations for approval. As a consequence, the Authority suddenly and without explanation withdrew its Final Form Regulations from consideration by IRRC on August 12, 2011 and has given the regulated community one week to submit comments on the Final Form Regulations.

One week does not give the regulated community sufficient time to comment upon the myriad of problems associated with the Final Form Regulations. We have done our best to address the issues we deem most important in the little time we have had to prepare these comments. But there are certainly items that we have overlooked and which are important to the regulated community and to the public. We believe it is against the public interest for the Authority to proceed in this fashion.

**FAILURE TO SUBMIT PROPOSED
AND FINAL FORM REGULATIONS
TO ADVISORY COMMITTEE**

Section 5702 of the Parking Authorities Law requires the Authority to submit issues and questions regarding the regulation, enforcement, compliance and operation of taxicabs and limousines in Philadelphia to the Advisory Committee. This includes proposed and final form regulations. In the brief it submitted to the Supreme Court in Germantown Cab Company v. Philadelphia Parking Authority, the Authority states:

Submission of all proposed regulations to the Advisory Committee is mandatory. 53 Pa.C.S. §5702(a) (“The PPA shall submit to the advisory committee issues and questions for their consideration regarding the regulation, enforcement, and compliance and operation of taxicabs and limousines in cities of the first class.”). The Advisory Committee is authorized to submit comments on these regulations to the PPA. *Id.* In addition, the Advisory Committee may also “submit suggestions or proposals” to the PPA on topics considered important by a majority of the members. *Id.* Furthermore, the PPA is directed to “give careful and due consideration to the comments and proposals of the Advisory Committee. *Id.*

Simply put, the Advisory Committee provides oversight of the PPA’s rulemaking process and acts as a consensus builder between the PPA and interested parties. It, therefore, serves the same functions as IRRC which acts as a clearinghouse for complaints, comments and input on regulations. See 71 P.S. §745.2(a).

The Authority did not submit either the proposed or the Final Form Regulations to the Advisory Committee for review and comment. By the Authority’s own admission, this failure is fatal to the success of the current rulemaking proceeding. The Final Form Regulations should not be submitted to IRRC until they are submitted to the Advisory Committee for review and comment as required by the statute.

**NOTICE PROVISION REGARDING ANNUAL FEE SCHEDULE VIOLATES
THE ACT AND THE REGULATED COMMUNITY’S DUE PROCESS RIGHTS**

Section 5707 of the Parking Authorities Law pertains to the Authority’s budget and fees and provides the mechanism and procedure by which the Authority’s fee schedule becomes effective. In other words, the Authority’s fee schedule does not become effective unless and until the Authority does all of the acts required by this section. Section 5707 does not establish a legislative approval process for the Authority’s fee schedule, although either house of the General Assembly may disapprove the Authority’s fee schedule, which triggers a procedure for resubmission of the budget and fee schedule by the Authority.

One of the purposes of Section 5707 is to give the regulated community the opportunity to challenge the Authority’s proposed budget and fee schedule by lobbying members of the General Assembly to adopt a resolution disapproving it. In order to have a meaningful

opportunity to lobby the General Assembly, the regulated community must have notice of the proposed budget and fee schedule **on or before** the date it is submitted to the Appropriations Committees. Section 5707 requires the Authority to adopt procedures for notifying certificate holders of the fee schedule for the upcoming fiscal year. The Authority's Final Form Regulations provide for notice **within five days of the effective date of the fee schedule**, which would be **after** date that the General Assembly could adopt a resolution disapproving the Authority's fee schedule. See Section 1001.43(b). Thus, the Authority's Final Form Regulation deprives the regulated community of the opportunity to challenge the Authority's proposed fee schedule before it becomes effective.

We raised this concern in our comments to the Authority's proposed regulations and the Authority did not address it in its Final Rulemaking Order.

FINAL FORM REGULATIONS MUST CONTAIN PROVISIONS PERTAINING TO THE FORMULATION OF THE AUTHORITY'S ANNUAL BUDGET AND THE ALLOCATION OF REGULATORY EXPENSES AMONG CLASSES OF CARRIERS

The Authority's Final Form Regulations do not contain any provisions pertaining to the allocation of regulatory expenses among classes of motor carriers. It should be noted that the regulations that the Authority adopted in violation of statutory rulemaking procedures contain such provisions. The Authority should explain why it omitted these provisions from its Final Form Regulations. Inclusion of such provisions is in the public interest because it increases the Authority's accountability for the fairness and reasonableness of expense allocation and makes the process more transparent and capable of analysis. We believe the Final Form Regulations must include such provisions for the following reasons:

Section 510 of the Public Utility Code, 66 Pa.C.S. §510, pertains to the allocation of regulatory expenses by the Public Utility Commission. Each year, the Commission is required to estimate its expenses for the upcoming fiscal year, which cannot exceed three tenths of one percent of the previous year's total gross operating revenues of all utilities under its jurisdiction. This amount is the "total assessment" for the upcoming fiscal year. The "total assessment" is allocated among utilities grouped by the type of service provided on a pro rata basis according to amount of the previous year's expenditure directly attributable to the regulation of each group of utilities. Each utility within a group is then assessed based on a factor determined by the utility's reported gross revenues divided by the group's total gross revenues.

Medallion taxicabs were excluded from the annual assessment allocation pursuant to Section 510(b)(5), 66 Pa.C.S. §510(b)(5) (repealed). Instead, medallion taxicabs were subject to a medallion reissuance fee, pursuant to Section 2406 and Section 2414 of the Medallion Act. 66 Pa.C.S. §2406 and §2414 (repealed). The Commission was not required to allocate regulatory expenses, nor was such an allocation necessary, because all medallion taxicabs operate under identical rights which authorize the operation of just one vehicle in citywide call or demand service. Consequently, medallion taxicabs are equally situated in terms of revenue potential and operating expenses.

Act 2004-94 repealed Section 510(b)(5), as well as Chapter 24 of the Public Utility Code. Act 2004-94 substantially reenacted Chapter 24 of the Public Utility Code as Chapter 57 of the Parking Authorities Law. Chapter 57 also gives the Authority power to regulate limousines. The Authority also claims that it has the power to regulate non-medallion taxicab carriers whose operating rights include the authorization to provide call or demand service in part of Philadelphia, which we dispute. Regardless of whether it has the power to regulate non-medallion taxicabs, the Authority must allocate its regulatory expenses among different classes of motor carriers. But Act 2004-94 does not contain any provision similar to Section 510 of the Public Utility Code that requires the Authority to allocate regulatory expenses in any particular manner.

The regulations that the Authority adopted in violation of statutory rulemaking procedures allocate regulatory expenses among all motor carriers subject to the Authority's regulation on a per vehicle basis. But this assessment methodology is neither fair nor reasonable when it is applied to non-medallion motor carriers. As previously noted, every one of the 1600 medallion taxicab operating in Philadelphia have identical rights. All of them may operate on a citywide basis in just one vehicle. Accordingly, they all have the same revenue potential and roughly the same expenses. Thus, it is fair and reasonable to assess them all equally.

But it is neither fair nor reasonable to assess non-medallion motor carriers in the service they provide under their rights is fundamentally different in two very important respects. First, non-medallion motor carriers may provide service in an unlimited number of vehicles. Secondly, with regard to non-medallion taxicabs, they may only provide service in small areas of Philadelphia. Accordingly, these carriers are not similarly situated to medallion cabs or to each other in terms of revenue potential or expenses.

For example, trips provided by non-medallion taxicabs in the small residential neighborhoods where they operate tend to shorter and more local and therefore less lucrative. In contrast, trips provided by medallion taxicabs to and from major transportation hubs, such as the airport and train stations tend to be longer and therefore more lucrative. A non-medallion taxicab has to do a lot more trips to generate the same revenue as a medallion taxicab: Three airport trips at \$25 each versus fifteen trips at \$5 each.

Almost all of the trips provided by non-medallion taxicabs are dispatched. In contrast, medallion taxicabs can wait in feed lines at the airport and train stations and work in Center City where most of the hospitality and entertainment industry is located and where there are almost always high concentrations of population. In order to provide service through a dispatch service, a non-medallion taxicab carrier has to place enough vehicles into service to ensure coverage. Accordingly, non-medallion taxicab carriers always have to be a reserve of idle vehicles ready to answer dispatch calls in order to be profitable. The number of vehicles being operated therefore does not correspond directly to income. Thus, a per vehicle assessment on non-medallion taxicabs is neither fair nor reasonable and is not in the public interest.

In addition to the foregoing, certificate holders subject to the Authority's regulation are entitled to a fair return on their investment and are required to charge rates that are just and reasonable. The manner in which Authority allocates regulatory expenses has a direct bearing on

the return on investment and the rates that must be charged to ensure that it is fair. Accordingly, assessment methodology must be established through regulation to prevent arbitrary and capricious allocations and to ensure a fair return on investment and to maintain a fair and reasonable rate structure. This is clearly in the public interest.

It should be noted that the Authority's most recent budget and fee schedule imposes a \$1,500 per vehicle assessment on non-medallion taxicabs and a \$1,250 per vehicle assessment on medallion taxicabs, even though non-medallion taxicabs are allowed to operate in only small areas within Philadelphia, whereas medallion taxicabs can operate on a citywide basis. In addition, most of the authorized territory of non-medallion taxicabs carriers with rights to provide service in small parts of Philadelphia is outside of the city.

The discrepancy between the assessment for medallion and non-medallion taxicabs also contradicts the Authority's oft-repeated mantra that there is no difference between medallion and non-medallion taxicab service. If this were true, then there would be no difference in regulatory expenses associated with non-medallion taxicab service and the assessment be the same as the medallion assessment.

Under the above assessment methodology, Germantown Cab Company is required to pay the highest assessment of all motor carriers - \$150,000 according to the most recent fee schedule - even though it operates in less than 10% of the city and 90% of its operating territory is outside the city. Germantown Cab Company's PUC assessment is approximately \$7,000 per year. So the assessment Germantown must pay to operate in 10% of its territory is twenty one times higher than the assessment it must pay to operate in 90% of its territory.

This points out the fundamental unfairness of the Authority's current assessment methodology, which is currently incorporated in the regulations it adopted in violation of statutory rulemaking procedures, and the need for a clear, understandable, fair and reasonable methodology to be incorporated into the Final Form Regulations.

WAIVER PROCESS

Section 1005.7 allows for filing of a petition for waiver of Authority regulations. The petitioner has the burden of proving that the requested waiver will not disrupt or harm taxicab or limousine operations in Philadelphia or will adversely affect the public interest. It gives the Director of the Taxicab and Limousine Division power to grant the waiver.

The Authority's Final Form Regulations establish regulations that will cause Executive Transportation Service to stop operating. Executive Transportation Services provides executive car service which is limousine service provided at rates based on mileage in Lincoln Town Cars equipped with meters. Executive has provided this service for almost twenty years and has used meters for more than ten years. In September of 2004 the Authority published proposed regulations that recognized executive car service as a classification of limousine service and would have permitted Executive Transportation Services to continue providing executive car service. For some unexplained reason, the Authority eliminated executive car service from the

regulations it adopted in June of 2005 in violation of statutory rulemaking procedures. The Authority adopted regulations that prohibited limousine rates based on mileage and the use of meters in limousines, effectively putting Executive Transportation out of business. Executive was forced to use the waiver process under the Authority's regulations to remain in business.

While the waiver process was pending, the Authority used coercive enforcement techniques against Executive, including vehicle impoundment, frequent field inspections, and issuance of numerous citations for regulatory violations to put pressure on Executive to agree to restrictions on its operating rights in order to remain in business. The Taxicab and Limousine Director initially denied the waiver without a hearing or an evidentiary record because he concluded that executive car service was unfair competition for medallion taxicabs. The Authority's waiver procedure allowed Executive to request a de novo hearing before the Taxicab and Limousine Committee, a subcommittee of the Authority's Board and it was Executive's burden to prove that its service did not unfairly compete with medallion taxicab service. The Taxicab and Limousine Committee found that Executive's service would not unfairly compete with medallion taxicab service if Executive's certificate was modified to cap the number of vehicles it was allowed to operate, significantly reduced its operating territory, and paid the same per vehicle assessment fee charged to medallions.

In essence, the Authority used coercive regulations and enforcement techniques to secure a modification of operating rights that it could not otherwise have secured through the normal order to show cause proceeding. Executive was not guilty of any regulatory violations before the Authority adopted regulations that conflicted with its rights. In fact, it provided some of the highest quality transportation services in Philadelphia. The Authority could not revoke, suspend or modify Executive's rights as a bad operator so it had to make it a bad operator by adopting regulations that conflicted with its rights.

We are concerned about the waiver process for a number of reasons. First and foremost because we believe it will be used by the Authority in the same what that it has used it in the past: as a method of securing modification of existing rights for improper purposes. We also concerned that the TLD Director has the power to adjudicate any application without a hearing or evidentiary record and that he is able to consider factors such as competition between carriers as a basis for any decision.

RATES

Comment to Section 1023.1 Uniform taxicab rate. The Authority does not have the statutory power to require uniform rates between medallion and non-medallion taxicabs.

Section 5720(b) of the Parking Authorities Law provides:

Uniform rates. --All taxicabs with citywide call and demand rights in cities of the first class shall charge a uniform rate to passengers, as determined by the authority upon investigation.

(emphasis added)

Section 1023.1 provides that "all taxicabs shall charge a uniform rate to passengers as determined by the Authority." The Authority only has the power to require medallion taxicabs to charge a uniform rate. The statute does not permit the Authority to require medallion and non-medallion taxicabs to charge a uniform rate and this power cannot be fairly implied in the statute. On the contrary, the explicit language of Section 5720(b) indicates that the General Assembly only intended to give the Authority power over medallion taxicab rates. Nothing in the statute indicates that the Authority has the power to establish rates for non-medallion taxicabs.

Requiring medallion and non-medallion taxicabs to charge uniform rates also violates Section 5703 of the Parking Authorities Law, which pertains to rates. Section 5703(a) provides:

Rates to be just and reasonable. --Every rate made for authority-certified taxicab, limousine or medallion taxicab service shall be just and reasonable and in conformity with regulations or orders of the authority.

What is fair and reasonable rate for a medallion taxicab to charge may not be fair and reasonable for a non-medallion taxicab.

Section 5703(g) also provides:

(g) *Fair return.* --In fixing any rate of a taxicab or limousine service engaged exclusively as a common carrier by motor vehicle, the authority may fix the fair return by relating the fair and reasonable operating expenses, depreciation, taxes and other costs of furnishing service to operating revenues.

DISPATCHERS

Section 1019.5, which pertains to facilities inspections for dispatchers, requires dispatcher facilities to be located within the Commonwealth of Pennsylvania. This provision violates the Commerce Clause of the United States Constitution.

BROKERS

Sections 1029.1 through 1029.22. There is no statutory authority for these regulations.

CITATION AND COMPLAINT PROCEDURES

Section 1005.1 pertains to pleadings allowed in an action before the Authority and does not allow for the filing of a citation. It does, however, permit a formal complaint, answer, new matter and reply to new matter.

Section 1005.11 and Section 1005.12 pertains to formal complaints generally and the contents of formal complaints and Sections 1005.41 to 1005.43 pertains to answers.

Section 1005.13 pertains to citation complaints by the Authority. There is no statutory authority for a citation process.

Section 5705(b) of the Parking Authorities Law provides, *inter alia*, that Authority enforcement officers may commence and prosecute complaints brought before the Authority pursuant to the Parking Authorities Law and Authority regulations applicable to taxicab or limousine operations in Philadelphia. 53 Pa.C.S. §5705(b). It does not provide for a citation process. Our courts have held that, in proceedings before administrative authorities, the strict rules of pleading applicable to common-law actions do not apply. Lancaster Yellow Cab & Baggage, Inc. v. Pennsylvania Labor Relations Board, 88 A.2d 866 (Pa. 1952); Kochinsky v. Independent Pier Co., 41 A.2d 409 (Pa. 1945). But there are certain minimum standards, and the rules of pleading must be observed in a broad and general sense. *Id.*

These minimum standards are set forth in the General Rules of Administrative Practice and Procedure ("GRAPP"), which govern practice and procedure before governmental agencies that have not adopted their own rules of practice and procedure. Section §35.9 of the GRAPP, 1 Pa.Code §35.9, pertains to formal complaints generally and provides that:

A person complaining of anything done or omitted to be done by a person subject to the jurisdiction of an agency, in violation of a statute or regulation administered or issued by the agency may file a complaint with the agency. If the complaint relates to a provision in a tariff, policy form or other similar contract document on file with the agency, the document should be identified. A copy of the complaint will be forwarded by the agency to the respondent who will be called upon to satisfy the complaint or to answer the same in writing within the time specified in § 35.35 (relating to answers to complaints and petitions), or such lesser time as may be prescribed by statute, after the date of service of the complaint, unless the agency with or without motion shall prescribe a different time. If, in the judgment of the agency, a violation of a statute or regulation administered or issued by the agency has been alleged and has not been satisfied adequately the agency will either invite the parties to an informal conference, set the matter for a formal hearing, or take another action which in the judgment of the agency is appropriate. In the event that a hearing is held the complainant automatically shall be a party thereto and need not file a petition for leave to intervene.

Section 35.10 of the GRAPP, 1 Pa.Code §35.10, pertains to the form and content of formal complaints and provides:

A complaint may be made by letter or other writing. It shall contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a statement of the facts forming the basis for the conclusion that there has been a violation of a statute or regulation administered or issued by the agency. Supporting material may be submitted along with the complaint.

While the Authority's rules regarding the form and content of citations may be sufficient to meet the minimum standards set forth in Section 35.10 of the GRAPP, the Authority's rules

with regard to the other aspects of the citation process fail to satisfy the minimum requirements of the formal complaint process set forth under Section 35.9 of the GRAPP. First, it should be noted that the Authority's invalid regulations treat complaints and citations differently and provide for different procedures for the commencement and prosecution of each. Section 29(a) through (d) of the Authority's invalid regulations govern the commencement and prosecution of formal complaints, while Section 29(m) governs the citation process and specifically exempts it from the requirements of Section 29(a) through (d).

Under the Authority's complaint process, a complainant, which could be an Authority Enforcement Officer, files a formal complaint with the Court Administrator of the Taxicab and Limousine Division. The Complainant is then responsible for service of the formal complaint on the Respondent. No notice to plead is required under Authority's regulations, which violates Section 35.9 of the GRAPP, but the Respondent is permitted to file an answer to the complaint within 30 days. If an answer is filed, a hearing on the merits is scheduled by the Court Administrator.

Under the Authority's citation process, Enforcement Officers are not required to file citations with the Authority and a Respondent may not file an answer to the citation. Rather, pursuant to Section 29(m), a citation is served on the Respondent, who must file a request for a hearing and post collateral for the payment of the proposed fine in order to contest a citation. This procedure violates Section 35.9 of the GRAPP because it does not require the filing of citations with the Authority and does not permit a responsive pleading. The posting of collateral also violates due process because it requires the Respondent to post collateral for a proposed fee prior to a determination of liability.

With regard to notice of the commencement of complaint proceedings and notices of hearings, Section 5.6 of the GRAPP provides:

Under 45 Pa.C.S. § 906 (relating to reasonable notice of hearing) whenever notice of hearing or of opportunity to be heard is required or authorized to be given by the Commonwealth government by or under a statute or may otherwise properly be given, the notice, except in cases where notice by publication is insufficient in statute, shall be deemed to have been given to persons residing within this Commonwealth, and to persons owning or having an interest in a property situated within the limits thereof, if the notice shall be published in the *Bulletin* at the time that the period between the date of publication as specified in 45 Pa.C.S. § 903(a) (relating to effective date of documents) and the date fixed in the notice for the hearing or for the termination of the opportunity to be heard may be:

- (1) Not less than the time specifically prescribed for the publication of the notice by the appropriate statute.
- (2) Not less than 15 days when no time for publication is specifically prescribed by statute without prejudice, however, to the effectiveness of a notice of less than 15 days where the shorter period is reasonable.

The Pennsylvania Public Utility Commission satisfies the requirements of this provision by publishing notice of the commencement of a formal complaint proceeding in the Pennsylvania Bulletin, along with a notice to plead and the complete text of the complaint.

FINES AND PENALTIES

Section 1017.3 pertains to age and mileage computation and provides in subparagraph (d) that "a person determined to have intentionally manipulated or disconnected the odometer of a taxicab will be subject to a \$1,000 fine and a cancellation of rights issued by the Authority or both." (similarly Section 1055.3(f) applies to limousines). Cancellation of rights is an overly harsh penalty for the specified violation. The Authority should consider eliminating this penalty. In addition, cancellation of rights should be considered in the context of an order to show cause proceeding or in a formal complaint proceeding where the rights holder has a full and fair opportunity to address the allegations against him and to raise any and all defense available to him. Cancellation should be exceedingly rare and should always be a matter of discretion. It should not be reserved for any particular violation, unless that violation is particularly serious, such as a violation involving criminal activity of a violent nature, or an accumulation of violations that demonstrate a pattern of violation and a failure to take corrective action to avoid repeated violations.

Section 1017.35 pertains to failure to submit to field inspections and provides in subparagraph (c) that "a person determined to have refused the direction of an inspector to submit a taxicab to a field inspection will be subject to a \$1,000 fine and a cancellation of rights issued by the Authority or both." (similarly Section 1055.1 applies to limousines). Cancellation of rights is an overly harsh penalty for the specified violation and is particularly unfair because the person who commits the violation would most likely be a driver who will most likely not be the certificate holder. A certificate holder should be subject to a loss of rights as a consequence of the actions of an individual other than the certificate holder. The Authority should consider eliminating this penalty.

No other section of the Authority's Final Form Regulations provides for a specific fine amount for violation of the Authority's regulations.

Section 1001.61 pertains to penalties and establishes a range for penalties that are not "otherwise assigned to a violation of any provision of the act, this part or an order of the Authority." The range is \$25 to \$1,000.

The Parking Authorities Law does not provide for specific fine amounts for violations of the Parking Authorities Law or the Authority's regulations. Sections 5725 and 5745 of the Parking Authorities Law limit the amount of any fine for violations of the Act or the Authority's regulations to no more than \$1,000. So the only purpose served by Section 1001.61 is to establish a minimum fine of \$25 because the maximum fine is established by statute. This section should be eliminated because it does not serve any purpose, especially in light of the penalty schedule discussed below.

The Authority's Final Rulemaking Order indicates that the Authority will develop a **penalty schedule guidance document**. One presumes that such a schedule would provide **guidance** to the Hearing Officer in the adjudication in enforcement actions. The Authority's Final Form Regulations should include provisions that specify whether the Hearing Officer is required to follow the penalty schedule or whether he has discretion to deviate from the schedule and, if so, the criteria for such deviation. In addition, the Authority's Final Form Regulations should also provide clarification and guidance regarding the imposition of progressive fines for second, third and subsequent penalties. In particular, the Authority should clarify how violations are counted and whether they accumulate forever or come off of a record at some point.

It should be noted that the Authority published a penalty schedule, **not a penalty schedule guidance document**, on its website and solicited comments that were due on August 9, 2011. The notice on the website does not mention the fact that the penalty schedule was submitted for publication in the Pennsylvania Bulletin. Apparently, the Legislative Reference Bureau mistakenly published it under the Philadelphia Regional Port Authority and, as a consequence, will republish it in an upcoming issue of the Pennsylvania Bulletin. The Authority has also extended the comment period for the penalty schedule guidance document until August 31, 2011.

It is not appear that publication of the penalty schedule guidance document is related to the present rulemaking process or a separate rulemaking process. Rather, the Authority asserts that it is following the same procedure followed by the Commission when it adopted a **penalty schedule guidance document** pertaining to the medallion regulations. The fact that the Commission adopted a similar procedure is not a justification for not incorporating specific fine amounts or ranges of fines into the Final Form Regulations. There is no reason why the Authority should not be able to incorporate specific fines into its regulations, particular where the omission allows the Authority to avoid justifying the amount of a particular fine or the economic impact it may impose.

Also, there is a significant difference between adopting a **penalty schedule guidance document**, as opposed to a penalty schedule. The Authority has adopted penalty schedules in the past and has always imposed fines in accordance with the schedule. In other words, it has not been treated as guidance but as the only fines that are permissible. The Authority issued an administrative order that permits deviation from the penalty schedule based on consideration of certain aggravating or mitigating circumstances; however, such an order, to the extent it establish binding norms to which the regulated community must adhere or which affect the outcome of proceedings are in the nature of regulations and the Authority may not bypass the regular rulemaking process by incorporating them into an administrative order.

The incorporation of specific fines will also avoid confusion to the regulated industry. This is clearly illustrated by the confusion created by the proposed penalty schedule the Authority is proposing to adopt. The document refers to particular sections of the Authority's Final Form Regulations, describes the offense supposedly contained in that section, and then provides for penalties for the first, second and third (and subsequent) violations. The problem is that the regulatory sections do not appear to match up with the described violation. For example the first five "Owner Violations" refer to Section 1011.3 and Section 1051.3, which pertain to the

annual renewal process. But these sections do not contain any provisions concerning any of the offenses described in the schedule. For example, nothing in Section 1011.3 refers to "Using a driver with an expired PPA Driver's Certificate."

One presumes that the failure of the described violations to match the cited regulation is merely a clerical error. But a careful review of the Authority's Final Form Regulations proves that many of the described violations do not match any provision in the regulations. For example, Section 1021.12(c) prohibits a taxicab driver from providing taxicab service with an expired taxicab driver's certificate, but there is not similar provision that applies to the "owners" to which the Authority's penalty schedule refers.

With regard to violations of an order of the Authority, orders which establish binding norms to which the regulated community must adhere need to be promulgated in accordance with statutory rulemaking procedures.

INSPECTION ON NON-MEDALLION TAXICAB

Some of the government officials who have submitted letters of support for the Authority's regulations have made comments about the urgent need for approval of the Authority's regulations because "too many taxicab and limousine operators are currently operating without vehicle inspections or basic background checks that should be performed by the Authority." The Authority's Executive Director made similar comments in his statement accompanying the Final Form Regulations. These comments reflect an ignorance of the true state of non-medallion taxicab regulation in Philadelphia and could not be further from the truth.

First of all, non-medallion taxicab companies operating within the City of Philadelphia were regulated by the Public Utility Commission before the enactment of Act 2004-94 and they continue to be regulated by the Public Utility Commission up to the present day. Non-medallion taxicabs are subject to regulations published in the Pennsylvania Code in Chapter 29 of Title 52. Germantown Cab Company, a non-medallion taxicab company operating within the City of Philadelphia is in full compliance with the vehicle requirements set forth in Chapter 29 and its vehicles are inspected by PUC Enforcement Officers on an annual basis at Germantown Cab Company's facilities and in the field on a random basis. The PUC routinely conducts these random field inspections within the City of Philadelphia.

In addition to the inspections conducted by the PUC, Germantown Cab Company also submits its vehicle to annual safety inspection by the Department of Transportation. So it is ludicrous to suggest that the public is in danger because vehicles operated by Germantown Cab Company are not inspected by three different regulatory agencies, instead of two. It should be noted that medallion taxicabs are only subject to inspection by one regulatory agency (the Authority) because the PUC no longer has jurisdiction over medallion taxicabs and the Authority conducts the annual PennDoT inspection.

In light of the foregoing, it is outrageous to state that Germantown Cab Company is engaged in "rogue behavior," as one public official has suggested, or that Germantown Cab Company has refused to submit their vehicles for inspection as Mr. Fenerty falsely claims.

Germantown Cab Company disputes the Authority's power to regulate non-medallion taxicabs operating in the City of Philadelphia and these matters are currently being litigated before the Authority and before the Commonwealth Court.

In fact, on August 3, 2011, the Commonwealth Court issued a *per curiam* order in the matter of Sawink, Inc., et al v. Philadelphia Parking Authority, Docket No. 84 M.D. 2011, a case in which Germantown Cab is a party, directing the scheduling of oral argument before an *en banc* panel in which the parties will be required to address the issue of whether the Philadelphia Parking Authority has the authority to regulate taxicabs that are certificated by the Pennsylvania Public Utility Commission when they operate in Philadelphia. This matter was previously briefed and argued before a three judge panel; however, the Court presumably considers the issues presented to be sufficiently significant to order re-argument before an *en banc* panel.

The fact that this issue is a matter that the Commonwealth Court wants to consider *en banc* should give the Commission pause before it approves the Authority's Final Form Regulations. Whether an agency has the statutory authority to promulgate a regulation is the most important of all the criteria the Commission considers in determining whether a final form regulation should be approved. Clearly, there is a legitimate and significant question as to whether the Authority has the statutory authority to promulgate regulations pertaining to vehicle and inspection standards for non-medallion taxicabs. The Commission should disapprove the Authority's Final Form regulations precisely because there is significant doubt about the Authority's statutory authority to promulgate regulations affecting non-medallion taxicabs.

But Germantown Cab Company is not relying simply on the fact that the Commonwealth Court is interested enough in the issue of the Authority's power to regulate non-medallion taxicabs to order oral argument before an *en banc* panel. The language of the statute itself suggests that the Authority's power to inspect taxicabs is limited to medallion taxicabs. Section 5714(a) of the Parking Authorities Law provides:

Procedure. --A vehicle may not be operated as a taxicab with citywide call or demand rights in cities of the first class unless a certificate of public convenience is issued by an authority authorizing the operation of the taxicab and a medallion is attached to the hood of the vehicle. **Prior to the issuance of a medallion**, the certificate holder shall have its vehicle inspected by the authority. The authority shall require, by order or regulation, **that each medallion holder** submit to a periodic vehicle inspection of its taxicab by authority personnel to ensure that the vehicle meets the requirements of this subchapter and authority regulations. Authority inspection requirements shall be in addition to the vehicle requirements set forth in Title 75 (relating to vehicles). Authority inspection and recording requirements shall be established by regulations. No vehicle which is more than eight years old shall continue in operation as a taxicab. Notwithstanding the foregoing, the authority may authorize the operation of antique vehicles in call or demand service in such circumstances as the authority may deem appropriate. Each medallion holder's tariff rates shall be clearly and visibly displayed in each taxicab. A medallion shall not be removed from a vehicle without prior

notification to and permission of the authority. A medallion authorizes operation of a vehicle as a taxicab only for the fiscal year for which the medallion is issued.

(emphasis added)

The Authority derives its statutory power to inspect medallion taxicabs from this provision of the Parking Authorities Law. There is no similar provision giving the Authority the power to inspect non-medallion taxicabs. By omitting non-medallion taxicabs from the inspection requirement, one may presume that the General Assembly did not intend to give the Authority the power to inspect non-medallion taxicabs.

The Commission should also consider the fact that, before Act 2004-94, Germantown Cab Company was subject to regulations published in the Pennsylvania Code in Chapter 29 of Title 52 and that these regulations were unaffected by the enactment of Act 2004-94. Act 2004-94 repealed the Chapter 24 of the Public Utility Code, also known as the Medallion Act, which never applied to non-medallion taxicabs. See Pennsylvania Public Utility Commission v. Genco Services, Inc., t/a Cheldon Radio Cab Co., Inc., 1992 Pa. PUC Lexis 40. The PUC's regulations under Chapter 24 of the Public Utility Code are codified in the Pennsylvania Code in Chapter 30 of Title 52. These regulations would have become ineffective upon repeal of Chapter 24 of the Public Utility Code. But the General Assembly realized that this would have created a regulatory void from the effective date of the repeal until the Authority deposited its final form regulations with the Legislative Reference Bureau for publication in the Pennsylvania Code. Accordingly, the General Assembly included a provision in Act 2004-94 (Section 22(2)) that extended the effectiveness of the regulations codified in the Pennsylvania Code in Chapter 30 of Title 52 until the Authority adopted its own regulations. Significantly, the General Assembly made no such provision for the regulations that apply to Germantown Cab Company and which are codified in the Pennsylvania Code in Chapter 29 of Title 52. The Commission should consider the fact that the General Assembly made no provision for the regulations that apply to Germantown Cab Company because it did not intend to change the regulation of non-medallion taxicabs and did not intend to transfer regulatory control over non-medallion taxicabs to the Authority.

Certainly, it would be absurd to conclude that the General Assembly intended both the Commission and the Authority to control the regulation of non-medallion taxicabs operating in the City of Philadelphia when medallion taxicab are subject to regulation by the Authority only and non-medallion taxicabs operating outside the City of Philadelphia are subject to regulation by the PUC only. How would it even be possible for one company to comply with regulations promulgated by two different regulatory agencies where those regulations conflict with one another? This is precisely what the Authority intends to do with its Final Form Regulations and this alone is sufficient reason to disapprove of them.

Germantown Cab Company understands that there are two sides to every dispute and has repeatedly offered to accommodate the Authority's concerns for public safety while these issues are being litigated by making its vehicles available for inspection by Authority enforcement officers to the same extent that they are available to PUC enforcement officers. But the Authority has rejected every offer. Germantown extends that offer again, here, in writing, to

allow inspection of its vehicles by Authority enforcement officers at its facilities, just as it allows inspection by PUC enforcement officers until the issue of the scope of the Authority's statutory power to regulate non-medallion taxicabs is resolved. But even if the Authority declines Germantown's offer again, the sky will not fall and the world will not end just because Germantown's taxicabs are inspected at least twice a year by two agencies, instead of four times a year by three agencies.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael S. Henry". The signature is written in a cursive style with a large initial "M" and a stylized "H".

Michael S. Henry